

Review of the use of children as brand ambassadors and in peer-to-peer marketing

CAP Review

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Executive summary

In January 2012, the Committee of Advertising Practice (CAP) launched a year-long review into the use of children as brand ambassadors and in peer-to-peer marketing, following a recommendation in the *Bailey Review* to explore whether to prohibit those practices with children under 16.

CAP invited relevant academics and stakeholders to submit research about brand ambassador and peer-to-peer marketing techniques in order to understand their potential impact on children and their peers, particularly in the online environment. CAP also considered how brand ambassador and peer-to-peer marketing techniques sit within the existing legal and regulatory framework, the effect of the industry Pledge not to engage children as brand ambassadors, and the extent to which they are subject to the existing protections afforded to children in the UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing (the CAP Code).

When assessing the prevalence of the use of children as brand ambassadors or in peer-to-peer marketing, CAP found that the instances of the use of brand ambassadors - a practice that involves the greatest level of engagement between a marketer, a child and their peers - were limited. CAP noted that in response to the *Bailey Review* significant elements of the advertising industry had agreed, through the auspices of the Advertising Association, to a voluntary Pledge not to employ children under 16 as brand ambassadors. Examples of the use of brand ambassadors that were identified during CAP's review occurred before the industry best practice was developed, commonly required parental consent and included use by Government organisations and charities; notably the Food Standards Agency (FSA) which encouraged children to promote its healthy eating campaign. In light of that Pledge and the wide range of signatories to it, CAP notes that the context of the recommendation has, therefore, changed considerably over the course of the review period.

CAP found that marketing techniques where there was a reward or incentive for a child to engage with the marketer, or "incentivised peer-to-peer marketing," were more prevalent. Typically such practices occurred when social media pages required users to "like", "pin" or "re-tweet" a brand in order to gain access to content such as games. The fact that the child had expressed some endorsement of the brand was then made known to the child's friendship group.

A number of respondents to CAP's review expressed concern that the use of children as brand ambassadors and in peer-to-peer marketing encouraged children to think about their friendships in a commercial and manipulative way that would exacerbate bullying and peer pressure. CAP found, however, that academic views were polarised as to whether the use of children as brand ambassadors or in peer-to-peer marketing resulted in actual harm, and there was disagreement as to whether intervention would unjustifiably remove some of the benefits children receive from using social media. Another concern that emerged from the review was the perceived ability of children to discern the difference between editorial and marketing content, which often led to the perception that marketing was 'stealthy'.

CAP considered how brand ambassador and peer-to-peer marketing techniques sit within the existing legal and regulatory framework and the extent to which they are subject to the existing protections afforded to children in the CAP Code which apply to marketing communications resulting from brand ambassador or peer-to-peer marketing techniques. It noted, for example, that the CAP Code contains clear rules that reflect relevant legislation and require marketers to ensure that all marketing communications are obviously identifiable as such, and that existing, robust rules prevent marketing communications from

being likely to cause children physical, mental or moral harm or exploit a child's credulity, loyalty, vulnerability or lack of experience. Furthermore, the CAP Code contains specific rules which prevent marketing communications from encouraging children to make a nuisance of themselves or pester their parents.

CAP also found that existing laws allow children over 13, subject to local authority licence, to undertake employment. Younger children could also be employed providing the requisite permissions were obtained. Overall, when considering the complex legal and regulatory landscape, it was not clear that in all circumstances a ban on the employment of children would be justifiable and could, potentially, be at odds with existing legislation.

After a thorough assessment of the available evidence, regulatory landscape, and impact of the industry Pledge, CAP has concluded that it is not proportionate to consult on introducing a rule in the CAP Code to ban the use of under 16s as brand ambassadors or in peer-to-peer marketing. However, CAP considers that it necessary and proportionate to publish new guidance for marketers in the first quarter of 2013 to ensure the responsible use of such techniques.

The guidance will make clear that brand ambassador or peer-to-peer marketing activity falling within the scope of the CAP Code continues to be subject to it and, drawing upon existing CAP Code rules, will clarify that it must:

- Be obviously identifiable as marketing activity; and will give examples on how that can be achieved;
- Do nothing that is likely to result in the physical, mental or moral harm of children;
- Not make children feel inferior or unpopular if they do not have a product or do not engage in peer-to-peer marketing and confirm that all rules in CAP's dedicated Children's section apply; and
- Be prepared with a sense of social responsibility.

For communications or practices that fall outside the scope of the CAP Code, marketers are encouraged to seek parental consent before engaging a child in the role of a brand ambassador.

Background

The recommendation

The *Bailey Review* into the commercialisation and sexualisation of childhood recommended that:

The Committee of Advertising Practice and other advertising and marketing bodies should urgently explore whether, as many parents believe, the advertising self-regulatory codes should prohibit the employment of children under the age of 16 as brand ambassadors or in peer-to-peer marketing – where people are paid, or paid in kind, to promote products, brands or services.

ACTION: *Committee of Advertising Practice, the Advertising Association and relevant regulators*¹

The commercial world engages children in a variety of ways, many of which extend beyond advertising. The *Bailey Review* asked CAP to interrogate specifically the concern at the heart of its recommendation in this area, which is the potential harm to the child brand ambassador and the specific potential harm arising from his/her resulting marketing communications, both to the child audience of the communication and, indirectly, to other children.

What is the potential impact of employing children as brand ambassadors or in peer-to-peer marketing?

CAP has drawn evidence from the *Bailey Review*, previous Government reviews on the commercialisation of childhood and responses to CAP's call for evidence. CAP understands concerns surrounding peer-to-peer marketing and brand ambassadors is twofold. Firstly, the potentially indistinct boundary between advertising and non-advertising content might disrupt children's critical understanding of the marketing communication, potentially exploiting their credulity and unduly influencing them to buy something or ask their parents/guardians to buy something for them. Secondly, the practices might distort children's engagement with other children and encourage them to think about their friendships and inter-relationships in a commercial way, which might contribute to instances of peer pressure or bullying because a child does not have a particular product.

The recognition of advertising

The review on *The Impact of the Commercial World on Children's Wellbeing* written by Professor Buckingham (the "*Buckingham Review*") notes that children as young as three years old are able to discern the difference between television programmes and advertising and by around seven years old they can identify the persuasive intent of marketing.² He highlights the importance of this cognitive development in children and states:

Some researchers suggest that if children do not understand the idea of persuasive communication, they are unable to use 'cognitive defences' against it – for example, by questioning the credibility of the source, or arguing against it. Some argue that children who recognise adverts as persuasive are therefore less likely to trust them, and to want the products advertised.

¹ <https://www.education.gov.uk/publications/eOrderingDownload/Bailey%20Review.pdf>

² P85 Buckingham Review: *The Impact of the Commercial World on Children's Wellbeing*

In the online world there is considerable potential for the boundary between advertising and non-advertising content to become blurred. In peer-to-peer marketing and the use of children as brand ambassadors, the brand message is delivered by a child rather than the brand itself, reducing the ability of the child audience to discern the difference between commercial and non-commercial messages. Professor Buckingham notes that “while the evidence is less than definitive, it is reasonable to assume that children are less likely to understand the commercial dimensions of online marketing than ‘older media’.”³ There is therefore a greater possibility that a child will view the recommendation of a product by their peer as a free expression of their preference for a product and not recognise the commercial intent behind it or not judge the material critically. (Part Two details the relevant CAP Code rules which cover the recognition of marketing communications.)

The effect on children’s engagements with other children

The primary concern underlying this recommendation is the effect of these marketing techniques on children’s friendships. The report notes that there is academic and parental concern that the use of children to promote products to other children disrupts their friendships. In *Consumer Kids* for example, Agnes Nairn argues that children “need warm bonds of friendship with their peers – not competitive consumption;”⁴ the promotion of commercial messages between children is therefore disrupting to the essential friendships children need to form. The report is concerned that commercial activity between friends, incentivised by the marketer, preys on the natural insecurities and emotions of children. This potential impact is exacerbated if the child cannot afford the product and feels encouraged to ask and perhaps even pester his/her parents to purchase the product. On the other hand, the child who has been paid to promote a brand to their friends may come to see their friends in a commercial light - as clients, rather than as friends. The *Bailey Review* recognises that advertising is not the sole cause of bullying or commercialisation, but it is concerned that the active involvement of marketers in friendships among children can have negative effects.

The findings of other reviews examining the commercialisation of childhood

Concerns about the commercialisation of childhood and, specifically, the use of children as brand ambassadors have been raised before. While several surveys have borne out parental concern about the impact of marketing on children, the key reviews and research in this area have not established that marketing has a negative or harmful effect on children’s welfare. The *Buckingham Review* noted that there is “little doubt that marketing can be effective... but convincing evidence about its effects on broader attitudes and aspects of behaviour is more difficult to obtain.”⁵ Often, associations between the media and negative wellbeing are presented as demonstrating that a particular technique has ‘caused’ an effect when that is not borne out by the available evidence. Moreover, the range of evidence on new marketing techniques is limited and the need for new research in this area has been a key recommendation of such reports.

The *Buckingham Review* report does, however, address the broader context for these issues, including the commercial and social environments of children and their relevance to children’s engagement with marketers. At the time of the *Buckingham Review*, a significant proportion of children aged 13-16 undertook part-time employment and received monetary reward for their work, so they were already actively functioning in the commercial world.

³ Buckingham Review: *The Impact of the Commercial World on Children’s Wellbeing* p 88.

⁴ Agnes Nairn, *Consumer Kids*, 2008.

⁵ <https://www.education.gov.uk/publications/standard/publicationDetail/Page1/DCSF-00669-2009>

The report did, however, note that concern remained about the use of children as brand ambassadors preying on children's insecurities within their peer group, which was seen as less acceptable than other forms of marketing. For example, if a child who is popular with children is paid by a company to promote its clothing to children it may exacerbate (for those children) the existing social pressure to 'fit in' and place pressure on them to ask their parents for that clothing.

In a literature review, Professor Buckingham noted that, as technological and familial environments develop, it is "harder to prevent children being exposed to potential risks from media"⁶. Researchers disagree on whether exposure to risk is a part of normal, healthy child development and some contend that in protecting children from negative or harmful effects "one may also prevent them from experiencing a range of positive consequences."⁷ The finding is supported by research from the EU Kids Online Network that noted there was a difficult balance between allowing children to explore the opportunities and benefits of the internet, while protecting them from risks such as online bullying or exposure to inappropriate content.⁸

While academics, policy makers and regulators remain engaged in complex debates about the evidence base, parents and guardians, who tend to have more limited knowledge of how these new techniques work, remain concerned about their children's interaction with the commercial world. In response to a survey for the *Bailey Review*, of 997 respondents, 820 considered instances where children were used or subject to practices where people are paid to promote goods and services to people they know were "inappropriate". In qualitative research, some parents felt that the practice was wrong, demonstrating evident concern.

Matters to consider when contemplating regulatory change

As the author of the CAP Code, CAP has been asked to explore whether there should be a ban on peer-to-peer marketing and the employment of children as brand ambassadors. The CAP Code sets standards to ensure that advertising is responsible, with particular regard to children and other people whose circumstances place them in need of special protection. The standards apply to all UK non-broadcast ads. The Advertising Standards Authority (ASA) administers the CAP Code and can require an ad to be withdrawn or amended if the rules have been breached. Together, the CAP Code and ASA enforcement place necessary restrictions on marketers' freedom to communicate with consumers, citizens and other businesses. Each restriction must therefore be a proportionate means of achieving a legitimate aim to withstand the potential of judicial review.

CAP takes very seriously the concerns of parents and the need to protect children, which is an enduring principle of the UK Advertising Codes⁹. In response to the recommendation, CAP undertook a year-long review to consider different ways in which children are used as brand ambassadors and in peer-to-peer marketing and prevalence of these techniques, research relevant to the recommendation, and the impact of the industry Pledge.

⁶ 'The Impact of the Media on Children and Young People with a particular focus on computer games and the internet.' 2007.

⁷ Ibid.

⁸ EU Kids Online, September 2011:

[http://www2.lse.ac.uk/media@lse/research/EUKidsOnline/EU%20Kids%20II%20\(2009-11\)/EUKidsOnlineIIReports/Final%20report.pdf](http://www2.lse.ac.uk/media@lse/research/EUKidsOnline/EU%20Kids%20II%20(2009-11)/EUKidsOnlineIIReports/Final%20report.pdf)

⁹ <http://www.cap.org.uk/Advertising-Codes/Non-broadcast-HTML.aspx>

How CAP has approached the review

In assessing whether the CAP Code should prohibit the employment of children under the age of 16 as brand ambassadors or in peer-to-peer marketing – where people are paid, or paid in kind, to promote products, brands or services - CAP has sought to weigh up, on the one hand, the evident parental concern about the principle of marketers undertaking this practice and, on the other hand, consideration of whether a ban, which would be binding on all marketers and result in material sanctions if it were breached, would be a necessary and proportionate regulatory intervention. CAP also considered whether an alternative response to parental concerns might be justified.

Part one

Understanding the use of brand ambassadors and peer-to-peer marketing

The Bailey Review defines brand ambassadors and peer-to-peer marketing as follows:

A **brand ambassador** is someone engaged by a brand or agency to promote or present a brand or product to others. This has traditionally involved celebrities or sportspeople acting as the public face of the brand, but a brand ambassador can be anyone being paid to promote a product to others, even for example their friends and family. The advertiser effectively employs the person as they would a traditional advertising medium like TV or radio.

Peer-to-peer marketing is about incentivising people (through offering a reward of payment or ‘free gifts’ of goods or services) to market brands to their peers, rather than the advertisers talking directly to people. Marketers use ‘peer-to-peer/word-of-mouth’ techniques in traditional media as well as online, such as in ‘tell a friend’ promotions. Marketers also often seek to earn the endorsement of consumers without offering a reward.¹⁰

These definitions are broad and may overlap. In order to meaningfully address the recommendation and the concern that lies behind it, CAP clarified with the Bailey Review team that the focus of the recommendation was marketing techniques that incentivise children through payment or payment in kind, to personally communicate with friends or other children they come into contact with about a product or service, thereby potentially commercialising or otherwise distorting their relationships. This review will therefore concentrate on that area of concern and will not address techniques where there is no obvious incentive offered by the marketer.

Examples of peer-to-peer marketing techniques and the use of children as brand ambassadors

Marketing techniques where there is a reward or incentive for a person to engage with the marketer: “incentivised peer-to-peer marketing”

There are a range of techniques whereby a marketer may incentivise a child to make an expression of endorsement, either offline or online. The incentive might be monetary but in the online environment it is more likely to consist of access to content, virtual points or the like. In the Lego, Peppa Pig and Cadbury examples (below), marketers provide the user with access to information, promotions and exclusive content if the web user hits the ‘Like’ button on Facebook. Their decision to ‘like’ the brand then becomes visible to their Facebook friends in their ‘news feeds’ and may be incorporated into a ‘sponsored story’¹¹.

¹⁰ <https://www.education.gov.uk/publications/eOrderingDownload/Bailey%20Review.pdf>

¹¹ Users must be over 13 to set up a Facebook account.



This raises important questions about what might constitute an ‘incentive’ for a child. It is likely that some children will view the opportunity to gain extra content or to be entered in to a prize competition in return for a simple expression of endorsement, as a clear incentive to engage with the marketer. For example, in the Peppa Pig example (below), the offer to be entered in to a competition in return for a re-tweet or ‘RT’ to visit Peppa Pig World is likely to act as an incentive for some children to ‘RT’, thereby proliferating the marketer’s tweet to the child’s followers on Twitter.



Similarly, an offer by a brand (e.g. through the account of a brand generated character) to ‘follow’ a child (i.e. add itself to a list of the child’s online friends or followers) or to add the child as one of the brand generated character’s friends or followers in return for a ‘Like’ or RT, is likely to act as an incentive for some children to engage with the marketer.

When making expressions of endorsement or approval in social media, the endorsement or approval is typically made visible to the child's online friendship or follower group. Ordinarily, there is no disclosure to this third party group of why the 'Like' or 'follow' decision was made, for example that it was made to gain access to extra content. In these cases the decision may appear to the online friendship group as a free expression of endorsement by the child to their peers, without marketer incentivisation.

Marketing techniques where a marketer has a formal relationship with a child akin to employment: the use of children as “brand ambassadors”

The use of children as 'brand ambassadors' is a type of marketing technique that involves a high level of engagement between a brand and a child. In contrast to a child responding to a brand promotion or incentive, a child brand ambassador is employed on a more formal basis to promote the brand to their friends or people s/he interacts with; the content of the brand ambassador's communications is normally controlled by the marketer. Examples of the practice are limited, but a small number have, in recent years, received press attention.

In 2007, Barbie recruited 50 girls aged 7-11 who had an interest in Barbie to promote the website and a Barbie mp3 player to their friends. Girls were rewarded with an mp3 player and Barbie merchandise for telling their friends about the Barbie brand.

In 2011 Weetabix¹² paid 15 young people to wear branded clothing so it would be seen by their friends. The practice was undertaken with parental consent.

The shoe brand Converse¹³ identified brand ambassadors via a social networking site where they were invited to design personalised trainers. As a reward, they would receive a free pair of their own designed trainers for every five pairs they sold to their friends.

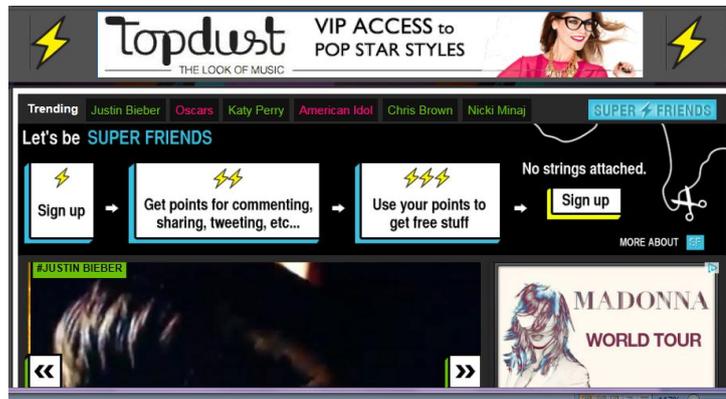
Government organisations have also used children as brand ambassadors. In 2009, the Food Standards Agency (FSA) recruited 210 brand ambassadors aged 13-17 with the consent of the teenagers' parents. The teenagers were recruited on the basis that they had a sufficient number of online friends to be regarded as influential among their peers. They were asked to promote the FSA online teen magazine promoting healthy eating in return for gift vouchers. As brand ambassadors, the teenagers raised awareness of the online magazine through social networks, instant messenger, e-mails, posting on friends' social networking sites and promoting quizzes and competitions. The campaign reached over one million online and offline users; the Facebook application for the FSA teen magazine had 8,399 monthly active users and 5,686 fans¹⁴.

Not all brand ambassador roles entail a direct relationship between the brand and the child. In the example below for the website Popdust, the primary mechanic of the website is to allow people to sign-up on a formal basis to be a member and then earn points for mentioning a range of companies, products and celebrities in social media. Members can then spend the points on products of most interest to them on the website.

¹² <http://www.bbc.co.uk/news/uk-14706687>

¹³ <http://www.marketingweek.co.uk/3032717.article?cmpid=MWE01&cmptype=newsletter&email=true>

¹⁴ Source: FSA.



On the basis of the examples known to CAP, it would appear that marketers have commonly invited parental consent before engaging a child as a brand ambassador, which goes a considerable way to safeguarding the welfare of the brand ambassador. Moreover, on the basis of CAP's call or evidence and through its review of relevant research, it would appear that there are very few examples of marketers using children as brand ambassadors in peer-to-peer marketing. Following the introduction of the industry Pledge (see Part three), where signatories have pledged not to use children in this capacity, the employment of children as brand ambassadors in peer-to-peer marketing is likely to be even less prevalent.

Summary

The definitions of peer-to-peer activity and brand ambassadors cover a broad range of marketing techniques. However, the level of engagement between the brand and the child tends to vary, which may affect the potential to distort or commercialise friendships. Given the breadth and prevalence of techniques by which a child may be incentivised or employed to promote a product or service, any regulatory intervention would need to be based on a clear and detailed understanding of the nature of the practice it addressed and the relative potential harm it sought to prevent.

Part two

Legal and regulatory landscape

Remit of the CAP Code

The CAP Code applies to marketing communications in a range of non-broadcast media, including advertisements in electronic media, companies' marketing communications on their own websites and online sales promotions. The remit is likely to cover the content of particular peer-to-peer advertisements delivered by brand ambassadors or generated as a result of a child responding to an incentive offered by a marketer but it does not cover the relationship (employment or otherwise) between the marketer and the child.

'Live oral communications' including verbal expressions of endorsement are not covered by the CAP Code: conversations between children, even at the behest of a marketer, are not – for practical reasons relating to the capture and enforcement of such communications - covered by the CAP Code.¹⁵ The CAP Code will apply to most other marketing communications that result from a reciprocal relationship between the marketer and a child and where editorial control rests with the marketer. Editorial control does not mean that the marketer need have sole authorship of the communication; the content may be created by the child, however if the marketer retains the right of approval or the ability to intervene to correct or ask for the removal of a communication, then the ASA may consider the marketer retains editorial control.

If a child is not paid by the marketer but receives material benefit for promoting a product or brand to friends by sending an email or posting a message on a social networking site, and the marketer had editorial control of that message, the CAP Code would apply to that marketing communication. If an individual 'followed' or 'Liked' a brand (and that action was made known to his or her online friendship group), without an incentive from the marketer, the CAP Code would not apply. The precise extent to which the CAP Code might cover brand-incentivised activity by a child has not been tested through ASA enforcement, because no-one has complained to the ASA about that kind of activity. That presents a complicating factor when CAP comes to consider whether regulatory intervention is justified because brand-incentivised activity may encompass techniques, used presently and in the future, which CAP has not been made aware of through its desk research and calls for evidence.

Rules in the CAP Code

To the extent that peer-to-peer marketing and brand ambassador activity do fall within the remit of the CAP Code, they are covered by general rules on misleading, harmful or offensive advertising: other specific rules may apply depending on the product (e.g. alcohol) being promoted or the marketing activity (e.g. sales promotion) in question. Finally, the CAP Code contains a range of protections for children under 16 to protect them from marketing communications that may mislead, harm or offend¹⁶.

Rules in the dedicated 'Children' section of the CAP Code are designed to prevent marketing communications from making children feel inferior or unpopular if they do not have a particular product or doing anything which may encourage or condone bullying. Further, marketing communications must not include a direct exhortation to children to buy

¹⁵ CAP Code II (i).

¹⁶ <http://www.cap.org.uk/Advertising-Codes/Non-broadcast-HTML.aspx>

a product or encourage them to pester their parents to buy it for them or make children feel inferior for not having a product. All of the rules intended to protect children take into account the likely way a child is going to react to the marketing communication, which will be influenced by their age, experience and the context in which the message is delivered.

The distinction between editorial content and marketing

One key concern in the *Bailey Review* and previous Government reviews¹⁷ into the commercialisation of childhood is the ‘stealthy’ nature of some online advertising. The *Bailey Review* notes that where children are not made aware that their peer is recommending a brand because s/he has responded to an incentive, they are not aware of the commercial intent of the communication. This may lead them to think the recommendation is self-initiated and genuine, which may ‘commercialise friendships and disrupt peer relationships for profit’¹⁸.

The Consumer Protection from Unfair Trading Regulations 2008 prohibit falsely claiming or creating an impression that the “trader is not acting for the purposes of his trade, business, craft or profession or falsely representing oneself as a consumer.”¹⁹ This requirement is reflected in CAP Code rule 2.3. Further, rule 2.1 requires that marketing communications must be obviously identifiable as such and all marketing communications subject to the CAP Code must adhere to that rule. For example, if a marketer pays a child to post a message approved by the marketer, on a social networking site but did not require that statement to indicate the message was marketing, that would likely be in breach of the CAP Code. Marketing, including material not covered by the CAP Code, is subject to potential enforcement by Trading Standards and the Office of Fair Trading²⁰.

Child employment

The Children and Young Persons Act 1933 s18(1) (as amended)²¹ states that children under 14 may not be employed, with the exception that children aged 13 can be employed to do “light work” if permitted to do so by local authority bye-laws. ‘Light work’ may include agricultural or horticultural work, delivery of newspapers, shop work, office work, working in a café or restaurant and domestic work in a hotel.²² A child under 13 may be employed to take part in performances, sport and modelling if they have a licence from a local authority.²³ Children are therefore permitted to sell their labour for a monetary reward and engage in the commercial world, provided certain safeguards are in place.

CAP notes that the Department for Education recently launched a consultation²⁴ that proposes to remove the specific age limitation on the range of activities, including in broadcast production, in which a child under 14 may partake. The consultation also proposes adoption of a simplified approach to the approval process for children aged over 13 to take part in one-off events and remove local authority stipulation of how earnings are

¹⁷ <https://www.education.gov.uk/publications/standard/publicationDetail/Page1/DCSF-00669-2009>, p9.

¹⁸ <https://www.education.gov.uk/publications/eOrderingDownload/Bailey%20Review.pdf>

¹⁹ Regulation 3(4)(d) and Schedule 1, Article 22 .

<http://www.legislation.gov.uk/ukdsi/2008/9780110811574/schedule/1>

²⁰ http://www.offt.gov.uk/OFTwork/consumer-enforcement/consumer-enforcement-completed/handpicked_media/g-and-a/

²¹ <http://www.legislation.gov.uk/ukpga/Geo5/23-24/12>

²² Department for Children, Schools and Families ‘*Guidance on Child Employment*’, 2009.

²³ <http://www.legislation.gov.uk/ukpga/1963/37>

²⁴ <http://www.education.gov.uk/aboutdfe/departmentalinformation/consultations/a00211097/child-performance-legislation-changes>

dealt with; favouring that parents and children together should be allowed to determine what is best.

While not directly connected to the employment of children as brand ambassadors, the existing legislative framework governing child employment indicates a general approach of allowing young people to undertake commercial employment, provided certain safeguards are in place. Furthermore, the Department for Education consultation emphasises a proposed new policy approach of empowering children and parents to determine what is in the best interests of the child.

Equality Act 2010

The Equality Act 2010²⁵ prohibits discrimination on the basis of certain protected characteristics, which includes discrimination based on age. It is possible that a marketer, who refused to recruit a person under 16 as a brand ambassador on the grounds of a potential CAP Code ban, might be found to be behaving unlawfully if they are unable to justify that discrimination under the law. CAP must, therefore, ensure that in exploring the merits of a ban on the use of children as brand ambassadors and in peer-to-peer marketing, it pays due regard to relevant legislation to ensure it meets the minimum requirements set in law.

Human Rights Act 1998

The relevant tests under Article 10 of the European Convention on Human Rights, as incorporated into UK law through the Human Rights Act 1998,²⁶ would need to be satisfied, namely that any such restriction in speech (imposed by CAP, for example) is necessary in a democratic society for the protection of health or morals or the rights of others. Any regulatory intervention must ensure it goes no further than what would be necessary to address the identified harm. In order to justify a restriction on a child's or a marketer's freedom of speech there must be a clear understanding of what specific practices could cause harm to children to ensure that any rule goes no further than what is strictly necessary to address that harm.

Conclusion

The existing legal framework permits children over 13, subject to local authority licence, to undertake employment in a variety of areas whether they are paid or paid in kind for their work. In addition, younger children may be employed to take part in performances, modelling and sport. However, it is unclear how these legally permissible practices differ from the use of children as brand ambassadors or in peer-to-peer marketing in their propensity to expose children to harmful commercialisation.

CAP also notes that there are a number of legal factors to take into account not limited to child employment, but also covering the role any prohibition in the CAP Code may play on restricting the free speech of children and marketers and fair and equal access to employment opportunities.

²⁵ <http://www.legislation.gov.uk/ukpga/2010/15/contents>

²⁶ <http://www.legislation.gov.uk/ukpga/1998/42/schedule/1>

Part three

Assessing the impact of the industry Pledge

In October 2011, the advertising industry, under the auspices of the Advertising Association (AA), launched a signatories' Pledge in response to the *Bailey Review*. The Pledge states:

Young people under the age of 16 should not be employed and directly or indirectly paid or paid-in-kind to actively promote brands, products, goods, services, causes or ideas to their peers, associates or friends.

Exceptions

CHILD PERFORMERS:

In accordance with EU and UK law, under-16s may be employed to appear in advertisements with local authority permission.

SPONSORSHIP:

Exceptionally talented and high-profile young people in sports and entertainment may be contracted by companies to use the companies' brands, products, goods and services. In those unusual circumstances, direct presentation or promotion to their peers, friends or associates by the young person should not be required or expected.

The Pledge is voluntary and includes signatories from high profile brands in addition to the wide range of trade associations.²⁷ Many trade associations have incorporated the Pledge into their own codes of conduct.

CAP understands, anecdotally, that the Pledge has had a material effect. Because trade associations, including the Institute of Practitioners in Advertising (IPA), which represents advertising agencies, are signed up to the Pledge, the use of children as brand ambassadors is unlikely to feature in the early parts of the planning for marketing campaigns. It is therefore difficult to quantify how many instances of the use of under-16s as brand ambassadors have been prevented by the existence of the Pledge.

Signatories to the Pledge represent a significant proportion of the UK advertising market. For example, the Pledge was signed by several influential trade associations that cover the breadth of the advertising industry. The IPA covers 250 agency members; the AA covers a wide range of trade bodies including advertisers, publishers and media owners; the Institute for Promotional Marketing has over 300 members of brand and marketing practitioners and the Incorporated Society of British Advertisers has over 400 members, covering nearly all the UK's major advertisers. The Pledge therefore covers a wide range of practitioners in advertising, from marketers to media space owners, all of which have committed to the Pledge.

In addition to marketing communications covered by the CAP Code, the industry Pledge covers techniques and business practices, such as live oral communications, street trading and other activity undertaken by marketers where children may be encouraged to participate. The Pledge not only has the support of the large representative elements of the

²⁷ <http://www.adassoc.org.uk/write/9Advertising%20Industry%20Pledges%20Action%20on%20Children.pdf>

UK advertising industry and leading brands, it also has the breadth to cover the full range of practices of concern in the *Bailey Review*.

It is important to note that the Pledge represents a voluntary commitment, freely undertaken by self-selecting signatories. By contrast, the CAP Code applies to all marketers and compliance with its requirements is compulsory; CAP must therefore ensure that it has solid grounds to justify imposing material restrictions on all marketers.

Conclusion

CAP's desk research and calls for evidence indicates that the use of under-16s as brand ambassadors is not widespread. Given the range of industry signatories to the Pledge, the very low incidences of marketers employing children as brand ambassadors is unlikely to become more prevalent and much more likely to reduce, perhaps even entirely. The ASA has not received any complaints about child brand ambassadors and there has been no press coverage following the introduction of the Pledge about brands using the technique.

Part four

Assessing the available evidence

Responses to the CAP call for evidence

On 17 April 2011, CAP invited a range of stakeholders, including academics, to submit research they had either conducted, had access to, or were otherwise aware of, on the potential harmful effects of the use of children aged under-16 as brand ambassadors or in peer-to-peer marketing²⁸. Stakeholders were also invited to share with other people details of CAP's call for evidence.

CAP received responses from a range of academics and campaign organisations. In summary, the main points made were as follows:

- The use of children as brand ambassadors and in peer-to-peer marketing distorts and commercialises friendships by suggesting that children's wellbeing or relationships will be improved if they possess certain branded goods. It will encourage children to think about their friends in a manipulative and commercial way, incentivising them to exploit those relationships for their own personal gain.
- The additional pressure created by peer-to-peer marketing could exacerbate existing issues around stress, pressure and lack of self-esteem and encourage children to judge one another based on the brands they use.
- These marketing techniques could incentivise children to extend their online and offline friendships to make them more likely to be 'employed' by a brand, thus opening them up to potential danger.
- There is no empirical evidence that the use of children as brand ambassadors and in peer-to-peer marketing causes harm.
- One respondent questioned how CAP would weigh or measure the moral peril and confusion of a child after they had been encouraged to make money by selling products to their friends or how CAP would determine whether an intervention was proportionate.
- The onus should be on advertisers, rather than children's organisations, to demonstrate that new forms of advertising techniques are beneficial to children and do not result in harm before they are used.
- The industry Pledge had gone some way in leading the debate and addressing concerns in this area. However, the Pledge may not work in practice and rather than relying on a voluntary pledge, a ban should be introduced into the CAP Code.
- One respondent supported the Pledge as a positive step in reversing the commercialisation of childhood.
- The retraction of campaigns using peer-to-peer marketing and brand ambassadors in response to negative press coverage is evidence that marketers already have significant reservations about the practices and would support a ban.
- Placing a ban in the CAP Code would significantly reduce the burden of brands and associations for monitoring compliance with the Pledge, and would increase awareness and compliance among smaller brands.
- Surveys have shown the general public would support a ban in the CAP Code.
- A thread on Mumsnet found that most respondents believed the employment of children as brand ambassadors should be illegal because it was 'vile' and 'utterly immoral'.

²⁸ <http://www.cap.org.uk/Media-Centre/2012/CAP-launches-review-into-child-brand-ambassadors-and-peer-to-peer-marketing.aspx>

Respondents expressed concern about the legal issues around the age at which children can work, the objectivity a child may have in explaining the merits of a product or service, concern about the values promoted to children if they are rewarded for selling rather than helping or sharing, the manipulation of friendships and potential bullying.

- Peer-to-peer marketing is deceptive for children as it's difficult for children to understand that a commercial company is using their friend to sell them something.
- Companies that use peer-to-peer and brand ambassador marketing are dependent on tracking mechanisms to measure the effectiveness of their campaigns which children are unlikely to fully understand.
- Evidence relating to harm from peer-to-peer marketing would not be forthcoming because it may be unethical to conduct an experimental study. Furthermore, an evidence-based approach is not appropriate and the 'precautionary principle' should apply instead.

Assessment of the responses

The *Bailey Review* notes that "Academics, including through the recent government reviews, have collected the evidence, investigated the complex issues and presented the range of views in a considered way. However, as the assessment led by Professor David Buckingham (DCSF/DCMS, 2009) made clear that this is an area where the evidence of harm is not conclusive and views are 'polarised', however this is not a reason alone not to act and make the views of parents heard.

Respondents indicated that academic research supporting the claim that the marketing techniques in question result in harm, does not exist and is unlikely to be forthcoming because the techniques are relatively new and it may be unethical to conduct a study. Some respondents expressed concern that CAP was asking children's organisations and academics to present it with evidence rather than placing the onus on advertisers to demonstrate their marketing techniques are not harmful. This review responds to a specific call in the Bailey Review for CAP to "urgently explore whether, as many parents believe, the advertising self-regulatory codes should prohibit the employment of children under the age of 16 as brand ambassadors or in peer-to-peer marketing" on the basis that it causes harm to children by distorting or otherwise commercialising their friendship. In that context, CAP considers it necessary to assess the evidence base that supports that recommendation. CAP sought to draw on the expertise of stakeholders by calling upon them to submit existing evidence that supported the recommendation in order to ensure it examined the issue in full. It has at no point requested any organisations undertake new research and would not expect any researcher to undertake research that they felt was unethical.

Risk of increased incidences of bullying and the distortion of friendships

CAP understands there is considerable concern that the use of children as brand ambassadors or in peer-to-peer marketing may distort their friendships with other children by encouraging them to view friendships in a commercial and exploitative way. One study submitted, but not related to peer-to-peer marketing or analogous advertising mechanics, stated that children judge one another on the brands they use from a very young age and the views of their peers have the most significant impact on young people.

We understand from Girlguiding surveys²⁹ that as girls make the adjustment from primary to secondary school and their friendship group expands, so does the pressure to “fit in”. That pressure may manifest itself in the imitation of popular peers, for instance by using the same brands as them, thus creating a commercial pressure on children and their parents to buy certain goods. During this time the confidence and self-esteem of children may be at its lowest. Respondents were mainly concerned that the use of children as brand ambassadors and in peer-to-peer marketing could exacerbate incidences of low self-esteem and bullying of children who do not have the latest fashionable clothing or who do not participate as brand ambassadors and in peer-to-peer marketing.

In order to determine whether a regulatory intervention is justified, CAP has carefully considered the potential harm of brand ambassador and peer-to-peer marketing techniques. CAP notes that there is no evidence, either in a scientific study or in individual case studies, to indicate that the above techniques cause or exacerbate incidences of bullying or accentuate the existing strong influence of peers.

Risk to the personal safety of children online

One concern amongst respondents was the potential that children would befriend people they did not know on social networking sites to increase the likelihood of being selected as a brand ambassador or peer-to-peer marketer. No respondents cited any case examples where this had occurred. While CAP notes the potential danger to a child’s personal safety if the child adds a number of unknown people to his or her social network profile, it has not seen evidence of pressure by marketers on children to add people who are not known to the child as a precondition of being used for marketing.

CAP notes that the Ofcom 2011 Children’s Media Literacy Survey³⁰ found that nearly all of 8-11 year olds (98%) only use social networking sites to talk to friends or family, with around 18% talking to friends of their friends. Similarly, 98% of children aged 12-15 reportedly only talk to friends or family on social networking sites but, unlike younger children, they were more likely to talk to friends of friends, with 28% reporting that they do so. It is possible that when talking to friends of friends, children may be talking to people they do not know offline, but they do nonetheless make these connections through existing friends. The report notes that in comparison to 2009, “children aged 12-15 are now less likely to talk to people who are friends of friends (28% vs. 39%).” There is therefore no indication that the use of incentivised peer-to-peer marketing on social networking sites has, in recent years, resulted in an increase in the amount of contact children make with people they don’t know in order to participate in marketing activity.

Risk of deception of children

Several respondents expressed concern that the use of children as brand ambassadors and in peer-to-peer marketing may be harmful because children lack the critical understanding to identify the commercial intent of the practices, making those practices inherently deceptive. As noted in Part two, marketing subject to the CAP Code must be clearly identifiable as such; all other types of marketing and related commercial activity are subject to enforcement by Trading Standards, which may enforce the relevant consumer protection regulations relating to the recognition of advertising. While some instances of peer-to-peer marketing could, arguably, encourage children to use their friends for personal gain, there is no evidence to suggest that this has occurred. Furthermore, there is no

²⁹ http://www.girlguiding.org.uk/pdf/GirlsAttitudesExploredRoleModels_FINAL.pdf

³⁰ <http://stakeholders.ofcom.org.uk/binaries/research/media-literacy/media-lit11/childrens.pdf>

indication that friendships are distorted or put in jeopardy when the commercial intent of the marketing by the child is disclosed.

Assessing risk and the application of the ‘precautionary principle’

As an evidence-based regulator, CAP is called upon to assess research arguing for changes to advertising policy to ensure the Codes remain fit for purpose. It therefore understands that in some areas research may be more difficult to conduct than in others and studies may, for very good reason, vary in their methodology and overall construct. However, CAP does expect that calls to amend advertising policy are backed by the best supporting evidence available, which in some cases may be a mixture of different types of research, in order to justify why a regulatory intervention is necessary. This is because the CAP Code imposes material and necessary restrictions on all marketers’ freedom of speech; CAP must therefore demonstrate that any intervention it takes is proportionate to the harm or risk identified.

On the subject of the precautionary principle, Professor Buckingham notes it may be applied but “it is also important to consider the potentially counter-productive consequences of this. In preventing the possibility of harm to children, we may also restrict the positive opportunities they are able to enjoy.”³¹ CAP considers that the precautionary principle should not simply apply when attitudinal surveys show some people feel strongly about a certain practice (especially where that practice is ill-defined, wide ranging and may reasonably fall within a wide spectrum of descriptions; from positive, to benign, to egregious). There must be a good reason to believe that the specific practice may result in harm. That harm must be identified to ensure that any intervention is appropriate to the likelihood of risk or harm so as to ensure intervention adheres to Better Regulation principles and remains proportionate, consistent, accountable and targeted where action is needed.

Conclusion

CAP notes the absence of evidence to demonstrate that harm is or is highly likely to be caused by the use of children as brand ambassadors or in peer-to-peer marketing and that the views of academics on the issue remain “polarised.”³²

³¹ <https://www.education.gov.uk/publications/standard/publicationDetail/Page1/DCSF-00669-2009>

³² The Impact of the Media on Children and Young People with a particular focus on computer games and the internet.’ 2007.

Part five

The case for and potential impact of further regulatory intervention

Potential impact or a ban or restriction on parents, children and wider society

A ban on the use of children as brand ambassadors and in peer-to-peer marketing is likely to address some parental concerns noted in the *Bailey Review* about the commercialisation of childhood. Parents who feel uncomfortable with these marketing techniques are likely to be reassured by a ban which would ensure their children are not directly or indirectly affected by the use of techniques that some believe to be ‘exploitative’ and ‘vile’. However, a ban or restriction instituted through the CAP Code might fall short of the wish of some respondents on the website Mumsnet, who requested a statutory ban. However, that is not within the gift of CAP.

Regulatory intervention may not, however, satisfy or address the concerns of all parents as it will not reflect the views expressed by some in Credos research which found that “For some [parents] it is ‘a bit of fun for kids’, allowing them access to ‘freebies’”. While parents in the Credos study were sceptical of some marketing techniques, particularly of celebrities that promoted products, they were nonetheless conscious that that was part of the commercial world in which children live.³³ It is therefore not clear that intervention would be seen as beneficial by all parents.

There is academic debate about the potential counter-productive effects of prohibiting the practices. Importantly, there is no evidence to suggest that incentivised peer-to-peer marketing or the use of children as brand ambassadors results in harmful commercialisation, or evidence to suggest that a ban would be beneficial to children. There is not, therefore, a compelling case that a prohibition on the use of children as brand ambassadors or in incentivised peer-to-peer marketing would be beneficial to children or wider society.

CAP considered whether a more limited restriction for the techniques that require the greatest level of engagement between a marketer and a child, (i.e. brand ambassadors), was likely to address parents’ concerns. As already explained, it is unclear if a more limited restriction would have positive or negative effects for children or for wider society. Due to the widespread uptake of the voluntary Pledge and the low likelihood that children will be employed as brand ambassadors, a limited restriction is unlikely to have a significant benefit to parents or children. Because the practice would, if CAP determined it, be banned in all circumstances, there might be instances where even with parental permission, children could not engage in the practice, which might undermine the authority of parents to make their own decisions about their child’s welfare.

A ban on the employment of children as brand ambassadors to promote products or services to their peers in all circumstances would also prevent the use of children for charitable or Government purposes, such as the FSA example cited in Part one. As noted, the FSA campaign had a wide reach to children through social media in promoting the benefits of fresh fruit and vegetables in an online environment they were familiar with and receptive to. There is no evidence to demonstrate children engage differently with charitable or ‘good’ causes, so an exemption from any ban for those organisations is

³³<http://www.credos.org.uk/write/Documents/Exploring%20the%20attitudes%20of%20children%20and%20parents%20-%20website%20version%20300811.pdf>

unlikely to be defensible, so any use of children as brand ambassadors or in peer-to-peer marketing for those purposes would also be prevented.

Finally, marketers could not make it a precondition that a child must 'RT' or 'Like' for access to content. That might prevent children from accessing content of interest to them on social network pages, which would be likely to significantly limit their uptake of the benefits of social media.

Potential impact of a ban or restriction on marketers

The potential impact of a ban or restriction on marketers is unclear. The use of brand ambassadors is not widespread so the impact is likely to be minimal, but there is no economic data to calculate the effect of regulatory intervention on the more widespread practice of incentivised peer-to-peer marketing. As noted, the definition of peer-to-peer marketing covers a wide range of practices which are not identical in their level of engagement with children or their potential for exposing children to risk.

For marketers, a ban on under-16s using incentivised peer-to-peer marketing mechanics would prevent them from conducting a range of experiential marketing techniques, including giving children free products which they would then be encouraged to use or mention to their friends. A ban is likely to have broader consequences for social media because marketers would need to re-assess their social media strategies to ensure that under-16s were not able to utilise incentives.

Marketers would need to cease certain online marketing techniques and re-design content or age-gate it to ensure it did not appeal to children. This would likely result in significant costs, although there is no detailed economic data to quantify such an effect. It may be difficult to distinguish between peer-to-peer activities of particular appeal to 15 year olds and activities of particular appeal to 17 year olds due to their overlapping interests, so marketers would need to make a clearer distinction between material of particular appeal to under-16s and material of particular appeal to young adults than may presently be the case. This may result in marketers ceasing to use that marketing technique for under-18s to ensure they do not inadvertently target children. It is worth noting that not all platforms have an age-gating function so marketers may be unduly dissuaded from utilising those marketing platforms.

A more limited restriction banning the use of children as brand ambassadors alone is unlikely to have a significant effect on marketers due to the widespread voluntary agreement to the industry Pledge. However, if a rule was introduced and breached, it would result in material sanctions.

Conclusion

In reaching a decision on whether or not there is sufficient reason to launch a full public consultation on whether to prohibit the use of under-16s as brand ambassadors or in peer-to-peer marketing, CAP has sought to understand the concern of parents and balance them with its objective to set standards that prevent misleading, harmful or offensive advertising and ensure an environment is retained in which creative and socially responsible advertising can flourish. Those standards apply to all marketers and the consequences for not adhering to them may be adverse and material. CAP must therefore ensure its response to this particular *Bailey Review* recommendation adheres to better regulation principles and is proportionate. It must be remembered that an outright prohibition in the CAP Code would be mandatory and would establish that in all circumstances those practices would be harmful, leaving no room for the ASA to discriminate between egregious, benign or positive marketing communications that might result from a marketer engaging a child as a brand ambassador or in peer-to-peer marketing.

During the review process, CAP invited evidence and repose from experts to support a contention that the use of children as brand ambassadors or in peer-to-peer marketing results, or could result, in the harmful commercialisation of children. No evidence was supplied, either in form of a study or a case study, and CAP understands that new research is unlikely to be forthcoming.

CAP appreciates the parental concern that the practices encourage children to think of their peers exploitatively, but there is no indication that this happens in practice. While CAP could intervene on a precautionary basis, it is unclear whether a prohibition would be necessary, proportionate or in the best interests of children as it would restrict them from enjoying some of the positive benefits of social media.

CAP has also examined the existing industry action to address the *Bailey Review* recommendation. It notes that the vast majority of the advertising industry has signed up to a voluntary Pledge not to use the techniques which require the greatest level of engagement, i.e. the use of children as brand ambassadors, so those techniques are now unlikely to be used.

After a thorough assessment of the available evidence, regulatory landscape, and impact of the industry Pledge, CAP has concluded that it is not proportionate to consult on introducing a rule in the CAP Code to ban the use of under-16s as brand ambassadors or in peer-to-peer marketing. However, CAP considers that it necessary and proportionate to publish new guidance for marketers (in the form of a CAP Help Note) in the first quarter of 2013 to ensure the responsible use of such techniques.

The guidance will make clear that brand ambassador or peer-to-peer marketing activity falling within the scope of the CAP Code continues to be subject to it and, drawing upon existing CAP Code rules, will clarify that it must:

- Be obviously identifiable as marketing activity; and will give examples on how that can be achieved;
- Do nothing that is likely to result in the physical, mental or moral harm of children;
- Not make children feel inferior or unpopular if they do not have a product or do not engage in peer-to-peer marketing and confirm that all rules in CAP's dedicated Children's section apply; and
- Be prepared with a sense of social responsibility.

For communications or practices that fall outside the scope of the CAP Code, marketers are encouraged to seek parental consent before engaging a child in the role of a brand ambassador.

CAP remains committed to offering children protection from harmful, offensive and misleading advertising and will continue to review the rules and assess any new evidence brought to its attention to ensure they remain robust and fit for purpose.

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