

# New laws make marketing to kids riskier



By Bart A. Lazar

According to Market research.com, American children represent a dynamic retail market, influencing an estimated \$500 billion in total retail spending. Inevitably, then, marketers want to reach such a huge market.

Last year was a big year for issues related to children's marketing. In addition to the standard issues related to avoiding misleading advertising, additional concerns were raised last year about the marketing of food to children being a cause of child obesity, as well as continued concerns about protecting children's privacy online.

While it may be obvious, the first rule of dealing with children is to recognize that they differ from adult consumers. When the FTC and other regulators examine children's advertising and marketing, they take into account children's limited ability to analyze the meaning of messages and statements. Children may believe messages that adults may reasonably discern or ignore as exaggerated or untrue. For example, a child, seeing a fully assembled toy in advertising or on packaging, may believe that the toy comes assembled; clear and prominent disclosures are probably necessary on the product or in the advertising.

In addition to distinctions between adults and children, distinctions exist among children. Teens, tweens and younger children must each be treated separately when crafting marketing materials and programs. For example, when the Children's Online Privacy Protection Act (COPPA) was enacted in 1998, the FTC and the marketing industry clearly recognized 13 as an important breaking point. Children younger than 13 were viewed as too young to voluntarily give out their personal identifying information over the Internet without some form of parental involvement or consent. Children 13 or older were free to do so. Note, too, that the Children's Advertising Regulatory Unit of the Better Business Bureau (CARU) views 12 as the critical age representing the developmental divide between childhood and adolescence.

Implementing COPPA has sometimes posed quandaries. I remember that at one major Internet service provider, prospects were prevented from becoming members, and in fact put on a block list, when they tried to establish a Web site for their pets and used the pets' ages when filling out the membership form. More detailed language in the membership application could have avoided these types of unintended blocks. But making the instructions too explicit carries risks, too: Children younger than 13 are smart, and regulators are concerned that marketers could tip off the children into putting in an inaccurate birth date.

This is that situation that Delia's Inc., a leading retailer to teens based in New York, was in last year. Delia's came under scrutiny for being too descriptive in asking age-screening questions. For example, CARU thought that Delia's use of such phrases as, "To request a catalog via the Internet, you must be 13 years or older. If you are under 13, you may do so by obtaining your parent's permission and calling (a toll-free number)," might have encouraged children to provide inaccurate information to avoid obtaining the parental permission.

Delia's agreed to modify its site, but this shows how close the call may be when it

## MARKETING AND THE LAW

comes to children's advertising. Regulators often come down on the side of protecting children.

Protecting children also is often cited as basis for greater attention to the marketing of food to children. The dramatic increase in child obesity has raised many concerns in the public and private sectors. Last July, the FTC held a workshop on perspectives on marketing, self-regulation and child obesity. Attendees raised concerns that the types of commercials aired during children's programming encouraged children to eat snacks as meals, instead of meals, and could cause them to eat unreasonably high portions of food. There was strong debate regarding whether a self-regulatory mechanism (such as one proposed by the Grocery Manufacturers of America) could have enough teeth to change the methods by which food products are marketed to

children. Since this type of workshop is often a warning sign to industry to act or face legislation to establish the ground rules, we should see this year whether there will be self-regulation or legislation in this area.

And as the character in the movie *Mean Girls* said, "I must have ESPN or something," but just after I completed the first draft of this article, the several Massachusetts-based organizations served notice on Viacom and Kellogg that they intend to file suit to stop them from marketing junk food to young children. The lawsuit will be filed under the state's consumer protection laws, and involve use of "spokespeople" such as the cartoon character SpongeBob SquarePants. The groups are seeking an injunction to prevent companies from marketing junk foods to audiences where 15% or more of the audience is younger than age 8, and to cease marketing junk foods through Web sites, toy giveaways, contests and other techniques aimed at that age group.

While I think everyone agrees that the health of our children is important, at some point parents and advocacy groups have to stop looking at the marketers as if they are

hypnotizing our youth. Marketers are the easy targets, but a parent (and I am one) ultimately bears the responsibility for what his child does. There has to be some accountability for parents, who must exercise some control and influence over their kids' exposure to the media, as well as their buying and eating habits. I trust that parents' groups and advocacy groups invest as much or more time in promoting parent education as they do on attacking marketers.

One rule remains true, though. The rules that apply to marketing will typically be applied and interpreted in a more restrictive fashion when dealing with children, precisely because of who they are. Creative and ethical marketers need to be careful when they are promoting products children are interested in buying or using media for which children make up a substantial part of the audience. ■

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