

Marketing and the Vulnerable

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INTRODUCTION

Contemporary marketing is commonly characterized by the marketing concept which enjoins marketers to determine the wants and needs of customers and then to try to satisfy them. This view is standardly developed, not surprisingly, in terms of normal or ordinary consumers. Much less frequently is attention given to the vulnerable customers whom marketers also (and increasingly) target. Though marketing to normal consumers raises many moral questions, marketing to the vulnerable

also raises many moral questions which are deserving of greater attention.

This paper has three objectives. First, it explores the notion of vulnerability which a target audience might (or might not) have. I argue that we must distinguish those who are specially vulnerable from normal individuals, as well as the susceptible and the disadvantaged—two other groups often distinguished in marketing literature. Second, I contend that marketing to the specially vulnerable requires that marketing campaigns be designed to ensure that these individuals are not treated un-

fairly, and thus possibly harmed. Third, I maintain that marketing programs which violate this preceding injunction are unethical or unscrupulous whether or not those targeted are harmed in some further manner. Accordingly, social control over marketing to the vulnerable cannot simply look to consumer injury as the measure of unfair treatment of the vulnerable.

The upshot of my argument is that, just as we have a doctrine of product liability to which marketers are accountable, we also need a corresponding doctrine of targeted consumer liability to which marketers should be held. By this I refer to the moral liability of marketers for the manner in which they market to consumers. Marketing to the specially vulnerable without making appropriate allowances for their vulnerabilities is morally unjustified.

ON BEING VULNERABLE

The notion of vulnerability is complex and slippery. Most simply, to be "vulnerable is to be susceptible to being wounded; liable to physical hurt" (Barnhart 1956). More generally, being vulnerable is being susceptible to some harm or other. One can be vulnerable to manmade or natural harms: one can also be vulnerable to harms from actions or omissions (Goodin 1985, 110). In each of these cases, the threatened harm is to one's "welfare" or "interests."

The vulnerability of the person who may be harmed by others may be a permanent, or temporary, condition. Clearly, vulnerability is a matter of degree. Typically only those who are subject to some substantial level of harm are referred to as "vulnerable." This vulnerability may arise due to their own peculiar characteristics, those of the agents who are said to impose the harm on them, or the system within which certain acts impose harm

on them. Accordingly, vulnerability is a four-place relation: Some person (P) is vulnerable to another (moral or causal) agent (A) with respect to some harm (H) in a particular context (C). As such "vulnerability is inherently object and agent specific" (Goodin 1985, 112).

The relation of vulnerability to two related concepts—susceptibility and disadvantage—used in marketing literature may serve to further clarify its nature.

Vulnerability is distinct from susceptibility, in that a person might be susceptible to something or someone and still not be vulnerable to that thing or person. "Susceptibility" merely implies that one is "capable of being affected, especially easily" by something or someone. It is true that one who is susceptible may also be vulnerable. Clearly, one who is vulnerable is susceptible. But one need not be vulnerable if one is susceptible, since one's susceptibility may not be to some harm or other. An overweight, underexercised adult might be susceptible through flattery or positive remarks to certain suggestions made by friends to exercise and moderate food intake. But this person would not, thereby, be vulnerable to such suggestions. Hence, vulnerability and susceptibility are different.

The vulnerable also differ from those with "unusual susceptibilities," a term of art in marketing for those "who have idiosyncratic reactions to products that are otherwise harmless when used by most people" (Morgan, Schuler, and Stoltman 1995, 267). People who are "unusually susceptible" are those who are atypically harmed by various products. Accordingly, "unusual susceptibility" has been linked with vulnerability. However, in any ordinary sense, a person might have "unusual susceptibilities" to some experiences (e.g., changes in air pressure or moisture), the suggestions of others, clothing styles, etc., and this might not involve harm to the person but, perhaps, that person's heightened sensitivity to those influences.

Further, people may be vulnerable in ways other than that they may be atypically harmed by the products they use. Vulnerable groups such as young children, the grieving, or the elderly are not necessarily atypically harmed by the products they use. Nevertheless, they are vulnerable.

Finally, the vulnerable are also distinct from the disadvantaged. Though marketers quite frequently speak of disadvantaged populations or market segments, they have given little analysis of this concept. Most discussants simply give examples of those whom they consider to be disadvantaged. This extensive, diverse and confused list includes the poor, immigrants, the young married, teenagers, the elderly, children, racial minorities, the physically handicapped, ethnic minorities, and even women shopping for automobiles.

Generally we are told that members of this list are disadvantaged because they are impaired in their transactions in the marketplace. For some this means not getting their full consumer dollar (Andreasen 1975, 6). For others this means confronting an imbalance in the marketplace (Barnhill 1972; Morgan and Riordan 1983). Andreasen says "the disadvantaged" are "those who are unequal in the marketplace because of characteristics that are not of their own choosing, including their age, race, ethnic minority status, and (sometimes) gender" (Andreasen 1993, 273).

It is clear, then, that the vulnerable and the disadvantaged also constitute different, though overlapping, groups. The disadvantaged are impaired or unequal with regard to their attempt to obtain various goods and services. This may occur relative to other groups (normal consumers) competing for various goods, or to those from whom they seek to purchase those goods. On the contrary, those who are vulnerable are not vulnerable with regard to others who are competing for similar goods, but with regard to the harm they might suffer from those who market those goods to them. As such, the

notion of vulnerability suggests the harm which one might receive, whether or not one is competing for a particular good, but due to the manner of obtaining some good (or service). Further, this harm need not come from paying more or being deceived. The vulnerable may get exactly what they want, but what they want may unwittingly and unfairly harm them (as well as their family and/or community).

Accordingly, the vulnerable are not simply the susceptible or the disadvantaged. They constitute a distinct group which deserves our close attention.

VULNERABILITY AND MARKETING

What moral responsibilities do marketers have when they consider marketing to the vulnerable? Since one might be said to be vulnerable in a variety of ways, and since some people might willingly place themselves in competitive situations where their vulnerabilities are exposed, we must specify the manner(s) in which various forms of vulnerability are significant from the standpoint of marketing. Otherwise, if it were morally unjustified to market to those who are vulnerable in any sense, moral marketing would not exist. It would be an oxymoron. . . .

One standard to which we might turn for the responsibilities of marketers to the vulnerable refers not to the degree of their vulnerability but to the effects on all those relevantly affected by marketing to these individuals. In short, harm to the vulnerable by marketing programs might be balanced by countervailing benefits for all other consumers and competitors. Thus, the responsibilities of marketers to the vulnerable would depend upon which course of action would maximize all relevant utilities.

However, appeal to a simple utilitarian standard is ethically unacceptable in that it would allow a few vulnerable individuals to substantially

suffer because a certain action or policy maximized total utilities. For example, it might be that other marketers are more vulnerable (they might go out of business) than some of the individuals (they might be harmed by the products or the form of marketing targeting them) to whom those marketers and others sought to sell their goods. Hence, in order to protect vulnerable marketers (and their employees, suppliers, etc.), the proposed standard might permit targeting various vulnerable market segments because the total harm they sustained was less than that of those *engaged* in producing and marketing products to them. This could unleash a tide of manipulative and exploitative marketing.

Similarly, suppose that a particular means of marketing did not make allowances for the fact that those targeted were vulnerable in that they significantly lacked a capacity to make judgments regarding economic exchanges (e.g., children, the senile, or the retarded). Though the marketing efforts took advantage of this vulnerability, it nevertheless maximized total utilities. We might suppose that these customers were not dissatisfied and the marketers were pleased with their successes. To argue that this means of marketing is, nevertheless, morally acceptable runs afoul of important moral and market principles. To begin with, those targeted are not competent to evaluate the product marketed to them. They might not be aware of problems with the products they use. As such, this justification of marketing to the vulnerable permits treating some individuals simply as means to the ends of others. It denies them moral respect. It runs afoul of basic ethical and market principles, even though those targeted do not suffer a direct harm.

The difficulty with Goodin's approach is that he treats vulnerability as simply a quantitative matter without recognizing that each form of vulnerability occurs within a particular context. The market is one such context. In

it some individuals may justifiably seek, in recognized forms of competition, to exploit the vulnerabilities of others. The problem with the consequential first approach is that it does not consider the nature of people's vulnerabilities except insofar as they portend certain consequences for everyone. Not the ability of the person to participate, but the effects on society are its concern. Instead, we need to be able to identify those who are specially vulnerable within a market situation, but whose vulnerability is not the occasion for justified competitive attacks. In short, we need a different approach which takes account both of the context within which marketers address the vulnerable as well as the nature of their vulnerabilities.

MARKETING TO THE VULNERABLE

The necessary features for morally (not merely legally) justified market relations are commonly stated in terms of the nature of the relations or interactions which participants in the market enjoy.¹ Thus, we are told that among the relevant characteristics a morally justified market requires are the following: (a) Competition is free, i.e., participants in the market do so voluntarily, when each believes they can benefit; (b) Competition is open, i.e., "access to the market is not artificially limited by any power, government, or group" (DeGeorge 1982, 101); and (c) Deception or fraud are not used in market competition (Friedman 1962).

These conditions spell out some of the necessary conditions for a justified form of competition among those we may call "market participants," i.e., those who willingly and knowingly engage in market relations. The activity of these marketplace competitors is strongly determined by their need to derive a profit. To be a market participant is to place oneself in competition with other participant

capitalists in which one recognizes that one may succeed or fail. It is to engage in these relations in order to produce various goods or services for sale. It is to acknowledge that all participants, including oneself, have strengths and weaknesses, formidable powers and vulnerabilities. The endeavor of each participant is to compete such that their own strengths and powers will outweigh those of others, or that their weaknesses and vulnerabilities are less significant than those of others.

Second, though these conditions are important for a morally justified market, they make no direct reference to the conditions or characteristics which those individuals who engage in market relations as ultimate consumers—call them “market clients”—must have in order to do so. However, morally and legally justified market relations also make assumptions about the nature of these participants, since not just anyone can be a market client. To take the most obvious cases, the severely mentally ill, incompetent elderly, and young children cannot be market visitors. Someone else must visit the market on their behalf.

Those who would visit the market as consumers do so not under a concern to derive a profit, but in order to satisfy various needs and wants they have. Accordingly, they must have certain market competencies such as the following: (a) They know they should shop around and are able to do so, (b) They are competent to determine differences in quality and best price, (c) They are aware of their legal rights (Schnapper 1967), (d) They have knowledge of the products and their characteristics, and (e) They have the resources to enter into market relations.²

These conditions, conjoined with the preceding, spell out essential requirements for individuals to be market clients. It is assumed that those who fulfill these conditions are able to protect their own interests and that their

self-interested behavior in the market will work towards greater wealth or well-being for all. Accordingly, when these conditions are fulfilled (*ceteris paribus*), market relations between market participants and clients will be fair or just. Thus, these conditions for market clients (or consumers) have been recognized not simply as moral restrictions, but also as the source of various legal regulations regarding children, the elderly, and the grieving.

Third, the preceding market client conditions are not fulfilled by consumers wholly independently of marketers. On the contrary, marketers seek to foster the fulfillment of these conditions. “Ultimately,” a marketing text reminds us, “the key objective [for marketers] must be to influence customer behavior” (Assael 1993, 592). Thus, marketers extend credit or loans to prospective individuals so that they may have the needed resources to enter the market. They advertise to foster the knowledge and desire of their products. They seek to identify unfulfilled needs, wants, and interests among potential consumers or clients and endeavor to find ways to satisfy them. Marketers seek to draw into the market those who might not otherwise enter the market, or do so only in different ways and under different conditions. Thus, one marketing researcher comments that “marketers have failed to develop strategies designed to attract the elderly consumer market” (Bailey 1987, 213). In short, marketers create not only products to sell to market clients (consumers), but seek to create consumers (clients) out of ordinary, nonmarket interested people. This is not to say that they create consumers out of whole cloth, it might seem that they do a product. Nor is it to say that they are always successful, or that whenever a person becomes a market client it is because of some specific action of a marketer. Still, marketers not only create products for consumers, but they also have a hand in creating consumers for their products.

In these various efforts, the marketer has a number of advantages over even the most reasonable consumer (client). These include greater knowledge of the product; expertise on how to market to individual customers and targeted groups; knowledge of what interests, fears, wants and/or needs motivate various market segments; and resources to bring that knowledge to bear on behalf of persuading a customer to buy a product. Indeed, the marketer may be aware of attributes of potential consumers of which they are themselves unaware. These special characteristics, powers, and abilities of marketers create special responsibilities for them in the relationships they create with consumers.³

Fourth, when marketers, or market participants, compete with each other, the fact that one has a vulnerability may be viewed as an opportunity for another who seeks to take advantage of that vulnerability. There are, obviously, legal and moral limits here. If one firm has temporarily lost its security force and its headquarters are unguarded one evening, this does not imply that another firm may use that opportunity to sneak into those headquarters to steal important files. Thus, competing firms ought not to try to exploit those vulnerabilities which would require illegal or immoral acts. On the other hand, vulnerabilities linked to market performance may be *the occasion for other firms to try to outperform the vulnerable firm when the acts involved do not transgress the preceding limits*. Accordingly, if market participants fail to compete aggressively out of laziness or are indifferent to quality differences, they may be harmed as a result. This is acceptable to the market, since it is intended to encourage participant competitiveness.

However, when a marketer confronts a market client, i.e., an ordinary consumer, the situation is different. Individuals must fulfill the above conditions to be market clients. Those that do so may also be lazy shoppers or indif-

ferent to quality differences. As a consequence, they too may suffer. This is also acceptable within the market. However, some individuals may suffer not through such circumstances, but because they fail to fulfill, in ways which render them specially vulnerable, various conditions to be market clients.

I suggest that we may initially characterize this specially vulnerable group as being constituted by those individuals who are particularly susceptible to harm to their interests because the qualitatively different experiences and conditions that characterize them (and on account of which they may be harmed) derive from factors (largely) beyond their control.

Accordingly, there are three conditions for the specially vulnerable:

1. They are those, in contrast to other normal adults, who are characterized by qualitatively different experiences, conditions, and/or incapacities which impede their abilities to participate in normal adult market activities. These characteristics may render them vulnerable in any of four different ways:
 - A. They may be **physically vulnerable** if they are unusually susceptible due to physical or biological conditions to products on the market, e.g., allergies or special sensitivity to the chemicals or substances which are marketed.
 - B. They may be **cognitively vulnerable** if they lack certain levels of ability to cognitively process information or to be aware that certain information was being withheld or manipulated in deceptive ways. Children, the senile elderly, and even those who lack education and shopping sophistication have been included here.⁴
 - C. They may be **motivationally vulnerable** if they could not resist ordinary temptations and/or enticements due to their own individual characteristics. Under the motivationally vulnerable might be brought the grieving and the gravely ill.⁵
 - D. They may be **socially vulnerable** when their social situation renders them significantly less able than others to resist various

enticements, appeals, or challenges which may harm them. Some of those who have been included here are certain groups of the poor, the grieving, and new mothers in developing countries.

2. The qualitatively different conditions and incapacities of specially vulnerable individuals are ones they possess due to factors (largely) beyond their control. In addition, they may be largely unaware of their vulnerability(ies). In either case, they are significantly less able (in any normal sense) to protect themselves against harm to their interests as a result. Thus, the allergic, the child, the elderly, and the grieving all experience their vulnerabilities due to reasons (largely) beyond their control. In certain situations this may also be true of various racial groups. The fact that these factors are largely beyond their control may be due to the weaknesses or inabilities these individuals themselves possess, due to the greater power of marketers which render their characteristics specially weak or incapable, or due to the system within which they find themselves.
3. These special conditions render them particularly susceptible to the harm of their interests by various means which marketers (and others) use but which do not (similarly) affect the normal adult. In short, it is the combination of their special characteristics and the means or techniques which marketers use that render them specially vulnerable. This emphasizes the relational nature of vulnerability.

As so identified, the specially vulnerable are significantly less able than others to protect their own interests and, in some cases, even to identify their own interests. Consequently, they are considerably less able to take appropriate measures to satisfy or fulfill those interests. Central to these difficulties is the special liability (or susceptibility) they have to be swayed, moved, or enticed in directions which may benefit others but which may harm their interests.

Accordingly, when market participants face individuals who do not qualify or pass a certain threshold for market competition, the latter are unable to protect their interests in a manner comparable to that of ordinary mar-

ket clients. If the fulfillment of these conditions or threshold is required to be treated as a market client, then these individuals may not morally be treated as other clients in the market. Further, when this situation arises because these individuals have special vulnerabilities then to market to them in ways which take advantage of their vulnerabilities, i.e., to seek to engage them in the competitive effort to sell them goods through the weaknesses characterizing their vulnerabilities, is to treat them unfairly. Regardless of whether they are actually harmed, they are being taken advantage of. They have little or no control over these features of their behavior. The fact that they may take fun or pleasure in being targeted by marketers is, then, irrelevant since they do not qualify, as market clients.⁶ And it is this situation which has been cited as one of the criteria for determining unfairness in advertising, i.e., advertising (or marketing) makes unfair claims when those claims "... cause especially vulnerable groups to engage in conduct deleterious to themselves" (Cohen 1974, 13).⁷

Consequently, since moral marketing must exclude treating customers unfairly, marketers need to "qualify" those they propose to target as genuine market clients before they introduce marketing campaigns which target them. This might involve helping them to become qualified consumers, avoiding marketing to them, or marketing to them in ways which are compatible with their limited abilities and characteristics.

As such, moral marketing requires a theory of targeted consumer liability analogous to the product liability, to which marketers are presently held responsible. A theory of targeted consumer liability would elaborate on and operationalize the conditions noted above under which individuals may play full roles as market clients as well as what lesser roles they may play. In each case, it would tell us what relationships marketers might have with them.

IMPLICATIONS

What are the implications of the preceding analysis? A first interpretation might be that marketers may not market to the specially vulnerable at all. This is mistaken. There are obviously cases in which those who are specially vulnerable, e.g., the elderly or the grieving, require various products and services and would benefit from learning about them. The preceding argument contends that any marketing to the vulnerable cannot morally be undertaken in a way which trades upon their vulnerabilities.

In cases when the special vulnerability is temporary, measures could be taken to restrain marketing to them until after such period. Accordingly, the legislatures of some states have introduced and/or passed legislation prohibiting lawyers from "soliciting the business of victims until 30 days after accidents, wrongful deaths, and workplace injuries" (Ferrar 1996). Similarly, for the grieving, some have suggested that "insurance companies may need to be restricted through legislation regarding the nature of their contacts with those in grief; specifically, the payoff of a life insurance policy should not be accompanied by an immediate attempt to encourage the survivor to reinvest. A period of time (i.e., at least a month) should elapse before the insurance company initiates a sales contact" (Gentry et al. 1994, 139). When it is desirable that individuals in this group have certain products or services prior to the vulnerability-creating situation's abating, other arrangements can be made for advisors to the specially vulnerable to be present or for restraints on marketing to them.

The situation is different when the vulnerability is not temporary or relatively short-term. In such cases, marketers may not target those who are specially vulnerable in ways such that their marketing campaign depends upon the

vulnerabilities of that specially vulnerable group. That is, in the case of the specially vulnerable, no significant aspect of a marketing campaign may rely upon the characteristics that render those individuals specially vulnerable in order to sell a product. Hence, because children are cognitively vulnerable due to their undeveloped abilities, any marketing to children must be done in ways which do not presuppose those vulnerabilities. As such, the FCC's limit on the amount of advertising on children's television programming does not directly address this issue. Instead, the content of those advertisements must be monitored so that children's special vulnerabilities are not taken advantage of. The removal of ads for vitamins and drugs from children's television programming does directly respond to the present point (Guber and Berry 1993, 145). However, it does not go far enough. Since young children do not understand the purpose of ads (cf. McNeal 1987, 186), they do not fulfill the qualifications of market clients. Accordingly, it is mistaken to speak of restrictions on marketing to the vulnerable (and particularly children) as violating their rights as consumers (cf. McNeal 1987, 185). Since vulnerable children do not qualify as market clients or consumers, they cannot be said to have consumers' rights.

Admittedly, vulnerable individuals such as children will witness marketing to competent market clients. There is no way to stop this. Nor is it desirable to try to do so. But this does not mean that marketers can invoke images, symbols, etc., which are designed to persuade or influence this group of noncompetent vulnerable individuals to purchase products (or influence those who do) through the very characteristics which render them unfit to be market clients.

Accordingly, it is not morally acceptable to market goods to specially vulnerable individuals with the intention that they bring

pressure to bear on genuine market clients to buy those products and with the expectation that those genuine clients will curb any problems which the use or possession of those products by the specially vulnerable would raise. Such marketing continues to target those who are not fully competent market clients. Further, to depend upon others to prevent harm which the marketing techniques may potentially engender through the purchase of various products is to seek to escape from the responsibility marketers have for the consequences of their actions. It is a case of displaced moral responsibility.

However, the interpretation of the above argument is still incomplete. What about those cases in which marketing takes place to genuine market clients, but the campaigns are (unavoidably) witnessed by the specially vulnerable who positively react upon these campaigns and seek out the marketers' products? Let us assume that R.J. Reynolds use of "Old Joe" is such an example.⁸

If the effects on the specially vulnerable in such cases were not harmful, then few moral problems would be raised. However, when they are harmful, one must ask whether there are other means of marketing the product which would not have these secondary effects? If marketers, as other individuals, are under the general obligation of doing no harm, or minimizing harm, then they should seek to alter those marketing methods even if the harm is an indirect result of the marketer's intentions. On the other hand, if it is not possible to alter the marketing methods, then means might be sought to limit the exposure of those who are specially vulnerable to these marketing measures. In short, moral marketing requires some response other than simply ignoring the harm done to the vulnerable.

I suggest, then, that a more complete account of marketers and the vulnerable is that marketers may not market their products to

target groups (specially vulnerable or not) in such a way that their marketing campaigns significantly affect vulnerable groups through their vulnerabilities. That is, there is nothing in the preceding that says that we must limit the effects of marketers' programs to their intentional aims with regard to a particular target segment. When significant spillover effects arise, they too must be taken into account. In effect, this would be to apply a form of strict targeted consumer liability.

Finally, is it morally justified to use marketing techniques which take advantage of the vulnerabilities of the specially vulnerable but which promote products which members of this group are widely acknowledged to need? For example, may marketers use techniques which young children cannot understand in order to get them to exercise properly or to eat a healthy diet? Or, may marketers use fear appeals to get the elderly to use their medications in a proper manner? Bailey has suggested that public service appeals might use fear appeals to warn certain groups of the elderly about dangers to them (Bailey 1987, 242). But this misses the point three ways. First, if the use of such appeals violates those who have been rendered specially susceptible to it, then they ought not to be used for good (public service messages) or bad (confidence games) or even ordinary marketing. Second, if some of the elderly are so specially susceptible to messages including fear, then the use of ordinary messages concerning their problems should also reach them. Fear is not needed; they are already concerned about the content of the appeal. Third, public service messages are one kind of "communication," whereas those messages which seek to sell a product or a service are very different. Since the marketing concept speaks of marketers seeking to satisfy consumer needs, some seek to use this to slide over into the public message realm. However, this is a slide that rests on an

equivocation: public messages solely for the good of the recipient and private messages for the good of the sender, which may also be good for the recipient. In short, if a group is specially vulnerable, the use of unfair techniques which would not ultimately cause them harm is still the use of techniques which treat such individuals unfairly through manipulating them through their vulnerabilities. Only in very special circumstances should such marketing techniques be employed. . . .

ENDNOTES

1. I wish to capture here not the ideal market, but a morally justified imperfect market, filled with real participants. Further, I do not attempt to state all the necessary conditions for a capitalist market system, but only to highlight those most important for present purposes.
2. I intend that this allows for the use of credit, loans, and the like.
3. It is conceivable that they could transform the vulnerabilities of a normal consumer into special vulnerabilities.
4. Andreasen writes that "the swindler finds particularly good customers among the disadvantaged, since he expects the consumer not to understand much about contracts and 'formalities,' such as confessions of judgment, and to be unlikely to read legal language carefully or to peruse contracts disguised as receipts" (Andreasen 1975, 204).
5. Vulnerability, in the grieving, involves a transformation of the self that forces people to face new consumer of market roles when they are least prepared to do so because of the associated stresses (Gentry et al. 1994, 129). This state involves "traumatic confusion" (Ibid.); a passage between two worlds; a "marginalized experience often accompanied by isolation and suspension of social status" (Ibid.).
6. See McNeal, who notes the objection that limiting the market exposure of children would rob them of "the joy of being a consumer" or "the fun and pleasure that comes with being a consumer" (McNeal 1987, 183-84).
7. Among the members of these specially vulnerable groups which may be treated unfairly by

marketers Cohen lists "children, the Ghetto Dweller, the elderly, and the handicapped" (Cohen 1974, 11).

8. There is much dispute over whether this is the case. For present purposes I will assume that R.J. Reynolds has not directly targeted children.

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