Subconscious Marketing Techniques: the implications for consumer regulations and the marketing profession

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Gerry Brierley
ABSTRACT

Subconscious marketing techniques: the implications for consumer regulations and the marketing profession

The compromise of defending, advancing and embracing new opportunities in marketing communications creativity and new knowledge from neuromarketing, whilst maintaining integrity in law and protecting consumers is a challenging equilibrium. The fine line between leading and misleading consumers is increasingly blurred. Consumer expectations and repetitive behavioural familiarity warms the buying brain to being conveniently led to hone in on products in order to expedite shopping. Such behaviour can lead to confusing and misleading marketing communications to bypass consumer rationality. Similarly, the emotional excitement and expectation of fun driven luxury shopping can entice consumers to bypass misleading marketing clues. Information overload can lead to impulsive buying decisions, followed by post rationalisation with degrees of impaired freedom of choice.

A dichotomy exists between consumer behaviour models used by legislators and real human consumer behaviour. This filters into the regulatory adjudicative process. Opening up insightful discoveries of consumer buying behaviour in relation to the Consumer Protection from Unfair Trading Regulations (2008) exposing a fallible process.

Using deep rich ethnographic tools of organic inductive data driven expert narrative, this research uncovers answers to question whether or not subconscious marketing techniques can go under the radar of consumer regulations. Multidisciplinary deep narrative findings reveal evidence that expert definitions and consumer perceptions can differ vastly. Average consumers and rational consumers are a myth built on false premises. Expert findings concluded that it was not possible to fully legislate against subconscious marketing techniques. In light of these findings, the research recommends new models, which are presented to re-evaluate methods through better frameworks, which can be devised along with a new subconscious neuro-marketing mix paradigm based on the new study area of subconsciology.

Keywords: consumer regulations; consumer buying behaviour; subconscious marketing; misleading marketing; marketing communications; consumer emotions; Consumer Protection from Unfair Trading Regulations (2008); UCPD; multidisciplinary; law; psychology; neuroscience; neuro-marketing; ethnography; semi structured interviews; experts; choice freedom; marketing mix; new subconscious neuro-marketing mix paradigm; subconsciology: subcology.
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Chapter 1 Introduction

1.1 Background

Chapter 1 opens the door of insight into subconscious marketing techniques, and the implications for consumer regulations and the marketing profession. It introduces and integrates the new discipline of subconsciology and consciology into existing disciplines. The Chapter seeks to orientate readers into overall representation of the research problem and presents the key pieces of the puzzle.

This research was initially inspired by previous enquiry, which involved a number of expert interviews in a setting of marketing and regulatory matters. This prior standing provoked the current research questions and lead to the objectives described later in this Chapter. Long gone is the reliance on traditional marketing, as one-way communication renders obsolete and makes way for the dominance of two-way interchange. (Ozuem, Howell and Lancaster, 2008). Chapter 1 provides the lens into the thesis content and structure relating to sub-conscious marketing techniques, consumer behaviour, and the Consumer Protection from Unfair Trading Regulations (2008) (CPR’s).

The complexities of the research issue are not the sole domain of marketing. New forces are at work: other professional elements of wisdom are brought into the mix and present key cornerstones for investigation as to how new and traditional disciplines, such as neuro-marketing, psychology and law alongside marketing, have become the multidisciplinary mesh of enquiry in this context. To uncover and expose the research problem, Chapter 2 investigates the multidisciplinary literature review whilst Chapter 3 presents the methodological road map of data driven inductive ethnography, used as the key to unlock the depth of meaningful multidisciplinary expert knowledge.

In Chapter 4, the theoretical trajectory led to the examination of traditional and new theories opening up to semi-structured questions and interviews in Chapter 5 with world renowned experts, unveiling new secrets behind the subtler nuances of marketing under the radar of consumer regulations.
The penultimate destination of this research journey in Chapter 6 reviews the objectives and puts another layer of flesh on the conceptual findings. The final destination of this research culminates in Chapter 7 which concludes the contributions to knowledge, methodology and practice, along with signposts for future research directions.

1.2 Evolution of the Research Problem

The dichotomy between marketing and marketing regulations raises the question as to how marketing techniques may circumvent consumer regulations and distort the economic behaviour of the consumer (Lindstrom, 2008). It is rare to find a marketer that shares a similar deep passion for marketing as they might for law and regulations. Degrees of polarity exist in the creativity of the right brain attributed to marketing creativity and the analytical processes of the left brain, often more attributed to the regulatory processes of law (Loftus and Pickrell, 1995; Arkush, 2008). The two tend to be opposing rather than complementary, and rarely do they seek each other out.

Recent decades have witnessed extensive marketing regulations introduced into the UK. These complexities are intertwined through many general regulations and have direct impact on professions, businesses, and consumers. The evolution and fragmentation of the myriad of marketing professions, from sales, marketing, agency through to consumer services and the revolution of complex digital marketing disciplines has opened up a new opportunity for the marketing profession. This becomes a challenging landscape for the regulators to manage. Regulators have pursued the profession with an ever increasing grip (Dauses, 1998) (Moore, 1988).

What has happened? Have marketing communication regulations made advertisers cleverer or more covert? Is there a darker side to brand communications? The challenge arises from findings in Chapter 5: with an ever-increasing gap and dichotomy within the structure and framework of consumer regulations, true behaviour of consumers in matters of emotional relationships with buying decisions are a chasm away from how they are depicted in law. It might be argued that these regulations are based on a false premise of how consumers truly behave. Early investigations uncover that excursions into the subconscious was feared to be more dangerous than the atomic bomb (Lewis, 2013). Homo economicus tends to have exclusivity in the domain of the economists as the basis of rational bias within the trunk of legislation and branches of consumer regulations. It could be argued that the core of legislation based upon rational behaviour is misleading in its entirety and impedes on
accurate judgement of the general judiciary. Much social, economic and business theory and policy rests upon a legal fiction (Matthews, 2009).

General methods of training marketers have evolved by implementing formulas, processes, and procedures which were designed to attempt to make intangible processes ‘tangible’. The need to develop structured techniques for learning and to guide marketers through a conscious process of movement from A to B, evolved into such models as the 7 P’s of marketing mix and AIDA, forcing marketers to follow a process pattern which did not mimic true buying behaviour. Our minds and buying brain do not work in such a linear fashion, and this exposes fallibility in this traditional approach which is based on assumptions of rationality and the consumer being able to be moved through the steps of the buying process in a linear fashion guided by the marketer, as discussed in Chapter 4.

Persaud et al (2007) found that the brand was about the link between emotion from the subconscious mind, and affirmed that ninety-five percent of our decisions are made subconsciously. Contribution in academic research and institutional teaching in this area has been minimal.

1.2.1 The Regulatory and Marketing ‘Lag’

Regulatory and marketing frameworks are outdated and need to be updated by further empirical studies drawing together multiple disciplines in a qualitative study. Regulator and Traditional Marketing ‘lag’ model. Figure 1.1 reflects the context of originality presented in Chapters 4, 5, and 6. consolidated in tabular presentation in Chapter 7.1.
1. **Consumer Regulatory Model**: Regulation lags behind reality of daily life decisions and the marketing revolution. The ripple effect of time is shown to have limited impact on regulatory change, which is still based on assumed synthetic human behavioural model. Wilson, et al (2008), point out how regulations and policy lag behind practice, particularly intellectual property laws in the advent of the explosion of the Internet. With transparency around promotional methods lacking, they go as far as to call for new research methods such as neuromarketing to be used to update legislation. Moore (1988) and Brooks (1958:7) say: “The concept of free-will underlies a free society. To govern themselves, people must be able to think for themselves.” Recognising that many motives are determined at an unconscious level, Everson (2006: 106) in Incardona and Poncibo (2001-7):

“The European average consumer does not fully correspond to his or her legal construction. Law proves to be too self-contained and too blunt an instrument to allow for the coherent translation of economic and political conceptions and constructions of the consumer into an integrated legal framework of regulation”.

Even with the evidence of subconscious behaviour, prior to the implementation of the CPR’s, it was noted by Dauses (1998): that the European Court of Justice created the concept of the average consumer as the judicial portrayal of sensible, attentive and cautious being able to analyse critically and discerningly the messages behind advertising and
commercial practices in general. Woods (2004) highlights that there are inadequacies in consumer models surrounding consumer’s rationality. The fallible nature of our decision making process is often thwart with the notion that we are highly differentiated by our cousins in the animal kingdom by our rationality, and thus someone who is not behaving in a manner considered average and rational is somehow less psychologically stable.

2. Traditional Marketing Models: Divergence rather than convergence exist between those models now considered as ‘old’ traditional models. Research emerged at the turn of the last century regarding the more automotive levels of human behaviour in decision making, yet the development and extension of rational models of marketing activity and consumer behaviour prevailed, creating a woefully inadequate gap in marketing knowledge and professional practice. In the 1970’s Ehrenberg claimed that advertising was not a powerful tool, and that there was no evidence that it actually worked by persuasion or manipulation. In 2005, Cramphorn alerted us that old marketing models, still used prolifically today, were outdated since the advances of neuroscience, and warned that models such as AIDA reflect old world thinking, based on a presumed premise of false knowledge that human behaviour was conscious, sequential and rational. Bargh (2002) noted that the field of marketing was still dominated by rational cognitive approaches to decision making.

The traditional model of human conscious and rational behaviour, can be experienced through the four ‘P’s (McCarthy, 1978), from Culliton (1949) who described the role of marketing as a “mixer of ingredients” i.e. product, price, place and promotional elements. The four ‘P’s are considered essential elements to create a brand. The misleading elements of the CPRs follow a similar process to that of the more recent ‘seven Ps’ of the marketing mix. The dichotomous relationship exists in that methods used by marketing are also used within the CPRs to counteract marketing activity.

Arkush (2008) found that the mainstream of social psychology has moved away from the assumption that humans are aware of and control most of their thought and behaviour and that researchers now understand that behaviour was produced by conscious and unconscious thoughts. Reeves (1961) thought that emotions were a result of our thoughts and if we could understand our thoughts then we could understand everything. Today neuroscientific technology undermines that pattern.
3. New Marketing and Regulatory Models: After sixty years we know much more about how our mind and brain work, yet the complexities of the process are still a mystery to most. Ambler (2000) noted that persuasion was thought to be ingrained in advertising. Persuasion is about moving the other person by argument, reasoning or belief, and, as Hyder (2005) pointed out, it helps if the person you are trying to persuade pays attention. Postmodernist models such as Heath’s (2012: 9) extend the attention persuasion model:

“Advertisers think that their creativity makes us like ads more and pay more attention to them. What really happens turns out to be the opposite: the more advertisers attempt to subconsciously seduce us with creativity, the more we like it, the less we feel threatened by it, and the less attention we feel we need to pay to it... But the sting in the tail is that the less attention we pay the more effective the subconscious seduction becomes. By paying less attention we effectively give advertisers the permission to influence our subconscious.”

Steen (2007) revealed that trying to experience unconsciousness from the perspective of a consciousness prevents us from fully experiencing our unconscious processes, presenting a challenging research concept and an opening for neuroscientific research. It had previously been thought that the neocortex or the rational brain dominated the rest of our thought processes (Senior et al, 2007). However, as early as 1952, neuroscientist Dr. MacLean found that 3 stages of brain development existed, and how the limbic brain operating subconscious automotive elements such as emotions, memory and our senses could, hijack the neocortex. Maclean coined the term ‘limbic brain’. The limbic brain model is key to marketing as, amongst other things, it is responsible for transmitting survival information as to avoid pain and create repetition of pleasure.

New neuroscientific models and conjoint terms such as neuromarketing, neurolaw and neuroeconomics were coined, to become the application of neuroscience technologies to specific disciplines. Neuroscience has been used in law by experts to discredit eye witness accounts, citing that neuroscience proves memory to be fallible and distorted over which can create self-deception. Neuroscience proves that memory does not operate in a reverse style like that of a video recorder replay, it is way more complex. This is relevant to how memory can be triggered in brand recollection. Fuelled by the optimism of marketers, neuromarketing has undergone some controversies in the purpose and application of the method. This emerging and evolving discipline is important because opens up concrete scientific markers against insightful marketing research into our unconscious mind, which has been critically questioned over the past Century and led to false models of behaviour in the pursuit of the consumers’ patronage. Breakthroughs in neuroimaging techniques in
consumer brand communications could provide an insight into the perception of differing consumers to certain terminology used within the regulations, such as the terms ‘misleading’. This could expose the need for a review of the regulations and potentially a new framework for these regulations with ethical underpinnings. The CPR’s may be in itself misleading to consumers and businesses alike and therefore criminalisation of this regulation might be questionable.

1.2.2 The Research Space

The research space refers to gaps in the body of knowledge (figure 1.2) around the research aim in 1.3 and the research questions in 1.5. The gap is intended to provide an interesting, feasible and unexplored research space. Figure 1.2 reflects the context of originality presented in Chapters 4, 5, and 6, which is consolidated in tabular presentation in Chapter 7.1.

Figure 1.2 Connectivity of the Research Space

1. Current multidisciplinary research knowledge (fig 1.2): The extent and limitations of the multidisciplinary research are discussed in Chapter 2, which presents a disconnection between regulations and economic behaviour. Developments in neuroscience have opened up brain behaviour and begin to validate previous research in psychology. Psychology is interested in the workings of the ‘mind’ neuroscience is interested in the workings of the ‘brain’. Mind is like the steering wheel and brain is like the engine. In the 1980’s Pioneers
in psychology Zajonic and Bornstein showed that feelings and emotions have primacy over thoughts. Complexities of extensive current day messages can overwhelm the human brain and lead to confusion in decision making and increase emotional deviance. Therefore, the interconnectivity of consumer psychology to the disciplines of marketing, regulatory and neuromarketing is key if we are to understand this research issue. Heath (2012) thinks that susceptibility to subconscious seduction is related to what is happening around us, with new ideas from psychology.

“Many of those who study consciousness now accept that everything we do with our mind is done at a subconscious level, and ‘consciousness’ is just an observer. So our conscious mind doesn’t behave like a computer, more like a computer monitor.” Heath (2012: 165).

Martin and Morich (2011) present the idea that consumers are rational agents. Research from across multiple disciplines demonstrates that most human behaviour is the result of unconscious mental processes. It is an illusion that we are rational beings we only find out what is about to happen Cooper and Pawle (2005) during micro seconds of post rationalisation. Wegner (2002) thinks our adaptive subconscious and automaticity does all the work. Steen (2007) points out that, for millions of years, unconscious systems controlled intelligent life, and that our conscious thought processes are the most recent in our evolutionary brain. This is a multitasking system built for survival (Martin, 2008). Humans would be unable to survive without this dual system.

2. The Research Knowledge Gap (fig 1.2): The connection between the current knowledge and new knowledge is the research gap or space. The research space needed to be assessed on the feasibility and level of interest in this area. Assessing the feasibility involved accessing the right literature and establishing if there was interconnectivity with key disciplines in the research space and gaining access to the right experts, establishing their level of interest and contribution. The knowledge gap is concerned with information and knowledge (Tichenor et al, 1970) and about how subconscious marketing techniques can distort the economic behaviour of the average consumer.

The connecting gap in knowledge is the interconnectivity with regulatory statutes, consumer psychological behaviour and the emerging technology of neuromarketing to glue the gap together. The integration of research into models of the unconscious consumer decision-making process is long overdue (Martin and Morich, 2011). A knowledge gap exists where no research has been undertaken linking subconscious marketing
communications to the regulatory framework using ethnographically extracted empirical expert knowledge cascaded from conversations with a purpose described in Chapter 1.6.1 and 5.1.

3. The Target of New Knowledge (fig 1.2): Is to resurrect focus on the subconscious mind through subconsciology. Specifically how subconscious marketing techniques can circumvent consumer regulations and examine the connectivity between subconscious marketing techniques, consumer buying behaviour and the validation of consumer regulations. Freud coined the term subconscious in 1893; latterly, in 1926 he reverted to a position of uncertainty as to its meaning. There is no doubt that the subconscious exists. The concept had been recognized for more than 200 years. Freud (1914) wrote about it extensively. In the 1950s Wilder Penfield proved its existence during brain surgery when he used electric shock to bring forth memories from the subconscious mind that the conscious mind could not recall (Penfield, 1951).

The target of new knowledge opens doors to new territories and connecting unexplored terrains within multidisciplinary continents by providing information rich organic content from experts within each field of discipline to fill the knowledge gap. Though applying research from multi disciplines there is a greatly improved understanding of unconscious behaviour. This research targets new knowledge by initiating a multidisciplinary relationship between marketing, law, psychology and neuro-marketing and to understand the discourse mismatch. (Fig 1.8)

Martin and Morich (2011) argue that consumer models are based on the presumption of conscious behaviour. Howard and Sheth’s (1969) normative models of consumer behaviour prevailed until recent research revealed that human behaviour mostly occurs outside conscious awareness and intent. Schacter (2001) also detailed how emotional processes by pass rational processes. Heath et al. (2006) believes it is Damasio (1994, 2000 and 2003) who takes credit for modern theories about how emotions are processed. Damasio used the concept of a ‘limbic’ system in the brain, as discovered by MacLean (1952) (Damasio, 1994). The limbic system operates pre-cognitively and automatically. Subconscious techniques can be used in consumer marketing communications; neuromarketing may uncover that legislation is ineffective to those who are unscrupulous or astute legitimate brand communicators.
Neuroscience has become a technological mediator of past hypothesis and theories of the existence of the subconscious in action and how the human brain operates; it exposes the truth that humans can be affected in a subconscious manner by marketing communications. Competing discourses are presented in the findings Chapter 5 between two of the worlds’ leading neuroscientists as to the extent of the usefulness of the technology when applied to marketing. Proactive cohesion needs to play a part to aid our evolutionary understanding and to enable the seeds of research to bear fruit for future prosperity in new knowledge. Anderson (2007) acknowledges that multidisciplinary research can be time consuming but very relevant to understanding behavioural decision making. Seeking out the oratory of professional individuals, such as those engaged in the regulatory, marketing, psychology and neuromarketing professions led to illuminations of imagination and ideas to corral the developing inductive thought process. “Decision making crosses all disciplines such as economics, government, marketing, public opinion and the legislators.” (Tetlock, 2002:94). Broderick and Chamberlain (2007) have established the importance for multidisciplinary collaborative research from other fields to make progress in understanding various human states.

1.3 Research Rationale

It is widely accepted by social and natural science that only around five percent of our decisions are made rationally (Persaud et al, 2007). Therefore, it could be considered that EU and UK legislators and regulations are out of date by applying rational cognitive behavioural assumptions to regulations such as CPR’s. This research discusses how marketing techniques may circumvent the intentions of the regulators and whether the law it to blunt an instrument to apply to buying behaviour, the target knowledge and rational is to establish how subconscious marketing can penetrate below the radar of Government regulations thus potentially invalidating The Consumer Protection from Unfair Trading Regulations 2008 (CPR’s).

To understand the effect and perception of rational and subconscious behaviour within legal frameworks, Incardona, and Poncibo, (2007) state that the European Unfair Commercial Practices Directive (UCPD) provides information that consumer’s need before buying, such as: the main characteristics of the product, the price, delivery costs and the right of withdrawal. It also introduces requirements that traders should provide information in a clear, intelligible and non-ambiguous way. Consumers’ perceptions can vary; generally, perception is often based on beliefs and stereotypes and so marketing
stimulation to products and services may have varying effects and therefore perceive things differently. People see and hear what they expect to see and hear (Woods, 2004; Bettman et al, 1998; Heath, 2012). Tellis (2004) thinks that regulators should be aware of the process of the emotion of perception and ensure that information is tailored to the needs of the specific target audience.

Fugate (2007) shows that neuromarketing has the capability to demonstrate that emotional and rational thinking co-exist and are co-dependent. “Neuroeconomics challenges the notion that emotions can corrupt economic decision making. Emotions grab people’s attention and motivates them to focus the rational brain on the issue at hand” (Damasio quoted in Coy, 2005:94). Neuro-marketing studies reveal that brands have succeeded in by-passing Government regulations by creating stimuli powerful enough to replace traditional advertising (Lindstrom, 2008); Barthol and Goldstein (1970); Loftus and Pickrell (1995) even though consumer trust their innate decision making (Braun La Tour, 2004). Heath (2012: 198) noted: “Being subconscious doesn’t mean it ceases to influence us; it means that it influences us even better, acting as a marker that covertly directs our intuitive decision-making”. Subconscious marketing techniques are excluded under Prohibitions within the CPR’s. However, Misleading Actions and Omissions are prohibited. Incardona and Poncibo (2007) and Trzaskowski (2011) argue theoretically that the average consumer and rational consumer does not exist. (See expert empirical discussions in 5.5).

Bettman et al (1998) provide evidence that when giving consumers more information for them to make a rational decision does in fact impede upon their ability to make a rational decision, discussed by experts in Chapter 5. We see this phenomenon in supermarkets where the average supermarket shopper is unable to expedite the processing of complex pricing offers displayed on goods. Regulations assume that consumers are able to be sufficiently mindful and aware to digest and process even simple data into a rational context is an extreme misguidance of natural abilities. This goes in part to suggest there are inconsistencies in the human thought processes and consumer regulations. Braun-La Tour, et al (2004) mention that even though consumers can be manipulated, their innate response is to trust their decision making. (Hoch 2002) talked about how advertisers are looking for knowledge on how consumers experience information and respond to that information (Hoch and Deighton, 1989). Braun (1999) found that post advertising experience can influence how an experience is brought forth in recollection. Arkush
(2008:1275) affirms that unconscious behavioural processes are “so ubiquitous, robust and effective that some are left wondering what purpose conscious reasoning serves.” Barthol and Goldstein (1970:30) acknowledged that “there is little doubt that advertisers and propagandists will continue to develop new and better techniques designed to by-pass our normally available defences against external influence.” In relation to rational marketing models Martin and Morich (2011: 483) confirm that “conscious models of consumer behaviour do not accommodate the reality of the part that emotions, attitudes and beliefs play in decision making.” Arkush (2008) discussed how a revolution had begun in legal thinking on emotion in decision making. Rational choice theory which at its core assumes decision making is emotionless has now been replaced by the thought that decision making is fundamentally flawed, thereby following the theory of behavioural economics. Incardona and Poncibo (2007:21) think that the average consumer test used by legislators and regulators is built on a false premise of the economist’s rational consumer model. They say:

“This notion may be useful for economists’ calculations and projections, but departs from the unpredictable realities of individual human behaviour and is hardly an appropriate standard for legislative or judicial sanctions. The average consumer model is inadequate to describe consumers’ rationality.”(Woods, 2004).

Loftus and Pickrell (1995: 720) noted that legal theory treats emotion as a source of interference in decisions, but empirical evidence suggests that emotion is a behavioural process that is critical to decisions (Chapter 5). This shift has widespread implications for law, legal theory, and policy. As a descriptive matter, it suggests that we should re-evaluate legal doctrines that rely on the assumption that humans are mostly emotionless creatures and re-examine areas of law that concern consent, states of mind, and the causes of behaviour. As a normative matter, emotional realism suggests that we have no empirical or internal definition of welfare on which to base policy. Legal fictions are thought to be one of many masks of creative grammar that can be confused with reality and even become legislative reality itself. (Mathews, 2009)

Heath (2012: 10) explained that to understand how our behaviour is influenced by emotion in advertising we first need to understand how we make decisions. Psychologists now accept that our emotions act as a gatekeeper for all our decisions. If we don’t have the time to think about a decision, our emotion will make it for us via our intuition. Emotion in advertising is able to influence our behaviour far more that anyone ever thought. Heath (2012: 11) describes Subconscious Associative Conditioning, whereby an advertisement triggers an emotional reaction, subconsciously transferring the emotion to the brand and
Subconscious Relationship Manipulation when the creativity communicated influences the way we feel about the brand. Psychiatrists think brain clues might help marketers target customers more precisely (Psychiatric Annals, 2004). The potential for neuro-marketing to reduce marketing failures and increase marketing successes seems quite promising; although not without controversy.

Defining consciousness was, and still is a difficult process between philosophers and neuroscientist who were struggling to understand its limitations (Dennett, 1991; Crick and Koch, 1998). Fugate (2007) explains that neuromarketing and its precursor, neuroeconomics, uses clinical information about brain functions and mechanisms to help explain what is happening inside of the “black box” of consumer behaviour. Before this, most explanations of consumer behaviour are based on inference. If neuromarketers can “use science to locate the consumers’ ‘buy buttons’ then we have got closer to opening the ‘black box’ of the consumer’s mind” (Moore, 2005:12). The melding of neurology and marketing applications are attributed to Gerry Zaltman, (2003) who conducted MRI projects in the 1990s for a number of Fortune 500 corporations (Reid, 2005).

Dijksterhuis, et al (2005:193) determined the “perception–behaviour link.” Their work shows that mere perception of the social environment leads people to engage in corresponding behaviour (see Dijksterhuis and Bargh, 2001; Wheeler and Petty, 2001). This research implies our behaviour is often highly imitative and thus behaviour is contagious. We can often see this behaviour in market stalls where an interested group of people congregate turning into a crowd of curiosity where consumers want to know what the crowd is interested in and we can see this occurring in street performances (Chapter 5 and 7.4). Aarts and Dijksterhuis (2000), Bargh, Goll-witzer, Lee-Chai, Barndollar and Trötschel (2001) and Moskowitz, Li and Kirk, (2004) all show that goal-directed behaviour is often unconsciously guided by the environment, such as involvement in a performance or purchase of goods. The consequence of this is that perception often affects behaviour directly and unconsciously (Dijksterhuis and Bargh, 2001).

Discussing human behaviour and decision making, Bargh and Chartrand (1999) estimated that conscious deliberation guides us about five percent of the time. Ryder (2004) noted that our primitive emotions prevail and cause strange and unpredictable behaviour, often making it difficult for marketers to make accurate predictions on advertising concepts.
To underpin the universal domain within which this research paradigm exists, the hierarchical model of dominance of the domain resides within business management and subservience is seen in the multiplex of cross disciplines with the discipline of marketing at the core of this research (Figure 1.3). The mother discipline of marketing steers at the helm, providing manoeuvrability within disciplines, extending the hand of marketing to integrate these boundaries.

![Hierarchy of research domains](image)

**Figure 1.3 Hierarchy of research domains**

### 1.3.1 Research Methodology Rationale

In codex on the flight of birds (1505) Leonardo da Vinci applies his multidisciplinary knowledge to the inductive process of invention, more commonly known today in industry as ‘blue skies research’. Da Vinci designed and developed the flying machine on a purely inductive basis, in that, no other machine of its type was known. The only potential reference points were his ideas, which may have burst forth through observing flight patterns of insects such as the dragon fly which can hover, and birds such as the pigeon which has a vertical take-off pattern. This approach opened up phenomenal postmodern inventions through pure induction. Often, research can be restricted by the constraints of methods being inflexible, such as the under-researched area of the nature of human perception which is lacking due to the quantitative methodology applied to an area being more relevant to a qualitative approach. This approach cannot be replicated in the laboratory thereby stunting the literature. A bit like trying to build a wall but having the incorrect foundation in place so the wall cannot be built.
This research is built on the foundations of an inductive multidisciplinary approach, and a postmodern ethnographic strategy. It embraces the building blocks of structuralised semiotics and patterns of meaning through thematic discourse analysis. In conversation with the inventor Sir Clive Sinclair in 2004, when discussing collaboration, he commented that one of his regrets was that of not discussing his research with other disciplines as he felt it would have helped him make better decisions, he went onto say:

“After all, in Roman times all the technology was there to create the bicycle, so why didn’t they? People didn’t make the connections because they didn’t talk and share ideas; nowadays we can share ideas to develop better products”.

These words of wisdom echoed to influence the forging of key disciplines in this research to develop originality through the fusion of expert minds and opinions and untangling discourse mismatch (Figure 1.8). “The phenomena of human life are not intelligible except through their interrelations.” (Blackburn 2008:40). Broderick and Chamberlain (2007) believe in the need for collaboration with other research fields to advance consumer behaviour research in the study of the subconscious emotional response. The new neuromarketing evidence combined with ethnographic observation methods may provide valuable insights into the behaviour relating to subconscious marketing communications and the CPR’s.

The strong interconnectivity of neuromarketing to marketing, regulatory, and particularly consumer psychology provides invaluable research material in the context of this research issue. Similarly, ethnography is undergoing a technological evolution from personal anthropological observation to broader video streaming observation techniques being able to detail responses such as micro facial expressions. One might describe this as ‘Postmodern Ethno-Technology’, or ‘Ethno-Tech’. Advanced ethnographic models infused with neuroscience can open up opportunities for the true behavioural expression in sub-consciology. Previous research leans towards scientific quantitative studies in relation to subconscious brand influence. Minimal attention has been focused on the relationship between subconscious marketing techniques and how this might go under the radar of the CPR’s. Loftus and Pickrell (1995: 720) state:

“When dealing with a piece of information that is quite blatantly false to some consumers, one might argue that misinformation that is less detectable may float under the consumers' conscious radar screen and be adapted. New information invades us like a Trojan horse, precisely because we do not detect its influence. It could be revealing if policymakers can determine the value of goods and services and define welfare simply by watching what people do in well-working
markets and learning how natural lives operate in a more anthropological way applying ethnographic strategies to what is essentially a human behavioural issue.”

Traditional technological tools used by the neuromarketing profession to generate neurological images are electroencephalography (EEG), magneto encephalography (MEG), positron emission tomography (PET), and functional magnetic resonance imaging (fMRI) (Moore, 2005; Camerer, et al 2004; Singer, 2004). Subconscious bias may be uncovered where other research methods, such as focus groups, fail to uncover and even show how to ignite pleasurable feelings in consumers (Huang, 2005). Today, more advanced neuroscientific organisations use implicit neuromarketing techniques involving questions fired at a speed whereby the recipient has insufficient time to rationalise the outcome.

A knowledge gap exists to establish on an ethnographic basis to what extent consumers will make a purchase on the basis of subconscious brand influence, and how subconscious marketing techniques might circumvent consumer regulations. There is no study that examines this phenomenon. Broderick and Chamberlain (2007) note that infrequent use of observation methodology in marketing research is often justified by researchers because it is viewed as a time consuming technique. It is this recording of the subconscious experience which is useful for emotion research; observation methods can enhance our understanding of this construct by providing us with detailed objective and subjective data regarding the subconscious and conscious emotional experience. Although ethnographic strategies are thought to be used infrequently, observation methods have been used to research purchase behaviour (Wells and Lo Sciuto, 1966). Boote and Mathews (1999: 19) concur that:

“Observation is a good choice of methodology for examining subconscious influences on consumer behaviour, especially where the individual does not wish to divulge their real behaviour or emotions, or where they simply want to appear rational.”

1.4 Aim of the Research

To establish if and how subconscious marketing techniques can circumvent consumer regulations thereby distorting the ‘economic behaviour’ of the consumer, as defined in consumer regulations (CPR’s), exposing a dichotomy between marketing and consumer regulations. Create collaborative multidisciplinary expert narrative (Chapter 5) to update the literature and produce original authentic content to form the basis of new models and
processes for the academic, marketing and regulatory environment. Extending and challenging current knowledge, theories and assumptions (Chapter 4) creating a new conceptual process of the subconscious neuro-marketing mix model (Chapter 6), and to resurrect the study of the subconscious developing subconsciology.

1.5 Originality: a multidisciplinary contribution

By the nature of the inductive approach to this research, originality is interspersed throughout Chapters 1, 3, 4, 5, 6, and 7 to create curiosity led blue skies research. The explanation of how this was achieved is discussed in section 1.7, 5.1, and 5.2, and clear tabulation of the original contribution is summarised in Chapter 7 sections 7.1 and 7.2. Original research findings are summarised in Chapter 5.7. In this research, the phrases ‘subconsciology’ and ‘consciology’ (Table 1.4) describe the study of the subconscious and the conscious mind as a new defined discipline. It became apparent that psychology and neurology were too wide and broad disciplinary study areas to define an important, understudied and subdued phenomenon as the subconscious, which is resurrected here to understand buying behaviour and regulatory reform. Psychology focuses on the mind as a whole: neurology and neuroscience focuses on the brain as a whole; yet the most powerful area which has received minimal study mainly because of taboo and lack of understanding is our subconscious mind (or limbic brain), bringing the term ‘subconscious’ back into the frame rather than using more politically correct terms such as ‘unconscious’ and ‘priming’. Table 1.4 also shows that subconography is a way of directing and the qualitative mapping out these subconscious processes; conversely congraphy is the way of mapping out conscious processes (Figure 1.7).
<table>
<thead>
<tr>
<th>Subconsciology</th>
<th>Consciology</th>
</tr>
</thead>
<tbody>
<tr>
<td>Specifically, the study of the subconscious mind. How we relate to ourselves, others and external messages. Models can be scalable and replicable into other disciplines</td>
<td>Specifically, the study of the conscious mind. How we relate to what we think we are conscious of in our own behaviour, others and external messages.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Subcongraphy</th>
<th>Congraphy</th>
</tr>
</thead>
<tbody>
<tr>
<td>The mapping out of the subconscious mind for individuals, projects and creation of new interdisciplinary tools/models. Such as can be seen in the new subconscious neuro-marketing mix in Chapter 6.6</td>
<td>The mapping out of the conscious mental process for individuals, projects across disciplines</td>
</tr>
</tbody>
</table>

Table 1.4 Marketing subconsciology: a new conceptual paradigm. The new discipline explanation of Subconsciology and Consciology, Subcongraphy and Congraphy

Figure 1.5 describes how subconsciology moves from general to specific through the funnel of disciplinary hierarchy. Subconsciology is a deep yet scalable study area which crosses disciplines as depicted in Figure 1.6 and is threaded through this research and specifically identified in the role of the new subconscious neuro-marketing mix of the 12 P’s of consumer behavioural marketing paradigm in Chapter 6.6. This new model shows how subconsciology can specifically be applied to model building around goal pursuit of human behaviour in a marketing campaign. However, it can also be linked in an inverted manner to regulatory decisions and a broad range of or goal pursuits and achievements. Similarly, consciology as the study of the conscious mind operates in unison to understand what we think we understand. This new disciplinary area defines two very specific areas of mind and brain function, its connectivity and interrelationships.
At the heart of this research is the requirement of original contribution described in Chapter 7. The first part of the originality is the identified research space, which is filled with new empirical literature in Chapter 5. The research uncovers how subconscious marketing techniques can distort the economic behaviour of the consumer and circumvent the intentions of marketing regulators. It uncovers the discourse mismatch, which appeared during the literature review, the reflection of competing discourses is described in Figure 1.8 and was further uncovered in Chapter 5 during expert stories and themes, where the need to have structuralised definitions as the starting point as a prelude to progress was identified. This problem was overcome by establishing the individual expert definitions of a term and the term used in their disciplinary field, explained further in 1.7.1 to 1.7.3.
Figure 1.6 New Interdisciplinary Interaction: a qualitative method which can be replicated in other disciplines

Figure 1.7 New Disciplinary Interactive Ethnographical Mapping
Figure 1.8 The Discourse Mismatch: connecting the research question to multiple disciplines

This new research pollinates the literature with a branch of research linking evolving marketing communications techniques and their relationship with ever increasing constrictive legislation. Senior academic and industry experts were selected for their dual expertise and contributions to the flow of knowledge in both the directions of academia and professional practice, and their capabilities to cross-fertilise currency within both knowledge banks. For example, one interviewee is both a Professor of Neuroscience who owns an international neuromarketing business taking in the view from both sides of the research fence bringing forth emerging new consumer facing concepts and theories. This research provided an opportunity to solve philosophical, academic and professional practice problems in providing a new subconscious neuro-marketing mix in Chapter 6.6. Chapter 4 identifies current theories and challenges these with new theories and Chapter 6 uncovers new areas of the fine line between ‘leading’ and ‘misleading’ consumers. The originality is created by delving deep into the mind set of experts using semi structured interviews and distilling authentic narrative into patterned thematic discourse analysis, thus filling the research space and present original finding as outlined in Chapter 7 and detailed in Chapter 5. Extensive new multidisciplinary models were developed throughout this research and consolidated in 7.1 and 7.2. As Penn (2005) pointed out, that changes in refocusing advertising can be complex leading to changes which will challenge conventional research assumptions, as revealed in Chapter 6 and 7.
1.6 Research Questions

Answers to the research questions are threaded through forthcoming Chapters.

1.6.1 Research Question One: the problem

Do subconscious marketing communications techniques circumvent misleading marketing communications regulations thereby distorting the economic behaviour of consumers and invalidating these regulations? To what extent may consumers be unwittingly led or misled by brands? Is there an opportunity for marketers to create new regulatory and marketing models to address these problems and opportunities? This question is answered in Chapters 2, 4, 5, 6 and 7.

The purpose of this question is to elicit information relating to subconscious marketing techniques, which can be utilised to manipulate customer decision making processes without customers being aware or conscious of such activity. Referring to Consumer Protection from Unfair Trading Regulations (CPR) (2008) which makes it an offence for a commercial practice to mislead a consumer by ‘Action’ or ‘Omission’, this research specifically focuses on the conscious ‘Action’ of a company, agency or brand to intentionally manipulate consumers through various methods of communication techniques into purchasing products or services, thereby potentially contravening the CPR’s and distorting the economic behaviour of the consumer. Given that these subconscious techniques exist, currently there are no provisions under CPRs to prevent such a ‘Misleading Action’ or ‘Economic Distortion of Behaviour’. The literature review and empirical research using an ethnographic strategy aims to establish if these techniques invalidate part or whole of the CPRs. If subconscious marketing techniques are not prohibited and indeed are to be considered acceptable under European and United Kingdom regulations, then a dichotomous relationship with marketing and law may exist, providing an opportunity for marketers to create new concepts and knowledge within a multidisciplinary merger providing a ‘force for good’ to inhibit problems in Governance. Heath (2012: 9) states:

“Perhaps even more worrying is that advertising’s ability to seduce our subconscious using elements that are in our full view and easy for us to discern. The problem is that although we are able to perceive and attend to these elements, we mostly choose not to”.
1.6.2 Research Question Two: literature review

How can subconscious marketing techniques penetrate below the threshold of consciousness; can they be used by brands to penetrate under the radar of Government Regulations, and, if so, to what extent? Are the level of fines and criminalisation justified? Can Government legislate against subconscious marketing techniques, and what affect would legislation have upon subconscious marketing techniques? What can a multidisciplinary literature review reveal? This question is answered in Chapters 2, 4, 5, 6 and 7.

The purpose of this question two is to establish in the literature search what connections exist between consumer behaviour in relation to conscious and subconscious buying behaviour. Yet to be established is whether legislators and regulators are aware of subconscious marketing intent and to what extent these techniques can go under the radar of Government regulations. Legislation may have forced marketers to become more creative, clever, and covert in their communications. If communications fall foul of the CPRs, then financial penalties and custodial sentences can be imposed. However, some communications may unwittingly contravene these regulations, and customers’ interpretation of an advertisement communicated may be not what the advertiser intended. It may also be the case that experienced brands with clever marketers who understand consumer psychology, can by-pass these regulations and push the consumers psychological ‘buy buttons’ at the deepest emotional level. Therefore, legislation by Government against subconscious marketing techniques may prove fruitless and more difficult to assess cases if legislators continue to subscribe to the idea that consumers act rationally in a conscious manner when making purchase decisions.

1.6.3 Research Question Three: methodology

What can neuromarketing techniques combined with an ethnographic strategy of expert narrative reveal about how consumers buy at a rational and subconscious level within the legal framework of CPRs? Do findings from neuromarketing studies and ethnographic research invalidate CPRs? This question is answered in chapters 3, 4, 5, 6 and 7.

The purpose of this question is to establish how the evolving use of neuroscience research within neuromarketing techniques provides research findings and evidence within the literature about consumer buying behaviour. Coupled with an ethnographic empirical rich
data extraction through expert opinions from marketers, marketing institutions, legislators, regulators, government, psychologists, and neuroscientists, question 3 seeks to uncover relationships between the thin scientific laboratory results and evidence under practical scrutiny utilising the skills of the interviewer to establish expert correlation. This question potentially forms the glue which holds questions 1 and 2 congruent.

1.7 Objectives

The objectives were set to answer the research questions in 1.6, and to meet the aim described in 1.4. The delivery of the objectives followed a process of moving between stages back and forth distilling decisions as to the most appropriate direction for the research to flow in parallel and synthesised between conversations, literature review and expert narrative. The general stages of the objectives involved are shown in Figure 1.9.
Figure 1.9 Inductive Data Gathering Process: in parallel and synthesised

Stage 1: Discussed in objective 1 (1.7.1)
Stage 2: Discussed in objective 1 (1.7.1)
Stage 3: Discussed in objective 1 and 2 (1.7.1 and 1.7.2)
Stage 4: Discussed in objective 2 (1.7.2)
Stage 5: Discussed in objective 3 (1.7.3)
Stage 6: Discussed in objective 3 (1.7.3)

1.7.1 Objective One: The Research Problem

To develop previous inductive conversations with experts, to move forward and explore initial research ideas. To identify relevant disciplines and experts deemed sufficiently knowledgable with a multidisciplinary bias to identify the appropriate structure of interview questions for each discipline. To carry out this excersise in tandem, parallel with objective 2. This objective was met in chapters 2, 3, 4, 5 and 6. Stage 1,2 and 3 of the process was completed in this objective.
Figure 1.10 Inductive Data Gathering Process: in parallel and synthesised Conversations and interviews model objective 1 encompassing stage 1-3

Objective 1 was fulfilled by a previous research award from the Worshipful Company of Marketors to research marketing laws and the impact on the profession in 2007. A number of key experts in the marketing, legal and regulatory professions were interviewed. This uncovered a potential dichotomy between consumer regulations and marketing communications. Taking this research forward, a number of these experts were revisited and new experts were identified through personal contacts, attending events such as lunch at the Old Bailey with the Judiciary, Judges dinner at Mansion House, lectures at the Royal Institute with neuroscience experts, marketing lectures, business discussions, networking events at the House of Commons and House of Lords, and business and political connections through committee work with the Federation of Small Business, marketing institions such as the IDM, watching videos of expert lectures, discussions with expert authors of journals and books and those involved in expert multidisciplinary private and governmental department research committees in areas such as the connectivity of neuroscience to neurolaw. This is further expanded in ‘brief encounters with reality’ in Chapter 5.1.
Moving from ‘general to specific’, this initial process provided funelling information and pruning to pinpoint the problem and understand the issues in greater depth, this involved moving to and fro from conversations, filtering experts, the literature review and attending seminars to define the patterns of meaning to outline the specific interview questions, some which were aimed directly within the experts discipline and some which crossed boarders of disciplines. These questions were directed in a way to be relevant to the discipline of the expert at the end of the conversation or interview ‘referrals were requested’ by asking the question: “Do you know anyone else who would be interested in being interviewed for this research” which created a cascading snowball effect integrated in Chapter 3 Figure 3.1.

Crowther and Lancaster (2009:146) discuss ‘conversations with a purpose’ as “an approach to collecting data which often proves extremely fruitful”. In this instance the researcher begins to gather data through the process of joining in conversations. This interviewing technique is felt to be particularly appropriate in ethnographic research (Foddy, 1993; Arksey and Knight, 1999). Crowther and Lancaster (2009: 146) go on to say:

“Data gleaned in this way has characteristics that often cannot be achieved in any other way. For example, data revealed in day-to-day conversations may be more open and honest than where the researcher specifically question respondents about an issue. It is imperative that the researcher must be able to at least listen in to and participate in conversation with informants”.

Conversations such as Crowther and Lancaster suggest provide entry level discussions, and provoke thought processes and natural flow of information exchange. Heath (2012: 10) uses a multidisciplinary approach to understand how the subconscious can be seduced and for this purpose he states: “I have used cognitive psychology, behavioural psychology, neurobiology and philosophy as building blocks.”

1.7.2 Objective Two: Literature Review

To identify key relationships between rational and subconscious marketing communications, CPRs, traditional marketing techniques, average consumer buying behaviour, and homo-economicus by carrying out a depth review of multidisciplinary literature culminating in the design of a conceptual framework. This objective was met in chapters 2, 4, 5, 6 and 7. Stage 3 and 4 of the process was completed in this objective.
Objective 2 was fulfilled by sifting through multidisciplinary literature of around 800 journal articles within the disciplines of neuromarketing, consumer regulations, marketing and psychology. Most valuable peer reviewed articles, where those involved in cross disciplinary research. The distilled review of this research can be found in Chapter 2. Identifying discourse mismatch of definitions across disciplines such as those around the underpinning of economic man, homo economicus and the average consumer, synthesising between previous research (stage 1), conversations, and identifying further experts from the literature (stage 3) and the literature review (stage 4), the research space began to emerge and form to allow crystallisation of research questions. Articles were also identified by the purpose, abstract, content, methodology deployed and conclusions. In some research articles similar problems were identified without presentation of a solution or new ideas to correct the problem. This research identifies the problem, the research space, and presents solutions in Chapters 4 and 6, and identifies further research gaps in Chapter 7.

1.7.3 Objective Three: Methodology

To establish what neuromarketing evidence from the literature review, along with a reservoir of stories from expert interviews when combined with an ethnographic strategy, can reveal about rational and subconscious consumer behaviour and marketing techniques
on the legal framework of the CPR’s. This objective was met in chapters 3, 4, 5, 6 and 7. Stages 5 and 6 were completed in this objective.

To clarify forward definitions, the word ‘neuromarketing’ is used as a common term in this research to describe consumer research insights using brain scanning technology. The new ‘neuro-marketing’ model created in Chapter 6 relates my new model of ethnographic of the postmodern subconscious neuro-marketing mix.

Objective 3 was fulfilled by evaluating neuromarketing studies from both academic and commercial sources. To meet objective 3, the process involved intertwining stages 3, 4, 5 and 6, primarily with the focus on stages 5 and 6 (figure 1.12). Authors such as Dr David Lewis and Martin Lindstrom were identified through the literature and subsequently engaged in dialogue (stage 3); notable experts known to the researcher from each discipline were identified and contacted for dialogue, and in each case the expert was asked for a referral to another expert who may wish to contribute to the research. The methodology of this objective is discussed in more detail in 3.1 and 5.1.
Often restrictions can be placed on research by being ‘hostage’ to a specific type of methodology as was revealed during this research whereby research into ‘perception’ has limitations due to the foundation of belief that because it cannot be replicated in a laboratory, therefore it cannot be measured. Using the ethos of an ethnographic strategy as the fuel driving the research vehicle to establish the best research outcome, semi structured interviews were used. Interview questions were formulated from previous experience, common sense, current affairs, regulatory rulings, and the literature review. There were challenges in competing discourses in that one discipline may use differing terminology to describe the same event as another discipline, so care was taking in asking questions using the accepted terminology that the expert would be familiar with. Marketers tended to use more neutral terminology and explanations were given for unfamiliar terms.

The central strategy of ethnography was supported by the structural mesh of the postmodernist concept thematic discourse analysis, semiotics and structuralism. Thematic discourse analysis in this sense refers to identifying themes of patterns, language and key words used by the experts in the narrative of their opinions and stories. Semiotics refers to the linguistic meaning in the communication of signs and symbols (Table 6.7), with structuralism embracing anthropological contexts of ethnography as the central strategic concept of this approach to data gathering using semi-structured interviews described in the overarching methodological framework Figure 3.1. Figure 1.13 is the tactical structure that underpins model 3.1. Extended theoretical mesh structure, such as the neuromesh and multidisciplinary mesh, can be found in Chapter 4 Figures 4.1 and 4.7.

Thematic discourse analysis was used as a qualitative method of analysing conversations and exploring the connections between language, communication, and knowledge, focussing on the patterns of meaning and semiotic structure of subconscious and rational communications behaviour (Foucault, 1969). Structuralism involved the interrelations that underlie the thoughts and perceptions from the stories of experts (Blackburn, 2008). Developing a postmodern perspective (Taylor and Ussher, 2001), the findings were transformed into themes from the semi-structured interviews. This is further expanded in ‘deep encounters with reality’ Chapter 5.2. Expert stories are presented in an unadulterated way to ensure the authentication of the experts perspective, featuring a main theme, summarised theme and keyword discourse (Chapter 5.2) developed from an organic inductive approach (Chapter 3.1). Many of the experts interview responses were subsequently put as key questions to the regulators. The findings in Chapter 5 went onto
assist in filling the research space with new literature and in the development of new models in Chapters 4 and 6.

![Figure 1.13 Postmodern Ethnographic Mesh: a cohesive structure of interconnectivity](image)

The postmodern ethnographic mesh was developed as a glued framework to consolidate the key elements of the data gathering, analytical processing, and creation of new original material. Described in Figure 1.13 as the mesh of thematic discourse analysis, semiotics with postmodern structuralism, the working framework for this can be seen in Chapter 3 figure 3.1 with ethnographic strategy at the core of both frameworks.

“Empathy, in the sense of being able to identify with the other, in nature and in society is an important element of ethical behaviour and this is a function of consciousness of (a) the grammar adopted in making choices and (b) awareness that alternative grammars exist.” (Matthews, 2009:13)

Using the art of observation techniques, bringing together postmodern knowledge from neuromarketing for this research and utilising ethnographic strategy in relation to brand communications and the essence of human brand experience Ryder (2004) found that it was strange how anthropology had been ignored in brand thinking, believing that this method was at the core of social science akin to social relationships and how understanding the drivers of conscious and unconscious would optimise brand performance.
1.8 Summary

This Chapter introduced the research pattern with the evolution of the research problem providing a glimpse into the regulatory marketing lag and research space. Justification for this research was sought through the rationale which solidified the main aims of the research culminating in the key questions and related objectives to tackle this complex problem. A preview of the original multidisciplinary contribution was briefly outlined. Chapter 2 reviews the interconnectivity of wide multidisciplinary literature, exposing stunted growth and gaps. It aims to keep readers focused on the core of the problem of uncovering gaps to be filled by empirical data along the way, as described in objective 1.7.2.
Chapter 2: Literature Review

2.1 Introduction

Meeting research objectives 1 and 2, this chapter reviews literature relating to the role of rational and subconscious consumer marketing communications surrounding the CPRs, critically examining the literature and identifying where gaps need to be filled with current day expert content.

The aim is to connect the disconnected and reveal how multidisciplinary literature fuses and contains an undetected gap of knowledge which is the key to the relationship of these disciplines, and the deep rich methodology which challenges the limited and stunted research growth. Because of perceptions, discomfort and controversy arose, surrounding implications of the fear of some who compared the subliminal and subconscious activities to that of the atomic bomb. Mind manipulation was considered in previous decades to be as dangerous as atomic weapons. There was confusion and attempts to ban the unknown and shun these techniques from the minds of many professions, particularly marketing. This was largely due to the historic connotations of the terms of referenced definitions and perceptions of words such as ‘subliminal’, ‘subconscious’, ‘unconscious’ and ‘priming’. However, priming people is now a key tool in the box of UK Government policy discussion (Anon: Mindspace, 2009). This literature review opens up some of the caverns of historic references and fears to deploy current day understanding, open reasoning and new reflections from the technology of neuroscience.

2.2 Historical Antecedents of Regulations and Regulators

In 1926, the newly-established Advertising Authority was formed to take up scrutiny of advertising, investigate abuses and take remedial action to inappropriate advertisements. When commercial television started in 1955, it was the first time advertisements were controlled by legislation. Similarly, when commercial radio was launched in 1973, radio advertisements became subject to statutory control. According to the Advertising Standards Authority (ASA) in 1962, following discussions with other industry associations, they agreed it was important that advertisements should be trusted by consumers in non-broadcast media as well. As a result, the industry (agencies, media and advertisers) came together to form the Committee of Advertising Practice (CAP) and produced the first edition of the British Code of Advertising Practice. In 1962, CAP
established the ASA as the independent adjudicator under the newly-created code to supervise the working of the new self-regulatory system in the public interest. ASA (2012)

In 1973, the Minister for Consumer Protection, Shirley Williams, criticised the system for not being well-known enough known. In response, the industry set up the Advertising Standards Board of Finance (ASBOF), in 1974, to provide sufficient and secure funding for the system through a levy of 0.1% on advertising space costs. Because the ASA is not responsible for collecting the levy itself, its independence is assured. The levy ensures funding for the ASA to promote itself to the public. Therefore, for advertising, the self-regulatory system comprises three bodies: the ASA, ASBOF and CAP (CAP, 2012).

The self-regulatory system is recognised by the Government, the Office of Fair Trading (OFT) and the Courts as one of the ‘established means’ of consumer protection in non-broadcast marketing communications. If certain types of marketing communication, including those that are misleading or contain an impermissible comparison, continue to appear after the ASA Council has ruled against them, the ASA could refer the matter to the OFT for action under the Consumer Protection from Unfair Trading Regulations (2008) (CPRs). The OFT could seek an undertaking that the marketing communication be stopped from anyone responsible for commissioning, preparing or disseminating it. If that is not given or honoured, the OFT could seek an injunction from the Court to prevent its further appearance. Anyone not complying can be found to be in contempt of court and is liable to be penalised (CAP, 2012). The OFT was disbanded during this research on 1 April 2014 (see Figure 2.1).


1988 saw the introduction of the Control of Misleading Advertisements Regulations (CMARs) that enabled the ASA to refer advertisers who made persistent misleading claims and refused to co-operate with the self-regulatory OFT system for legal action (ASA, 2012). In 2008 these regulations were revoked by the Consumer Protection from Unfair Trading Regulations 2008 (CPRs). (Explanatory Memorandum to the Consumer Protection from Unfair Trading Regulations, 2008). The CPRs also repealed a number of laws which cover the same subject matter, including most of the Trade Descriptions Act 1968 (TDA) and the provisions on misleading price indications in Part 3 of the Consumer Protection Act 1987, to create a modern, simplified consumer protection framework. Since 1988, over
170 marketing laws have been enacted, most having gone unnoticed by the marketing profession.

The CPRs came into force on 26 May 2008 to transpose and enact into UK law the EU Unfair Commercial Practices Directive (UCPD). This prohibits traders in all sectors from engaging in unfair commercial (mainly marketing and selling) practices against consumers and sets out rules that determine when commercial practices are unfair (Department for Business Innovation and Skills, 2011)

These rules fall into three categories:
1. Commercial practices which contravene the requirements of professional diligence (honest market practice/good faith);
2. Commercial practices which are misleading (by action and omission) and aggressive practices;
3. Certain specific commercial practices which are always considered to be unfair.

The first two categories of commercial practice which are caught by the prohibition are principles-based; they apply only if the effect of the trader’s practice is likely to alter consumers’ decisions or ‘economic behaviour’ in relation to products. The normal benchmark for assessing the likely effect of the practice is the ‘average consumer’. However, the CPRs contain two variations of the ‘average consumer’ test (Explanatory Memorandum to the Consumer Protection from Unfair Trading Regulations, 2008).  
1. Where a practice is directed at a particular group of consumers;
2. Where a practice is likely to affect only a clearly identifiable group of vulnerable consumers in a way the trader could reasonably be expected to foresee by virtue of mental or physical infirmity, age or credulity.

In either case the likely effect of the practice is then assessed from the perspective of the average member of that group. These variations of the ‘average consumer’ test are intended to provide additional protections for vulnerable consumers. This type of commercial practice caught by the prohibition is not principles based, and are always unfair (Department for Business Innovation and Skills, 2011).

The purpose of this research is to establish if subconscious marketing techniques invalidate categories 1 and 2 taking into account the specific elements of consumer decision-making and economic behaviour as an alleged ‘average consumer’. That is to say, does the average
consumer actually exist, and can subconscious marketing techniques surreptitiously change behaviour without it being overtly registered to be identified as an unlawful act?

Ironically, the misleading elements of the CPRs follow a similar process to that of the seven ‘P’s (Booms and Bitner, 1981). A dichotomous relationship exists. Businesses are prohibited from misleading in areas such as the nature or availability of the product; price, such as the manner in which price is calculated; place, such as geographic or commercial origin of the product; promotion, such as the way the goods are presented; people, such as qualifications; processes, such as handling of complaints, and physical evidence, such as awards and distinctions. The CPRs are criminalised and carry heavy financial penalties of up to £5,000, and for serious offences up to two years’ imprisonment.

Stuyck et al. (2006: 149) comment:

“If it is true that commercial practices are about increasing persuasion by reducing resistance, in one way or another commercial practices will always aim at manipulating the ability to take an informed decision in such a way that a consumer does what he would not have done otherwise. And if that is true, the criterion ‘thereby causing the consumer to take a transactional decision that he would not have taken otherwise’ will be a very hard criterion to distinguish ‘manipulation’ from ‘appreciable impairment’, possibly leading, again, to diverging interpretations.”

The CPRs enact the European Parliament and Council concerning the Unfair Commercial Practices Directive 2005 (UCPD). When developing the UCPD the European Commission has adopted the term ‘the average customer’, who is understood by the European Commission to be an entirely rational and well-informed individual, as also adopted nationally in the UK by the CPRs (Figure 2.1). Economic man is not without his critics, especially when empirical observations of human behaviour seem to contradict the predictions (Beckert, 1996; Mueller, 2004). Some argue that the concept of economic man is too narrow, as self-interest is not his only motivation and people are often driven by social norms as well (Dahrendorf, 1968).

Incardona and Poncibò (2007: 27) point out that:

“A practice is found to be unfair when it both (1) fails to respect the professional standards of accuracy and disclosure required or customary in a given field and (2) influences significantly the economic behaviour of the “average consumer,” precluding him or her from dispassionately using the pertinent information to evaluate a commercial proposal, thereby inducing the consumer to take an economic decision that he or she might not have otherwise taken.”

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Discussing the UCPD, Stuyck et al. (2006) and adoption of total harmonisation of the Directive 2005/29/EC of 11 May 2005, was thought to be exiting even for lawyers in the field of consumer protection, with far-reaching innovative objectives. Making the UCPD appear more transparent and ambitious than previous directives, with the basis that informed consumer choices lead to efficient consumer choices and thus maximising collective consumer interests.

In Article 2(h) and Article 2(e) under the grand general clause, a commercial practice is unfair if it is contrary to professional diligence and materially distorts the consumer’s economic behaviour. Professional diligence means:

“The standard of special skill and care which a trader may reasonably be expected to exercise towards consumers, commensurate with honest business practices and/or the general principle of good faith in the trader’s field of activity.” (Council of the European Union, 2005: 26)

This definition tries to amalgamate diverging legal traditions possibly resulting in diverging interpretations. ‘Material distortion’ means:

“Using a commercial practice to appreciably impair the consumer’s ability to make an informed decision, thereby causing the consumer to take a transactional decision that he would not have taken otherwise.” (Council of the European Union, 2005: 26)

In this provision, the European legislator has based the general fairness test on the equation that ‘economic behaviour equals the ability to make an informed decision’. This makes assumptions that a consumer behaves economically, and that economic behaviour ultimately is based on the ability to make informed decisions. The equation correctly refers to the ability to make an informed decision rather than the informed decision itself. The consumer, therefore, is still free to ignore all information and make a bad decision, on the condition that his ability to make an informed decision was not appreciably impaired (Korobkin and Ulen, 2000). However, this observation will not assist judges to appreciate how the test is to be applied in practice (Stuyck et al. 2006). The UCPD is a strange marriage of vague norms, detailed rules and economically inspired principle. Hastak et al (2011) discuss how consumers continue to be enticed towards deceptive advertising even with the knowledge that it is deceptive and researchers often focus on legal frameworks as opposed to theoretical predictions. Consumer typologies are unreliable when trying to construct frameworks around advertising deception. Often consumers form their own explanations of an advertisement which is sometimes way beyond the literal meaning.
2.4 Multidisciplinary Elements of Behaviour

To fully understand the problem of misleading marketing communications and the effect of subconscious marketing techniques on the consumer and the Unfair Trading Regulations (2008), we need to establish a broader review of literature pertaining to a number of fields. To answer this question simply by researching isolated fields would be restrictive. Therefore, the literature review takes the stance anthropologically that all humankind has a connection, thereby operating within methodology based on the philosophical principles of experience and the phenomenological paradigm. In disagreement with multidisciplinary interference, Richards (2009: 174) claims:
“Researchers frequently publish studies inspired by laws or regulations, and often, the authors hope to be affecting public policy. In so doing, they draw upon and address aspects of law. Most of these scholars, however, have no special training in law, and all too often, the consequence is a manuscript that is replete with misstatements of law or faulty suppositions … We can only hope that poor research will be ignored by regulators; otherwise, it might mislead them into adopting policies that exacerbate rather than help solve society’s problems.”

Chamberlain and Broderick (2007) explain that neuroimaging can deliver accurate research data on emotions, though this research has been kept in the domains of psychology and neuroscience with little development by the social scientist. Marketers and psychologists have acknowledged this (Lee et al., 2007) and have called for collaboration (Cacioppo and Gardner, 1999: 192) to advance both theory and methodology in the study of emotional behaviour. This approach is also useful in understanding the role of subconscious marketing activity and the effects of perception in terms of the CPRs. In utilising such methodological approaches, marketers cannot only develop understanding of the specific emotional experiences of consumers. Contribution can also be made in the fields of marketing law in terms of debates surrounding conceptualisation of perceptions, emotions, memory and persuasion by addressing the complexity of the construct and its application in a marketing and legal context through ethnographic study. However poor multidisciplinary research may be detrimental to regulatory policy processes. Mastering multiple disciplines can be a challenge and misinterpretation may result in the adoption of poor policies, these challenges can already be seen in the cross-disciplinary knowledge within the advertising industry, which can lead to deficiencies in knowledge and processes. (Richards, 2009).

Decision-making is multidisciplinary in that it occurs “within a social context in which we are confronted with the opinions, the actions, and the presence of other active decision makers” (Kelley, 2000 in De Cremer and van Dijk, 2003: 191). Individual biases and beliefs further complicate decision-making (Robbins, 2006); habitual patterns of thinking interfere with inventive decision-making that attempts to address real-life issues influenced by changing world conditions (Foster, 2003).

Trzaskowski (2011: 377) provides a unique and interesting insight into multidisciplinary study linking behavioural economics, neuroscience, advertising and regulations to discuss the influential areas of these disciplines in uncovering important oversights in the UCPD.

“As the Directive focuses on whether a commercial practise distorts the economic behaviour of consumers, arguments for whether a particular
commercial practise should be considered unfair may be found within these disciplines. It is important to bear in mind that the assessment that courts are to make is normative, and that behavioural economics and neuroscience is of a more descriptive nature. Thus these disciplines may not help draw the fine line between the legitimate influence of commercial activities and the illegal distortion of the average consumer’s behaviour.”

Describing an example of multidisciplinary cross collaboration, Perrachione and Perrachione (2008) form a brain-centric question in a study by Plassmann et al. (2008) which examined the effects of marketing actions (pricing) and the congruence between neural activity and perceived reward. Participants were presented with sample wines and prices, they rated the pleasantness of each wine while their brain was scanned with fMRI. Subjects reported a more pleasant tasting experience as the wines’ indicated price increased. Activity in reward related regions in the subjects’ brains also increased when they believed they were drinking more expensive wine, suggesting that the price of the wine changed the perception of the taste. This study is unique in showing that consumers’ are influenced by perceptions of a product, therefore by manipulating one element of the marketing mix consumers’ perceptions can alter their behaviour towards a product. This case study illustrates how collaborative research in marketing and neuroscience can be mutually informative. To marketers, the question is: How does the price of a product affect its perceived quality? Perrachione et al. (2008) discuss that all four components of the marketing mix, as perceived by consumers, could be interesting perspectives from which to study functional neural architectures.

Similar to neuroscience being the parent discipline of neuromarketing, neuroeconomics is sometimes considered a parent discipline that explores links between the brain and economic behaviour. Kahneman and Tversky (1979) found that behaviours are not always consistent with rational economic theory. Excursions into anthropology, psychology, sociology, and philosophy could be very helpful in order for economists to obtain a more comprehensive view of human behaviour (Ng and Tseng, 2008). Even though many researchers across multiple disciplines have revealed consumers’ unconscious behaviour, current day models rely on the assumption that the consumer is making conscious decisions. The integration of this research into new models is long awaited (Martin, 2008).
2.5 Irrational Rationality: Homo economicus and the average consumer uncovered

In the past, much consumer research has been dedicated to conscious consumer choice. Limited attention has been based on choice activity outside our conscious awareness. Traditionally consumer choice is assumed to be conscious rather than being influenced by factors outside the awareness of the decision maker. Attention is no longer viewed as a bottom-up process from pre-conscious processing. According to Searle (1995: 141) there is a paradox within two views, with one described as rational “according to rules and principles” and the other as “non-intentionalistic and not rational”. Differing in meaning as well as in experience, notions of rationality challenge and confuse both individuals and societies. Developed by John Stuart Mill in 1836, homo economicus started his evolutionary journey on which the concept of rational decision-making was borne, (Ng and Tseng, 2008) being utilised as an analytical tool for future predictions for all our choices (Weale, 1992; Schneider, 1974) and being without complications, such as personality, value, belief and emotions. Doucouliagos (1994) makes clear that Paleo Homo Economicus is a utility which captures some of the essence of rational human behaviour and is not intended to replicate human behaviour.

A decade ago the emerging field of neuroeconomics (Vromen, 2007) as an extension of bio-economics found cognitive biases such as anchoring and framing which could not be governed by our emotions fears or legislation. Reptilian style ‘instincts’ are separated from our limbic ‘emotions’ as they happen without thought, therefore behavioural economics challenges traditional economic views of human nature that people are rational, utility-maximising, cost minimising with stable preferences (Wood et al., 2011). Neuroeconomics could uncover seemingly irrational choices (Huang, 2005). Neuroeconomics puts emphasis on the role of decision-making and emotional process (Kenning and Plassmann, 2005), reward circuitry is also associated with decision-making (Cohen, 2002). Emotion processing relating to product and price is linked (Knutson et al., 2007) and calls upon multiple areas of the mind (Lee et al., 2007).

“Advertising provides information about products and their attributes, which helps consumers choose between various products. In conventional economics, it is assumed that people are all rational, which implies that, in everyday life, people compute the value of all the options faced and then follow the best possible path of action” (Ariely, 2008 in Trzaskowski, 2011: 377-378)
McCabe (2008) suggested that the conceptualisation of economic behaviour in terms of neuronal computation is difficult, in that current knowledge linking neuroscience and economics is incomplete. The comparison to the brain and the mind being akin to a computer’s hardware and software lacked congruence in the algorithms within the software is so much as rationality in economics is not tied to physiological and psychological behaviour, so it seems economics already validates behaviour.

A proponent of the traditional model of AIDA, extended by Sheldon (1911) added satisfaction to the fifth step (AIDAS) (Barry and Howard, 1990) relating the importance to the more recently recognised post purchase behaviour. McGuire (1978) identified that the consumer would engage in the purchase as a result of advertising which was conditional upon the consumer’s retention of a message, attraction to the message, comprehension and attention in the message, therefore a hierarchical rational model was developed, whereby purchase decisions were assumed to be entirely as a result of the advertising message. Following these rules, resulting in very low effectiveness of advertising, (Peterson et al, 1986 in FitzGerald and Arnott, 2000: 108) suggest:

“The question ‘did the person think first or feel first’ is not very meaningful. Individuals are always in a stream of thinking or feeling; therefore, it is irrelevant to say ‘Are there any thoughts preceding an affect’ or ‘is there affect preceding cognition.’ Both of these activities are continually occurring…”

Researchers such as Barry and Howard (1990) believe that mental activities are dynamic, not static; however, the average consumer test is based on the assumption of a reasonably observant and cautious individual (Anagnostaras, 2010) who demonstrated duty of care in interests. The existence of deception is measured with regard to all relevant aspects of communication; even accurate statements can be considered misleading when they conceal important information that relates to all the elements of the marketing mix. Anagnostaras (2010) believes the examination must take place in relation to the particular customer group concerned. An advanced current day model is developed in chapter 6.

The EU Directorate-General for Health and Consumers has in a staff working document suggested that at least insights from behavioural economics could be taken into account when interpreting the Directive. Even though this document is not binding for the courts, it shows that at least parts of the Commission are interested in finding the real average consumer (Trzaskowski, 2011). Certainly on occasions the ASA takes behavioural economics into account in its adjudication methodology. In Wood and Harrison (2011),
behavioural economists believe that human decisions are strongly influenced by context – they vary across time and space and are subject to social influences, emotions and cognitive shortcuts and our biases. The market research industry is mainly founded on the traditional economic view of homo economicus.

Nevett (1982) was committed to the role of advertising communicating factual information (Heath et al., 2006) according to the common theory at the time that decision-making was an entirely rational thinking activity (Elliott, 1998) and that advertising works persuasively by delivering a clear message designed to change beliefs (Jones, 1990). These models have dominated the marketing world of academia and professional practice (Vakratsas and Ambler, 1999). Models such as the Lavidge and Steiner model (1961), Cognitive Response Theory (Brock and Shavitt, 1983), the Elaboration Likelihood model (Petty and Cacioppo, 1986), the Motivation Opportunity Analysis model (MacInnis and Jaworski, 1989) and the Rossiter-Percy Grid model (Rossiter et al. 1991) all place greater importance on cognitive informational learning than they do on affective or emotional learning. This cognitive dominance in turn leads to an assumption that attention toward advertising is invariably beneficial. Martin and Morich (2011) criticise how models of consumer behaviour are based on the assumption that the consumer is always operating in a conscious mode. (Howard and Sheth, 1969). These assumptive models prevailed as interpretive of the human thought processes until research revealed that thought activity occurs outside conscious awareness.

“What if rational thought and perception of a ‘satisfied need’ only showed up later in a process that psychologists refer to as post hoc rationalisation? Significant research across multiple disciplines indicates that the scenario that the consumer is not consciously aware of his actions is the more likely case.” (Martin and Morich, 2011: 483).

The revelation that unconscious processes drive our daily behaviour calls into question the foundation of our traditional marketing methods. If research information is inaccurate and unreliable, then as has been proven over the years much time and effort is wasted creating the wrong products and services. Assumptions about behaviour are flawed; even the consumers assume that their conscious behaviour prevails. Often, attempts to influence these non-conscious processes (Bargh, 2002) is seen to be manipulative and immoral and thus has hindered research in this area. Often it is linked to arrogance of human superiority that we must be seen to be rational at all times in order to be lucid and to be defined apart from other creatures, resulting in our progress of product development to be evolutionarily
stunted in growth as we consider our reptilian instincts and subconscious emotions make us somehow mentally inferior, when in fact, this is our deepest strength of mental agility.

“…the average consumer test is at least in principle flexible enough to allow the inclusion of research within human decision-making in order to apply a more realistic average consumer than the “Homo Economicus” applied by the European Court of Justice.” … “Thus these disciplines cannot draw the fine line between the legitimate influence of commercial activities and illegal distortion of the average consumer’s behaviour. However, the average consumer test is flexible enough to allow the inclusion of research within human decision-making in order to apply a more realistic average consumer than the currently applied Homo Economicus, who is expected to be more rational than the “real” average consumer. This entails a legitimate distortion of the large group of consumers, who are not as rational as the European Court of Justice expects.” (Trzaskowski, 2011: 377, 391)

In 2008, the year the CPRs came into force, Arkush (2008: 1277) thought that

“a revolution [had] begun in legal thinking on emotion in decision making,” and that rational choice theory had been taken over by behavioural economics, which recognises that emotions control our decision-making.”

Heath et al. (2006: 416) discuss the findings of Watzlawick et al. which imply that:

“…the influence of the rational communication content of advertising will fade quickly, but the relationship-building influence of the emotional metacommunication content will endure, even if processed subconsciously and without active attention.”

Consumers are never completely rational in making decisions, thus enforcing the theory that the average consumer model is inadequate to describe consumers’ rationality (Woods, 2004). Cultural cognition theory holds that emotion is rational and critical to decisions, positing that behavioural economics is mistaken to treat emotion as a distorting influence.

Rational choice theory already accepts that emotions occasionally influence decisions; behavioural economics only expands the account of the frequency and means by which this happens. The theory holds that people choose, without emotion, outcomes that will generate positive emotion. Behavioural economists employ the same structure, varying only their recognition that many decisions are irrational for various reasons, one of which is the interference of emotion. Economists also reverse this equation to infer preferences: people rationally choose the best means of satisfying their preferences, therefore people desire the results of their actions and their choices reveal their preferences. Policymakers could determine the value of goods and services and define welfare simply by watching what people do in markets. This approach assumes that emotion is mostly irrelevant or
dangerous in decisions, but decisions reflect attempts to pursue emotion. This approach assumes that people perceive, evaluate and pursue emotion without feeling it (Arkush, 2008).

The mainstream of social psychology has moved from the assumption that humans are aware of and control most of their thoughts and behaviour. Contemporary researchers hold that behaviour is produced by intentional, conscious, explicit and unintentional thought and non-conscious implicit thought. The roots of many of our attitudes and behaviours are beyond our control and understanding. Although researchers originally thought non-conscious cognition was limited to simple mental processes, they now believe that it dominates our lives. Non-conscious behavioural processes are so ubiquitous, robust and effective that some are left wondering what purpose conscious reasoning serves (Arkush, 2008). However, Van Boom (2011) observes that consumers are rational decision makers and limits to their cognitive abilities influence their thinking and decision-making.

2.6 Subliminally Subconscious

There has always been a mystery surrounding academics, regulators and practitioners in understanding this area and there are numerous definitions of subliminal, subconscious and conscious. From a legal standpoint, subliminal is usually taken to mean “the projection of messages by light or sound so quickly or faintly that they are received by the listener below the level of conscious awareness” (Phillips and Goodkin, 1983). Webster’s Dictionary describes subliminal as:

“existing or operating below the threshold of consciousness insufficiently intense to produce a discrete sensation, but influencing or designed to influence mental processes or behaviour.”

Multiple academic definitions of subliminal exist, though many do not relate this to the subconscious or unconscious, which are terms often thought of as equal to subliminal. Barthol and Goldstein (1970) refer to the term subliminal having numerous meanings, they do not think the term ‘invisible’ should be attributed to subliminal and that much of the anxiety around the term ‘subliminal’ is its link to ‘invisible’, which they say carries “magical connotations”. They say that:

“Psychologists traditionally use the term to refer to stimuli which are not clearly recognized by most people at a particular time. This does not mean that the stimuli are invisible; it means only that their exact nature is not clear.” (Barthol and Goldsteint 1970: 30)
They discuss that flashing a symbol or word on a screen briefly so that the recipient is unaware of the ‘flash’ subliminal, as it would be below the threshold of conscious awareness, though this experience may differ from person-to-person. They make a distinction with subliminal equalling invisible when a stimulus is never recognised, but when it is, they refer to this as ‘supra-liminal’, or above the threshold. Barthol and Goldstein (1970) also make reference to how multiple stimuli can cause our attention to be confused and how in this download of information some of the stimuli may not reach our conscious awareness, even though the consumer may be consciously aware. Silverman’s (1976: 311) definition of subliminal is: “The absence of evidence that the individual is aware of the impinging stimulus before its effect is felt”. Kimble (1962: 43) points out that there are disputes regarding subliminal which stem from “definitional vagueness”. Not all psychologists let alone marketers use the same definition for critical terms. Pierce (1963) thought that subliminal perception is actually a perception of supraliminal stimulation. Synodinos (1988: 317) used psychophysics to explain the phenomenon and describes “arbitrary limen” to describe the stimulus relating to seeing and hearing such messages. Trappey (1996) described a technique of exposing unaware consumers to general marketing stimuli, whereby the consumer would decode the communication and act on it without being aware of the causation of the stimuli bypassing consumers’ defences, though it was thought that the influence on consumers of this level of stimuli was negligible. Moore (1988) defines the measurement of subliminal effectiveness as a simple case of asking observers whether or not they are aware of the stimulus. If the observer is unaware, then by definition this is below the threshold of awareness. This ‘flashing type’ of method was advocated by Eriksen (1960:279) who defines consciousness as “the observer’s ability to discriminate amongst two or more alternative stimuli in a forced choice task.” Theus (1994:271) asserts that “definitions of subliminal have changed along with research foci”. Broyles (2006) thinks that the controversy of the term subliminal is to do with the misuse of the word; he observes in psychological terms ‘limen’ to be the threshold of consciousness, thus below the level of conscious awareness.

“A subliminal effect is a discrepancy between response indicators, i.e. no awareness as measured by verbal report and discrimination or detection thresholds, but an effect inferred from a detectable influence on some other response” (Wolitzky and Wachtel, 1973: 832).

Non-believers in the effects of subliminal such as Moore (1985: 11) pointed out: “The powers attributed to subliminal techniques for changing behaviour have a status similar to that of unicorns or the tooth fairy”. According to Huprich (2011) identifying the conscious
and unconscious elements of the human mind was one of Freud’s (1905, 1914, 1933) causational abilities to treat the human mind. In a meta-analysis of more than 100 studies of subliminal perception, behaviour and priming, Weinberger and Hardaway (1990) found that psychodynamic material presented subliminally had a noticeable effect on behaviour, showing that unconscious processes affect overt behaviour. Saegert (1987) thought it unlikely that subliminal messages could be used in marketing promotion effectively. Previously Bernstein (1978) requested that professionals do not talk about subliminal advertising because it gives industry a bad name. Cuperfain and Clarke (1985) and Kilbourne et al. (1985) claimed to have demonstrated that subliminal effects can occur with advertising stimuli. Many fears of subliminal influence are founded on a vague notion that weak and typically sordid stimuli are presented by advertisers at a rate too rapid or in a form too disguised to be detected by even a vigilant observer, and that these stimuli somehow penetrate one’s defences. Most marketing academic have not directly addressed this issue; instead they have discounted subliminal advertising on the grounds the approach will not work in the ‘real world’. Moore (1982) states that “subliminal influence should not be taken as a serious possibility” (Moore, 1982: 46). Moore did not believe that subliminal was the powerful tool it was portrayed to be and had no place in advertising.

Theus (1994) takes the middle ground and agrees in part with Moore (1982) that brand choice behaviour is not influenced by subliminal suggestion, though some themes might be applied to advertising in the hope that these techniques make a difference in influencing consumer behaviour, other than visual stimuli, which seems to have a greater effect than possibly auditory stimuli. Theus suggests that traditional demographic targets might be less susceptible than targeting psychogenic need based states of mind which could increase the effectiveness of advertising campaigns. Synodinos (1988) thinks that the concept of subliminal perception is misunderstood, and some of the claims made about its applications are unfounded. Most psychologists agree only those who want commercial exploitation of subliminal stimulation would maintain that subliminal stimulus can compete successfully with other more powerful influences (Dixon, 1971: 85). Moore (1988) disagrees and found no evidence that subliminal influences would affect the behaviour of individuals. There was no way of measuring the stimuli or indeed the variances of each individual’s response due to lack of understanding of awareness thresholds, perception and other forms of stimuli. Moore disputes laboratory tests on this basis and believed the empirical base for suggestions as to the effects of subliminal stimuli to be fallible.
Post war behaviour centring on concerns of freedom, free will and manipulation was considered as dangerous as the atomic bomb, so not surprisingly Brooks (1958: 78) spelt out the concern:

“The concept of free-will underlies a free society. To govern themselves, people must be able to think for themselves. Recognising that many of their motives are determined at an unconscious level, free people believe that practical decisions still can be made rationally, and resist all attempts to manipulate the subconscious to special ends.”

Today, public concern in matters of manipulation is still widespread. Most psychologists agree with the existence of the unconscious and subliminal stimuli to affect consumers: it is the evidence on how and why this works which causes controversy (Bevan, 1964; Latto and Campion, 1986; Glucksberg, 1982: 857). Limen is a central concept in classical psychophysics (Corso, 1963). There is no rigid barrier above which a stimulus is detectable and below which it is undetectable. The detectability of low-intensity stimuli varies between individuals and within the same person from moment to moment (Stevens, 1951).

Heath (2012) talks about ‘subconscious seduction’ as a way in which advertising works and distances this from any relationship to subliminal effects, and claims that subconscious seduction works in full view, unlike subliminal exposure which we cannot legislate against. Subconscious seduction happens because of the way our minds work and the way we make decisions; it is complicated because we are all different and susceptible to certain types of communications. Heath took a multidisciplinary approach using cognitive psychology, behavioural psychology, neurobiology and philosophy to form his theory about ‘subconscious seduction’. He believed that many have vested interests in proving his theory wrong as many have built careers and businesses on the old models, with a degree of paranoia around the prospect that advertising might be sinister. On the contrary, everything we do as humans happens at a subconscious level. Our conscious mind is more like a computer monitor than a computer.

Boote and Mathews (1999:19) thought that observation was a “useful technique for examining subconscious influences on consumer behaviour,” whereby consumers may not want to reveal their behaviour or do not have a conscious or rational reason for their behaviour. This method is useful for recording subconscious experience (Chamberlain and Broderick, 2007) and contributing to emotional research to increase our understanding of the constructs of subconscious and conscious emotional experiences.
2.7 Perceptions, Emotions, Memory and Persuasion

Experience forms perceptions, emotions, memory and persuasion as part of our evolutionary make up. Our subconscious is made up of these elements that pertain to our behaviour in varying degrees from individual to individual and from time to time. In particular, these behaviours influence how we make every day immediate, medium or short term decisions and how we are influenced by the messages around us. Perceptions and perspectives that drive individuals have a significant impact on their choices (Rosenthal, 2005).

2.7.1 Perceptions

Theus (1994) discusses how psychologists began researching perception in the mid-1800s using various levels of stimuli without conscious perception. Lazarus and McCleary (1951) used the term ‘subception’ to describe discrimination of the subject’s inability to consciously identify stimuli. Erdelyi (1974:1) recognised theories of selective perception and described perception as: “the conscious terminus of a sequence of non-conscious processes.”

Communication is a complex process and in 1966 Schatcher’s idea of perceptual representation system defines the first mental act in communication as perception. Perception is delivered through our senses and designed to be fully automatic as a form of innate protections to protect our everyday vulnerabilities. Tellis (2004:50) defined perception as “the interpretive process by which consumers make sense of their own environment.”

Mimicry can be contagious as the ‘perception-behaviour link’ shows that people can engage in corresponding behaviour in automatic goal pursuit (Dijksterhuis and Bargh, 2001; Wheeler and Petty, 2001; Aarts and Dijksterhuis, 2000; Bargh et al., 2001; Moskowitz, Li, and Kirk, 2004). Behaviour is often unconsciously guided by the environment. Mental representations are responsible for perception. Perception often affects behaviour directly and unconsciously (Dijksterhuis and Bargh, 2001). Evidence for automatic mimicry of the observable behaviours is abundant (Chartrand et al., 2005; Dijksterhuis and Bargh, 2001). Spontaneous mimicry is a consequence of humans’ neural makeup that people are born with, similar to our ape cousins. Meltzoff and Moore (1977,
1983) demonstrated that infants of about 2 to 3 weeks old imitated movements. PET scan and functional MRI showed evidence for a mirror neurons system (Decety and Grezes, 1999; Fadiga, Fogassi, Pavesi and Rizzolatti, 1995; Iacoboni et al., 1999). Many brain regions are involved in both the perception and execution of simple actions. Linkage with brain regions shows that we understand others ‘behaviour’ (Iacoboni, 2005). During observation of another human’s behaviour we map the perception of that action onto our own representation of that action. The findings show a direct relationship between perception and action. We understand what others do by mimicry. “Behaviour often unfolds unconsciously as a result of the mere perception of cues in the environment” (Incardona, 2007:21)

Given that consumer perceptions of marketing communications can vary as to what the advertisement is communicating and what is in their mind, misleading or not, as the case may be, this research questions the validity and enforcement of the CPRs. Research in the area of perception is increasing due to the emerging technology of neuroscience.

### 2.7.2 Emotions

Similar to perception, emotion is a complex structure of ‘events’ often researched by marketers, sociologists, psychologists and philosophers. Defining emotion from the Latin ‘emovere’; to excite, stir up, agitate or move the feelings Martin and Morich (2011). Emotion plays a part in our motivations, needs and wants. A notable psychological approach to emotion was by Kleinginna Jr. and Kleinginna (1981: 355), where they referred to emotion as a “complex set of interactions among subjective and objective factors, mediated by neural/hormonal systems”. Neuroscientist Damasio (1994 in Cooper and Pawle, 2005: 4) added to a hypothesis where “somatic markers represent the imprinting of emotions into long term memory that can later trigger behaviour such as brand purchase when recalled into working memory”: neuroscience now confirms that rationality only presents a thin layer in this process. Gobé (2001) discussed how emotional brand orientation provided the means for connecting the consumer to the brand in an emotionally profound way to create a form of emotional fulfilment, tapping into the inspirational and aspirational drivers of human motivations. Cramphorn (2005) makes the distinction between emotions and feelings in that emotions are more short-term and feelings exist for the long-term. Emotions influence the feelings. Feelings provide the
framework for our rationalisation process to make our thoughts and decisions acceptable (LeDoux, 1998; Damasio, 1994; Wilson, 2002).

Ryder (2004) connects our primitive emotions to the subconcious forming unpredictable behaviour. Chamberlain and Broderick (2007) link our emotions to consumer responses to the mix of advertising cues, store atmospherics and service interactions. Bagozzi et al., (1999: 184) thought we knew much less about the role of emotions in marketing behaviour and the importance of observation methods such as ethnographic data to generate research information in this complex area.

“…from an anthropological point of view we have to have emotions in order to be human. And that means we can’t stop ourselves being influenced by creativity in advertising. All we could do is to try to stop advertising having any creativity.” (Heath, 2012: 199)

Our decision-making behaviour is influenced by emotions relating to advertising (Heath, 2012). Our emotions are so powerful that we cannot make a decision without it concurring with our emotions. Emotions are the gatekeeper of our decisions. In the absence of time, emotions will make the decision for us, what people normally refer to as ‘intuition’. Therefore, emotion in advertising is likely to be very effective indeed. The belief that emotion was post-cognitive was originally challenged by Zajone (1980: 154), who showed that “feelings and emotions have primacy over thoughts” (Heath and Hyder, 2005) which complicates things in consumer emotions. Damasio (1994) proved how emotions are critical to decision-making, and in in the area of psychology. Daniel Schacter (1996) pointed out that learning can take place even when we pay no attention, and that this learning can interact with our emotional memory. Therefore, emotions are the key triggers of behaviour.

Heath et al. (2006) link feelings and brands to the brand personality described by Plummer (1985: 81) as “an articulation of what we would like consumers out there in the world to feel about our brand over time”. Blackston (1992: 80) likened the relationship between brand and consumer as that of “a relationship between two people.” Rational and emotional are intertwined and not adversaries. Arkush (2008) believes that emotions modulate our behaviour processes and are critical to our decision-making; Arkush (2008) discusses how emotions can operate independently and precede conscious thought and that our brains work to automate our behaviour. It also influences our attention, memory and knowledge. It tags and activates our learnt knowledge and primes our recall for our interpretation of events.
Given that consumer emotions can be affected by marketing communications, this research questions to what extent subconscious marketing of this nature can naturally ‘distort the economic behaviour of the average consumer’ as described in the CPRs and questions the very foundation of laws and the fabric of the regulatory content.

2.7.3 Memory

Incardona et al. (2007) maintain that memory is inextricably linked to consumer behaviour and decision making. Long-term memory stores provide information anchors to assist in our ability to relate objects and situation to past decisions.

According to psychologist Ebbinghaus (1885), if you want to remember something that you are not interested in, the best was to do this is pay attention to it. Heath (2012) discusses this impact on the senses, particularly colour representations on brands such as Pespi and Coke, having colour pallet messages, remaining in our perception and persuasion of preference. Heath (2012) explains that psychology no longer subscribes to the idea that memories are stored in neat retrievable parcels stored in a specific area of the brain. Today we know they are distributed all over the brain linked together by connective networks. Schacter (1996: 71) described this as follows:

“Connectionist or neural network models are based on the principle that the brain stores memory networks by increasing the strength of connections between different neurones that participate in encoding and experience.”

Shapiro and Krishnan (2001) explained that marketing research studies often only review one form of memory retrieval: that of conscious explicit memory rather than subconscious implicit memory. Explicit memory allows for post rationalisation of the experience and therefore is not a true and accurate experience. Implicit memory retrieval occurs automatically. Little research has appeared in marketing investigating this form of memory retrieval (Duke and Carlson, 1994; Krishnan and Chakravarti, 1993). Heath and Hyder (2005) agree, and this type of research may be attributed to the assumption of advertising attention equalling advertising effectiveness, therefore this is a potential reason for advertising failure when these methods are deployed. Applied psychologist Walter Dill Scott (1903) questioned the attention memory connection in 1903 five years after the development of the AIDA model. Shapiro et al. (1997) concurred how processing of visual stimuli can be made in the peripheral vision; they concluded that individuals need not process the advertisement in an explicit and attentive manner in order to recollect having seen the ad or recall the message.
Braun-LaTour et al. (2004) discuss how advertisers are searching for consumer memory cues to unlock decision-making (Keller, 1987). Seeking post-experience information from memory can alter how consumers remember the experience. “Post-experience information can influence memories for prior experiences, ranging from the alteration of details to the creation of entirely false experiences” (Loftus, 1982 in Braun-LaTour et al., 2004: 7) Concern about complications of accurate memory retrieval was raised by Schacter (1996). True and false memories reside in similar regions of the brain, so belief and recollection of both can be similar. We now know that retrieval does not operate in a direct linear fashion to that of a video recorder rewinding regressive memory of sounds and pictures; it is distorted with emotions over time. Therefore, this questions whether the consumer’s recollection of misleadingness might be accurate.

2.7.4 Persuasion

Persuasion is defined in the Longman Dictionary as: “to move by argument, reasoning, or pleading to a belief, position, or course of action.” Ehrenberg (1974) thought that advertising was in an odd position as it was claimed to have extraordinary powers at this time although there was no evidence that it worked by manipulation or persuasion. Chaudhuri (1995) experimented with the repetitiveness of associated objects, similar to ‘Pavlov’s dogs’ (Pavlov, 1902), whereby associated stimuli to objects could be used to elicit a response on its own; this is similar to the response to advertising cues. Persuasion of this type in advertising was at a subconscious level appealing to combining connections to the brand such as humour and family associations. According to Chaiken (1980:752), people process information in both systematic and heuristic ways and:

“consumers may use simple decision rules such as buying a brand name; buying the brand advertised by an expert, attractive or trustworthy spokesperson; or buying the brand that most people use.”

Ray and Batra (1983) contended that emotion-led ads may create better acceptance; giving a positive appeal to the emotional state of the consumer could result in better acceptance of the message and result in speedier positive decision-making, thus facilitating ‘persuasion’. Heath and Hyder (2005) point out that there is a belief that advertising needs to be persuasive to be effective. Ambler (2000) mentions how advertising persuasion is ingrained in society beliefs.
Heath (2012:180) discusses experiments conducted by those such as Johan Berger and Grainne Fitzsimons (2008) into the effects of perceptually related ‘environmental cues’ had on brand choice. In one experiment they tested consumers outside a local supermarket during and after Halloween. The reason for choosing this time period was that during Halloween there were a significant number of orange coloured pumpkins on display, and afterwards there were none. What they found was that orange coloured chocolate bars and soft drinks were mentioned by the shoppers over 50% more often before Halloween, when the orange pumpkin cues were everywhere. In another experiment they gave people different coloured pens (orange and green) to complete a survey. Afterwards they asked them to choose between 20 pairs of commonplace purchase items (food, drink, detergent, etc.) some of which were orange, some green and other colours. They found that those who used the orange pens to complete the survey were more likely to choose orange products and those who had used the green pens were more likely to choose green products. These experiments showed how easy it is for advertisers to target and persuade our subconscious by association cues.

Cialdini (2001) thought persuasion was intentional, but non-coercive, relating persuasion to a gentler process of guidance to adopt a belief, position or course of actions (O'Keefe, 1990). Persuasion is designed to appeal to the opposite party rather than to apply force. Bolder tactics can be used as described by Wilkie, Mela and Gundlach (1998) such as ‘Bait-and-Switch’, though it is up to the consumer to accept or reject the proposition. Though if intimidation occurs, Xie (2009) contends persuasion influence can turn into a threat invoking fear to the recipient. For example, a ‘smoking kills’ propaganda campaign was issued by Government, when in fact not all people who smoke die. “In most markets, the ultimate goal is to facilitate voluntary transactions of resources between two or more parties” (Hunt, 1976: 17)). This means some form of persuasion needs to take place. This can occur in many levels of the marketing activity such as sales, advertising and promotion. In all these activities the persuader is aiming to influence the target of the direct or indirect benefits of moving position to make or change a decision about a purchase in the favour of that framed by the persuader.

With the entities of perception, emotion and memory being utilised by brands in the right context and measures for the target audience, we could argue that persuasion begins to play an important concluding part in the process of marketing manipulation of the consumer and thus could again bring into question the validity and foundation of the CPRs.
2.8 Neuromarketing Uncovers the Branded Brain: Peeling back the layers in search of the black box

The definition that builds a bridge between branding (or marketing) and neuroscience is adopted by Walvis (2008) in line with Franzen and Bouwman (2001) who discuss brands as a network of associations of information, meanings, experiences and emotions.

Fugate (2007: 385) defines neuromarketing and its precursor, neuroeconomics, as to using “clinical information about brain functions and mechanisms to help explain what is happening inside of the ‘black box’” so prevalent in many explanations of consumer behaviour. Up to this point, the research points to most explanations of buying behaviour to be based on inference alone. “If neuromarketers can use science to locate consumers’ ‘buy buttons,’ then we have gotten closer to opening the ‘black box’ of the consumer’s mind” (Moore, 2005). Lee et al. (2007: 199), state:

“Neuromarketing as a field of study can simply be defined as the application of neuro-scientific methods to analyse and understand human behaviour in relation to markets and marketing exchanges.”

Neuromarketing represents the intersection of consumer behaviour and cognitive neuroscience (Garcia and Saad, 2008). The technology was developed for neuromarketing by Gerald Zaltman in the 1990s who melded neurology and marketing applications and conducted many MRI projects for Fortune 500 companies. ‘Neuromarketing’, the word linking the application from neuroscience to marketing, was coined by Ale Smidts in 2002. The technology was aimed at finding the reality of consumer responses to ‘emotional’ branding to product, price, promotion and other marketing mix elements along with attention, perception, memory, emotions and engagement levels. Tools, such as Functional Magnetic Resonance Imaging (fMRI) and Electroencephalography (EEG) both provide readings of brain activity generating neurological images in relation to marketing stimuli to measure responses to learn why customers make the decisions that they do. Neural political attitudes have also been studied (Kaplan et al., 2007). The neuroscience of decision-making, including the role of the prefrontal cortex in human decision-making (Krawczyk, 2002) and deliberation judgements in decision formation (Opris and Bruce, 2005). Other technological methods of neuromarketing research are biometrics, skin response, eye tracking, facial coding and voice stress analysis; these may be used to complement a suite of non-invasive procedures. According to The Society for Neuroscience (2006), the
advancement of neuroimaging techniques has provided valuable tools for research on the nervous system.

Historically neuroscience was and is today very sceptical about the creation of neuromarketing as a subdiscipline, possibly as a result of claims made by the marketers research and a failure to create common communication themes amongst these disciplines and the idea of peering into the so called black box of the brain is over stated, largely limited by the bounds of interpretation (Perrachione and Perrachione, 2008), furthermore, senior members of the neuroscientific community were sufficiently offended to launch a scathing attack as to the validity of the ethical nature of the new subdiscipline of neuromarketing keeping a wide berth of association with marketers.

Discussing human behaviour, Walvis (2008:176) stated: “much human behaviour appears to be shaped by factors beyond our awareness.” Persaud et al. (2007:257) state that “emotion appears from the subconscious mind and it is absolutely the real reason why brands exist”. In 1997, Interbrand-Schechter in New York published results of a survey of 2,500 respondents. Results indicated that the key purchase driver of such products was not price or functionality, but was ‘the emotional attributes associated with the brand’ (Ryder, 2004). Garcia and Saad (2008) originally considered tools of the physician have become popular amongst researchers to understand how the brain directs behaviour within its evolutionary construct. However, Garcia and Saad go onto raise concerns about the disjointed and atheoretical nature of neuroimaging, which lacks in coherant overarching explanatory frameworks, leaving the researcher with limited understanding of economic decision making.

Traditional methods of research such as focus groups, which tend by nature have a rational bias, may find strength in the tools of neuromarketing to elicit the subconscious biases of consumers (Quartz in Singer, 2004). James (2004) thought that neuromarketing was nothing other than a useful source of information, with the disbelief that other types of research methods would become redundant and found it unlikely that neuromarketing would solve all marketing research issues. In 1952, neurologist Paul MacLean had proposed that our skull holds three brains, each representing a distinct evolutionary stratum that has formed upon the older layer before it, like an archaeological site. It had previously been thought that the highest level of the brain, the neocortex, dominates the other, lower levels. MacLean (1952) has shown that this is not the case, and that the physically lower
limbic system, which rules emotions, can hijack the higher mental functions when it needs to (Senior et al., 2007).

MacLean observed that survival depends on avoidance of pain and repetition of pleasure, when the emotional part of the brain is stimulated with a mild electrical current, various emotions (such as fear, joy, rage, pleasure and pain) are produced, though they did not remain in one place for long. The limbic system is thought to be the reservoir of emotion, attention and memories with the potential for creating unpredictable and creative behaviour. Maclean found that the limbic system had vast interconnections with the neocortex, so brain functions are not either purely limbic or purely cortical but a mixture of both. The limbic system possesses our value judgements, instead of the more advanced neocortex. It decides whether our higher brain has a ‘good’ idea or not – whether it feels true and right, (Kazlev, 2003) what many might refer to as ‘instinct’.

The neocortex, cerebrum, cortex, or an alternative term, neopallium, is also known as the superior or rational (neomammalian) brain. The higher cognitive functions which distinguish humans from animals are in the cortex. MacLean referred to the cortex as the mother of invention and father of abstract thought. In humans, the neocortex takes up two thirds of the total brain mass. Although all animals have a neocortex, it is relatively small. A mouse without a cortex can act in fairly normal way, at least superficially, whereas a human without a cortex would be rendered incapacitated (Kazlev, 2003).

Weber (2007: 57) observed that the discovery of mirror neurons has implications on marketing and promotional activities (Coyles and Gokey, 2005; Wortman, 2005). This was an accidental finding during observations on Macaque monkeys (Ferrari et al., 2003). Observing the scientist reaching for food triggered a similar neuron firing pattern as if the monkey had made that movement; the same phenomenon is found in humans, i.e. when we see another person eating, it often triggers our hunger mimicry patterns (Rizzolatti and Craighero, 2004). This extends to our ability to empathise; to feel sad when another person is sad, to yawn when another yawns, and also in the development of language and so on (Arbib, 2002; Rizzolati and Craighero, 2004). It is suggested that unconscious internalisation may be the key that humans use to create learnt behaviour in patterns of repetition. There is relevance to marketing because it suggests we learn through modelling and imitating behaviour, so that may indicate that many consumers follow buying patterns based on others, such as wanting the latest brands or wanting the same as their friends, and
it is a socialisation process paramount to evolutionary human existence (Sonnby-Borgstrom et al., 2003) to follow the crowd.

Breakthroughs in neuroscience techniques in consumer brand communications, in joint co-operation with ethnography, could provide an insight into the relevance in terms of the perception of differing consumers to certain terminology used within the regulations, such as the term ‘misleading’. This could expose the need for a review of the regulations and potentially a new framework for these regulations with ethical underpinnings.

2.9 Under the Radar of Legislation

Barthol and Goldstein (1970) understood that advertisers would continue to develop better techniques to by-pass consumer defences. Discussing misleadingness, Attas (1999:49), commented that it is “twice removed from lying”, causing a person to be misled into holding false beliefs and deceit. Though there is a concession that there is always a subjective input from the consumer, misleading advertising is that which causes a distorted perception and consequences can vary. Attas (1999:49) argues that “advertising is a voluntary practice on behalf of the advertiser” and only semi-voluntary on the part of the consumer, hence the standards of regulation favour the consumer. For example, Heath (2003) maintained that young people were being subconsciously conditioned to make association with wealth, excitement and danger through smoking the Marlboro brand, yet no one could have proved this or banned the brand from doing this.

Krugman’s (1977) concern about mass media propaganda enslaving the public after World War 1 was evident (Lasswell, Smith and Casey, 1946). World War 2, propaganda by the French Resistance proved a valuable persuasion technique; a book called ‘La Peste’ – or ‘The Plague’ – helped inform the French population of the Nazi invasion and wartime atrocities that were being committed so that the French people could be prepared. The propaganda was publicly visible and freely available under the noses of the Nazi regime, but went completely unnoticed.

Deighton and Grayson (1995) commented how marketers use immoral persuasion tactics, making consumers suspicious of devious persuasion and misleading advertising (Darke and Ritchie, 2007; Friestad and Wright, 1994). Researchers have examined unintentional persuasion of marketers and the perception of the consumer as to understand if marketing
The perception of the consumer of an advertisement may be different from that which the advertiser intended. (Jeurissen and van de Ven, 2006; Wilson et al., 2008) think that marketers’ intentions are covert and that self-regulation lags behind reality – a particular example being copyright and intellectual property with the advent of the global internet. Many still contend that UK laws are unfair in the light of a global economy force an unfair competitive advantage to others and therefore imbalanced economic advantage.

Xie (2009) thinks that the methods used to collect data through neuromarketing technology may be of interest to legislators in the protection of consumer rights.

Lindstrom (2008:85) discusses the largest neuromarketing survey findings of tobacco companies covertly linking marketing messages such as a sports car, purple silk used for Silk Cut, and camels associated with the Camel brand – a long time after this type of marketing was banned. “In the human psyche a simple message, colour or symbol could trigger a compelling reaction to smoke.”. The study demonstrated that similarly with Governments all over the world banning advertising and the negative statements placed on the packaging of tobacco, it made the smoking sample feel a stronger desire to smoke. As Lindstrom (2008: 85) states when discussing tobacco companies:

“They have succeeded in by-passing Governments’ regulations by creating stimuli powerful enough to replace traditional advertising. In fact, they’ve even managed to enlist the help of Governments all over the world: by banning tobacco advertising, Governments are unwittingly helping to promote the deadly behaviour they seek to eliminate.”

Some may question as to why this might be. Some products can symbolise a variety of consumer needs and wants, such as attaching meaning to products that have little to do with their performance, but are simply about being part of a tribe; the Nike brand might be considered one such example. This deep emotional connection provides the ideal conditions for deception to take place. Symbolisation can vary from consumer to consumer or group to group and take guises such as the cool Marlboro cowboy or gentlemanly qualities of Dunhill, or the ruggedness of Camel. Religion is a prime example where the Cross symbolises meaning.

Berger and Fitzsimons (2008) found that the frequency of exposure to perceptually or conceptually related cues increases product messages or accessibility, which in turn influences product evaluation and choice, which vary with the frequency of exposure to cues. Therefore, conceptual ‘priming’ can have a deep impact on consumer decisions. These primes can automate and activate brand or product representations in consumers’
memories, making them more accessible and susceptible (Higgins, Rholes and Jones, 1977). This can also relate to associated products or services (Anderson, 1983; Collins and Loftus, 1975). This priming can lead to activation in memory and have a ripple effect on perception of associated brands. Often we see a tick box on opt in email notifications on websites asking if we wish to receive marketing information from associated partners of the organisation we are engaged with, leading to spontaneity of related memory priming. Research suggests that product choice and evaluations can be influenced by exposure to perceptually or conceptually related stimuli (Gordon and Holyoak, 1983; Whittlesea, 1993). Research with polygons exposure showed increased favourability to previously unseen polygons which were similar (Monahan, Murphy and Zajonc, 2000). Exposure to certain stimuli can increase choice preference of related products (Lee and Labroo, 2004; Whittlesea, 1993). Berger and Fitzsimons (2008) carried out ‘real world’ research using observation of people who learned a slogan linking fruits and vegetables to an environmental cue, and found they actually began to consume more fruit and vegetables. This approach could be used positively by Governments in social marketing to encourage healthier eating. The UK Government has behavioural change as part of its key goals beginning with a behavioural summit in 2009 whereby ‘priming’ of behaviour was one of its key goals for driving policy acceptance. In fact, the Nudge Unit in the Cabinet Office is responsible for refining and priming public opinion.

Braun-LaTour et al., (2004) believed that experiences can be malleable, yet consumers trust their decision-making experiences (Hoch, 2002). Advertisers try to set expectations to influence consumer decision-making (Hoch and Deighton, 1989). As Wells (1986: 9) suggests, through advertising, brands can provide cues to consumers and change their behaviour. In the experiment conducted by Olson and Dover (1979) it was found that advertising received prior to a bitter coffee experience made consumers tolerate and appreciate the taste more than those who did not receive the advertising; therefore, experiences can be compressed into memory (Braun, 1999). Ehrenberg et al. (2002: 10) stated “Once a message or image is placed in our long-term memory, it seems never to be forgotten,” (Hunter, 1964; Franzen and Bouwman, 2001); for example, we may remember a photograph or a piece of music from many years ago. However, it is believed there are limitations to working memory (Simon, 1955).

Regulators encourage consumers to seek more information; in particular, CPRs stress that providing more information brings about a more rational choice process by the consumer.
However, by giving consumers more information, the quality of consumer decision-making does not necessarily improve; in fact, it decreases with too much information or choice to shape preferences and adversely influenced to the point of saturation (Bettman et al., 1998; Loewenstein, 2001; Schwartz, 2004). When the cognitive load increases, for example with complex pricing such as the many offers consumers face every day in supermarkets, individuals actually use less of the information when overloaded with content (Bettman et al., 1998; Henry, 2005). Therefore, consumers would almost certainly take decisions they might otherwise not have taken as the CPRs suggest, with more information rather than less information. Simonson (2005:211) refers to consumer environment and stores:

“…although consumers often have limited insight into influences and processes producing their choices, the assumption that consumers base their choices on conscious, wilful evaluation of task-relevant inputs has been quite successful in explaining a wide range of phenomena.”

Dijksterhuis et al. (2005: 193) observed: “many choices are made unconsciously and are strongly affected by the environment.” This conclusion is based on evidence concerning the link between perception and behaviour. They also discuss how conscious inputs play a minor role in behaviour. Bargh (1997: 23) noted that decisions about good or bad are made in the mind a fraction of a second after the encounter; good and bad is often translated as pleasure and pain. Loewenstein (2001: 503) argued: “Consciousness seems mainly to make sense of behaviour after it is executed. Unconscious thought improves the quality of decisions.”

The impact of marketing messages and the consumers’ unconsciousness makes it unlikely that consumers would be able to resist their influence. Consumers do not think about the unconscious effects on their behaviour, otherwise most would be consciously eliminating or controlling this behaviour. The CPRs expect the consumer to make cold, calculated and rational judgements about products or services; policy makers need to take heed of this. Non-conscious influences may have their greatest and most enduring impact when they determine how decision makers consciously think about the objects of decision (Simonson, 2005). When dealing with a piece of information that is blatantly false, one might argue that misinformation that is less detectable may float under the consumers’ conscious radar screen and be adapted. Loftus and Pickrell (1995: 720) state: “New information invades us like a Trojan horse, precisely because we do not detect its influence.” Deception falls between false information and puffery on the information spectrum. Advertisers and
policymakers should remember that memory distortion may be an outcome of a misleading campaign.

“Although this may seem a paradox, all exact science is dominated by the idea of approximation. When a man tells you that he knows the exact truth about anything, you are safe in inferring that he is an inexact man.” (Russell, 1962 in Schutt: 65)

2.10 Conceptual Framework

Conceptualisation derives from the Medieval Latin conceptūālis ‘a thought; existing only in the mind; separated from embodiment’ (American Heritage Dictionary, 2003). The conceptual process involves understanding a situation or problem and identifying patterns and connections through mental reasoning (MacInnis, 2011). Miles and Huberman (1994) defined a conceptual framework as a visual or written product, one that “explain, either graphically or in narrative form, the main things to be studied – the key factors, concepts, or variables – and the presumed relationships among them” (18)” (Maxwell, 2013: 39). This is a model of conception of the research with tentative patterns mixed with existing theories, in order to inform design questions and methods. According to Smyth (2004:167):

“conceptual frameworks are structured from a set of broad ideas and theories that help researchers to properly identify problems they are looking at to frame questions and find suitable literature.”

Four main sources have been used for the design and construction of the conceptual framework:

1. The researcher’s own experiential knowledge; as described in chapter 1
2. Existing theory and research; as described in chapters 2 and 3
3. The researcher’s advance standing on inductive exploratory research;
4. Thought experiments from blue skies research.

Experiential knowledge was acquired from ‘conversations with a purpose’ with individuals within the target groups shown in the dependent and independent variables. An inductive approach was adopted for the development of the conceptual framework with a qualitative research methodological design to expand upon theoretical evidence as described in Chapter 3.

“To be genuinely qualitative research, a study must take account of the theories and perspectives of those studied, rather than relying entirely on established theoretical views or the researcher’s perspective.” (Maxwell, 2013: 53)
“Relevant studies may be only a small part of the research in a defined field, and may range across a number of different approaches and disciplines. The most productive conceptual frameworks are often those ... that integrate different approaches, lines of investigation, or theories that no one had previously connected.” (Maxwell, 2013: 40)

To understand what the key relationships are between subconscious marketing communication and Consumer and Unfair Trading Regulations 2008, we need to understand the context in which they fit and the interconnectivity and permeability into other disciplinary functions.
Figure 2.2 Conceptual framework

**The Gap**
What are the key relationships between the subconscious marketing communications to the consumer and the Unfair Trading regulations?

**Central Concept**
- **Consumer Marketing Communication**
  - Subconscious & Conscious Communications
  - Decision Making Perception
  - Behaviour
    - Homo-economicus & Average Consumer
    - Neuromarketing Persuasion
    - Memory Emotions
- **Regulations**
  - CPR’s (Consumer Protection from Unfair Trading Regulations 2008)
  - The Consumer
- **Breaches**
  - Fines
  - Criminalisation
- **Transactions**
- **Dependant Variables** (criterion or response)
- **Independent Variables** (predictor or explanatory)

**Multidisciplinary Mesh**
- Multi Marketing
- Psychologists
- Law / Regulators
- Neuromarketers

**Influencers**
- Regulators
- Government
- Institutions & Lawyers
- Marketing Agencies

**New Multidisciplinary Models of Contribution**, chapters 1.2.3.4. 5.6.

**New Postmodern Theories**
- Adapted Models of Contribution
Figure 2.2 defines the flow of major concepts resulting from a multidisciplinary model of the inter-relationships between the key disciplines of marketing, psychology, law/regulations and neuromarketing. There is yet to be a model formulated to make the interconnectivity and permeability to the research question and these disciplines. From the conceptual framework we can identify the waterfall of disciplines of multi-marketing; these have a potential impact through changes, knowledge and influence on the central cascading flow of concepts. The dependent variable is reliant on the independent variable, but the independent variable does not change if the dependent variable changes (thus is truly independent) – the independent variable influences or contributes to the dependent variable. At the core of the central concept are the anchored dependent variables of consumer regulations, communications and breaches of regulations; this distils into the specific variables of the Consumer Protection from Unfair Trading Regulations (2008), consumer marketing communications and the consumer.

“Qualitative methods serve as adequate tools for investigating these complex phenomena. Despite the extensive literature that provides logical guidelines for qualitatively deriving theories from text and data (Glaser and Strauss, 1967; Harris, 2003; Miles and Huberman, 1994; Myers, 2009; Strauss and Corbin, 1990), there is a lack of a qualitative systematic method for building conceptual frameworks. This is particularly noticeable in the multidisciplinary literature. Usually, these multidisciplinary phenomena do not even have a skeletal framework which is defined as “characteristics identified from previous inquiry that provide an internal structure that provides a starting point for observations and interview questions, and for analysis. The researcher proceeds by building on these structures or categories, padding them out or “giving them flesh” and organising the ways they fit together. (Morse, Hypcey et al., 2002: 1).” (Jabareen, 2009: 50)

New multidisciplinary mesh models can be seen in Chapters 4 and 6.

The intention of the framework is to link variables by means of testing leading theoretical models from marketing communications strategies and the marketing mix, linking subconscious buying behaviour with the legal framework of CPRs. These theoretical models are reviewed in relation to the methodology framework in Chapter 3 using an inductive research approach to gain empirical evidence extracting relevant sampling approaches from the identified expert sample.

2.11 Summary

Commencing with historic antecedents, this chapter charted the historic landmarks of the regulatory fusion of marketing and law and maps changes in geographic involvement of
the EU into the enactment of UK current day marketing regulations, to the origins of the Consumer Protection from Unfair Trading Regulations (2008). Merging multi-disciplinary elements in behaviour, the literature review uncovers how rationality can initially be irrational and how the average consumer may fit into this mould. Subconscious modalities of behaviour extend to deeper perceptions, emotions and how memory and persuasion play a part in decision-making. To go deeper, neuromarketing examines the content under the bonnet of our brains and peels back the layers in search of the black box as to how some messages might go under the radar of regulations. Illustrating the literary process, this chapter concludes with the conceptual road map to guide the research along to its destination and to fill the gap in literature to establish how subconscious marketing techniques can circumvent consumer regulations, specifically the CPRs.

Chapter 3 addresses this gap by providing an appropriate methodological framework to produce inductive empirical data, driven by expert opinions, to apply quality up-to-date content on this research issue and fill this research gap with new knowledge.
Chapter 3: Methodology

3.1 Introduction

Aiming to fill gaps and answer research questions, the literature review and theoretical evidence underpins thought experiments and conversations. The technique of ‘story telling’ is now accepted (Lancaster and Crowther, 2009: 146).

Perhaps at first glance this might seem to be a surprising technique to include in a discussion of primary research methods. It is in fact an approach to collecting data which often proves extremely fruitful in the context of organisational and management research. The researcher begins to gather data through the process of joining in, or in some circumstances simply listening in to conversation and general gossip.”

This interviewing technique is felt to be particularly appropriate in ethnographic research. (Foddy, 1993; Morton-Williams, 1993; Arksey and Knight, 1999). Therefore, a data driven inductive approach has been adopted for the development of the conceptual framework (Chapter 2, Figure 2.2) with a qualitative research method design to expand upon theoretical evidence in Chapter 4. To be genuinely qualitative research, a study must take account of the theories and perspectives of those studied, rather than relying entirely on established views or the researcher’s own perspective (Maxwell, 2013). “The relevant studies may be only a small part of the research in a defined field, and may range across a number of different approaches and disciplines” (Maxwell, 2013: 40).

This research embraces literature available from multidisciplinary sources to develop an inductive approach to ethnographic observational methods to understand this phenomenon from different perspectives of influential populations.

3.2 Methodology Framework Overview

The methodological framework (Figure 3.1) is designed to meet the objectives of the research as defined in section 1.7 This is to develop inductive research through previous research conversations in a multidisciplinary setting, supported by an extensive review of the literature in relation to the role of rational and subconscious consumer marketing communication techniques relating to the CPRs. Jabareen (2009: 53) acknowledges:

“The first task is to map the spectrum of multidisciplinary literature… it is also recommended to undertake initial interviews with practitioners, specialists, and scholars from various disciplines whose work focuses on the targeted phenomenon. Data collection should be a comprehensive and complete “fishing trip” or “scoping” (Morse and Richards, 2002), and should facilitate holistic
mapping and complete data collection to ensure validity (Morse and Mitcham, 2002).”

In identifying key relationships between rational and subconscious brand marketing communications and traditional marketing techniques relating to average consumer buying behaviour, specifically related to CPRs by means of a conceptual framework, discussed in chapter 1 the aim is to ‘discover’ concepts (Glaser and Strauss, 1967; Strauss and Corbin, 1990). “The result is a list of numerous competing and sometimes contradictory concepts. Generally, this method allows concepts to emerge from the literature.” Jabareen (2009: 54)

“Qualitative inquiry that commences with the concept, rather than the phenomenon itself, is subject to violating the tenet of induction and thus is exposed to particular threats of invalidity” (Morse et al., 2002: 68 in Jabareen, 2009: 54)

To create a new subconscious neuro-marketing postmodern paradigm by means of a revised theoretical consumer based model, the process is

“…iterative, requiring a steady movement between concept and data, as well as comparative, requiring a constant comparison across types of evidence to control the conceptual level and scope of the emerging theory.” (Orlikowski, 1993: 311)

Neuromarketing evidence, combined with an ethnographic strategy, can reveal new approaches to understanding the effect and perception of rational and subconscious behaviour within the legal framework of the CPRs.

“This position is described by Hatch and Cunliffe (2006) as anti-positivist and by Blaikie (1993) as post-positivist since it is contended that there is a fundamental difference between the subject matters of natural and social sciences. In the social world it is argued that individuals and groups make sense of situations based upon their individual experience, memories and expectations … and affect the interpretations reached by different individuals.” (Flowers, 2009: 3)

Crotty (1998: 15) argues:

“Most methodologies known today as forms of ‘qualitative research’ have in the past been carried out in an utterly empiricist, positivist manner. This is true, as we have already noted, of the early history of ethnography.”

The research approach deemed most suitable for this study, and to best secure the new knowledge required, is to use an organic inductive approach by developing patterns, resulting in a contribution to new theory. Hooper, (2011:34) suggest an inductive approach:
“You are likely to approach the existing literature on the topic with a fresh perspective born of your direct experience. You’re likely to begin to formulate your own ideas about what causes what else to happen. This is where most of the more interesting and valuable new theories will originate.”

Too often in applied social research (especially in economics and psychology) what gets missed is the direct experience of the phenomenon. (Trochim, 2006; Stallworth–Hooper, 2011). Therefore, the research method chosen is qualitative with secondary data collected primarily in the form of academic journals and books, with the addition of previous research. Saunders, Lewis, et al (2003: 93) argue that ethnography is firmly rooted in the inductive approach which ties in a particular methodology to a particular approach. Ethnography emanates from the field of anthropology. (Knox, 2004: 124)

Methodology is based on philosophical principles of the postmodern interpretivist paradigm; that is, to understand the perception of rational and subconscious behaviour within the legal framework of the CPRs. Hermeneutics is a more widely defined discipline of interpretation theory, because it includes the entire framework of the interpretive process, encompassing written, verbal, and nonverbal communication. The discipline of data driven thematic analysis and interpretation adds to a deeper and varied approach to data collection in a multidisciplinary environment.

“The discipline of phenomenology may be defined initially as the study of structures of experience, or consciousness. Literally, phenomenology is the study of ‘phenomena’: appearances of things, or things as they appear in our experience, or the ways we experience things; thus the meanings that things have in our experience. Phenomenology studies conscious experience as experienced from the subjective or first person point of view.” (Siddiqui, 2008: 166).

The aim is to discover knowledge through an open unbiased description of experience without any attribution of cause or other explanation (Habershon, 2011). However, a phenomenologically-orientated framework also requires the enquirer to bracket belief and preconceptions in the phenomenon under investigation (Goulding, 1999; (Ozuem, 2005). Qualitative research is rooted in the phenomenological paradigm, which embraces that reality is created through individual or collective definitions of situations, so reality varies from person to person and group to group. Taylor and Bogdan (1984)

“Whilst a phenomenological paradigm has the potential to orientate the research process to the everyday consumption experiences … of the research subjects” (Ozuem, 2004: 80). The phenomenological paradigm could present some tensions in detaching the researcher and the participant from the topic of enquiry and thus the effective interpretation process of
the researcher’s expertise in the topic under discussion. Qualitative research is more concerned with understanding the social phenomenon from actors’ perspectives through the participation of the life of those actors. “Ethnographic interviews have become a commonly used qualitative methodology for collecting data (Aronson, 1992)” (Aronson, 1995: 2). Within this research construct, immersion has been part of the inductive approach through hanging out, conversations and observation of behaviour.

Narratological models of meaning provide an important linkage between philosophical tenets and hermeneutic interpretation. They ground the interpretive framework in a series of issues relevant to the phenomenological aspects of the person/culture relationship (Merleau-Ponty, 1962 and Thompson, Locander and Pollio, 1989 in Thompson, 1997). Narrative traditions have provided us a way to share our stories and interpret the integrations of these narratives in our brand behaviour. Easterby-Smith et al. (2002: 3) argue that “it is unwise to conduct research without an awareness of the philosophical and political issues that lie in the background.”
Figure 3.1 Methodology Framework
3.3 Research Design Rationale

Interpretivists contend that only through subjective interpretation and intervention in reality can that reality be fully understood. The study of phenomena in their natural environment is the key to the interpretivist philosophy. Research traditions start in Classical Greek times with Plato and Aristotle (positivists) on the one hand, and the Sophists (anti-positivists) on the other. Well known ant-positivists have included Kant, Hegel, Marx, Freud, Polanyi and Kuhn. On the opposing side we have Bacon, Descartes, Mill, Durkheim, Russell and Popper (Hirschheim, 1986).

The aim of the research design is answer research questions as outlined in 1.6 and to advance the conceptual framework (Fig 2.2), thereby contributing to new knowledge through new theoretical frameworks as discussed in Chapters 4 and 6. To understand to what extent consumers may be unwittingly misled by brands, yet there are multiple realities (Denzin and Lincoln, 2003). Since ‘all knowledge is relative to the knower’ interpretivists aim to work alongside others as they make sense of, draw meaning from and create their realities in order to understand their points of view, and to understand these experiences in the context of the researcher’s academic experience (Hatch and Cunliffe, 2006) and hence is inductive or theory building. The focus of the researcher is on understanding the meanings and interpretations of ‘expert actors’ and to understand their world from their point of view (Saunders, Lewis and Thornhill, 2007). The consumer’s perception and understanding of the level of misleading or subconscious marketing communications needs to be understood by “what people are thinking and feeling, as well as how they communicate, verbally and non-verbally are considered important” (Easterby-Smith, Thorpe and Jackson, 2008). Given the subjective nature of this paradigm, language in a thematic context is important. (Eriksson and Kovalainen, 2008).

This qualitative interpretivist research study (Fig 3.1) was designed to capture the understandings based on the lived experiences of consumers and the influencers around the research question: “Do subconscious marketing communications invalidate the CPRs”? This philosophically based phenomenological approach employs one-on-one conversational semi-structured interviews regulators, Government representatives, institutions, lawyers and marketing agencies. Interviews were conducted with 26 experts. The purpose of this qualitative phenomenological research design was to advance understandings around subconscious marketing communications and whether these marketing techniques used by brands can penetrate under the radar of Government
regulations by accessing the lived experiences of the population sample. Another feature of
the methodology is that of conversational inquiry, a methodology rarely used with the
judiciary (Edwards, 2003; Pierce, 2002). Relying on thoughtful listening and artful
interaction, the study design created an environment for what Plato called a ‘genuine
conversation’ (Kvale, 1996) or conversations with a purpose as described by Crowther and
Lancaster (2009: 146). “Examining a number of variables such as conversation, linguistics
and levels of congruence in behaviour to discover the underlying influences in order to
answer the research question: ‘Does subconscious marketing penetrate below the threshold
of consciousness and below the radar of Government regulations?’

Husserlian, or descriptive phenomenology, discloses the true meaning of Human
behaviour. It describes and clarifies the essential structure of the lived world of conscious
experience by meditating on the origins of experience (Goulding, 1999). “The term
“phenomenology” is often restricted to the characterization of sensory qualities of seeing,
hearing and what it is like to have sensations of various kinds. However, our experience is
normally much richer in content than mere sensation. “Interpretivist” is given a much
wider range, addressing the meaning things have in our experience from in our “life-
world”. The meaning of our existence and experience can be related to emotions. The
literature review uncovered some of the marketing and psychological commentary on what
emotions are and the further relationships this has with our behaviour. Phenomenology
studies the structure of experience ranging from perception, thought, memory, imagination,
emotion, desire, and volition to bodily awareness, embodied action, and social activity,
including linguistic activity. The structure of these forms of experience involves what
Husser called “intentionality”; that is, the directedness of experience toward things in the
world, the property of consciousness that it is a consciousness of, or about, something.
However, a deeper and richer psychological insight to subconscious behaviour can be
afforded using and ethnographic strategy based on an interpretivist paradigm to answer the
research questions.

When brand messages reach the people standing in their way, the brand is starting to form.
This happens in the perception that is created in the heads, hearts and emotions of both
intended customers and innocent bystanders. It is as perceived by everyone who touches
the brand in a unique way. This impacts upon persuasion and resides in many constructs of
memory. We take direct experience and create meaning by passing it through a set of
highly-biased perceptual and subconscious filters. Using broad mental models and unique
memories, we assess for immediate threats. Then we test against expectations and goals,
re-predict the future and compare against our values. All of this is biased by our current emotional state. The eventual perception, therefore is far from the sensory inputs we receive. Even after the original perception, we continue to ponder, muse and reflect on our experiences, changing their meaning even further (Argyris, 1993; Korzybski, 1933; Straker, 2002). Therefore, our sensory perception can be increased or reduced based on our state of emotional arousal. Is it true that if a brand intends to mislead by subconscious engagement that it actually succeeds in doing so? It could be said that perception is the brand as experienced. Not brand reputation, but reputation is brand perception.

We can appreciate from Goulding (1999) that Venkatesh (1992) acknowledges the social, complex, often irrational and sometimes unpredictable nature of consumer behaviour. Therefore, a combination of ethnographic strategy with the support of secondary neuro-marketing evidence gives us better multidisciplinary knowledge to contribute to new theory. Holbrook and Hirschman (1993) articulate the importance of interpretivist perspectives in the study of consumer behaviour and indicate the need to remind business scholars that those engaged in the humanities are human, and those engaged in the social sciences are social. Brown (1995), thinks that interpretivist methods should not be confused with postmodern modes of enquiry and that the conceptual framework of the interpretivist, is more aligned to the postmodernist. Nonetheless, there remain constants that transcend the demarcating line between these distinct paradigms. “Post-modernism and interpretivism regards these dichotomies as unsuccessful historical attempts to legitimise partial truths.” (Brown, 1995:20)

Heidegger (1962), referred to phenomenology as “hermeneutic (interpretive) phenomenology”, or “existential phenomenology” and developed the ideas of Kierkegaard, et al (1962). Heidegger’s modern existentialism had a strong influence on phenomenological methodology (Grene, 1983). His philosophy was to discover the nature of ‘being’, which can be found in consciousness rather than the subconscious and the types of existence that humans have. This existentialist view revolves around the idea that we are all responsible for the choices that we make, even though there are no guarantees that these will be the right choices. Therefore, how might legislation be a caretaker of everyday consumer decision making?

Elliot and Jankel-Elliot (2003: 215) suggest: “when tackling this complexity, we must go for depth, not breadth; understanding, not prediction.” Alvesson and Skoldberg (2000) distinguish between ‘inductive’ ethnography which emphasises data and strongly focuses
on method as the key to good research, and ‘interpretive’ ethnography which puts the emphasis on bold interpretation.” Here we are concentrating on authentic data driven inductive ethnography. an approach in which: “you are directly involved in community life, observing and talking with people as you learn from them their view of reality” (Agar, 1996: 163).

3.4 Qualitative Reasoning

Rich description affirms that the researcher was immersed in the setting and gives the reader enough detail to ‘make sense’ of the situations. Therefore, it could be postulated that EU and UK regulations and legislators are out of date by applying rational cognitive methodology to regulations such as the CPRs. To provide contribution to research, frameworks needed to be updated by further empirical studies drawing together multidisciplinary elements to describe the linkage and the problem using rich qualitative techniques. The words of everyday language are rich in multiple meanings. Like other symbols, their power comes from the combination of meanings in a specific setting (Cohen, 1979). This qualitative research provides an opportunity to solve both a philosophical and practical problem in providing a new neuro-marketing subconscious paradigm, thus filling a gap in knowledge through new theoretical frameworks.

Stallworth-Hooper (2011) think that despite the power of qualitative research to make brands more human it is sometimes viewed as inferior to quantitative research; a comparison that is inevitable when practitioners try to use qualitative as a precise, scientific, and replicable methodology. Qualitative is a way to illuminate emotion, bestow texture, and encourage consumer improvisation. Therefore, a qualitative method was used to developed the research problem. Qualitative research encourages deviations and creativity. Stallworth-Hooper (2011:163) to on to say:

“If you are interested in how people view topics like God and religion, human sexuality, the death penalty, gun control and so on, it is suggested that one would be hard-pressed to develop a quantitative methodology that would do anything more than summarize a few key positions on these issues. If one really wants to try to achieve a deep understanding of how people think about these topics, some type of in-depth interviewing is called for.”

Mariampolski (1999) cautions that sometimes these types of qualitative studies can replace simplification with complexity. Goulding (1999) acknowledges the surge in growing popularity of the application of qualitative methods in the 1980s and 1990s which continues to be a popular theme in the study of consumer behaviour today. Division has
occurred between researchers on the basis of methodological orientation, or a positivist/interpretivist split. Much criticism regarding qualitative research centres on issues of clarity, methodological transgressions and mixing of methods without clear justification and explication of why and how. To develop new theory in the area of subconscious marketing communications, there is strong qualitative reasoning behind an inductive approach. Belk (1995) draws attention to the fact that during the 1980s alternative perspectives in consumer research began to emerge. These represented a radical departure from the traditional positivist paradigms that had dominated the discipline since the late 1950s. McQuarrie and McIntyre (1990) and Thompson et al. (1990) argue for phenomenological positions to be adopted.

Roberts (2002) discusses how the hard wiring of the brain is emotionally bias and how this forms the most substantial part of consumer decision-making. Now proven by neuroscientists who show that emotion is linked to actions and therefore the majority of behaviour comes from our unconscious minds. Roberts provides further support that the best quality contribution for this research will be applied from a qualitative perspective. Roberts goes on to explain how the art of ‘story-telling’ is a powerful communication method which has been used historically to assist us in making sense and structuring our lives. Story-telling is at the core of this research and illuminated in chapter 5. When comparing quantitative and qualitative research in terms of branding and consumer research, Roberts, of Sachi and Sachi, asked in 2002 (Esomar Congress) that we: “Count the beats of your heart not the fingers on your hand”. This captures the very ‘heart’ of the challenge that faces qualitative research. It stands to be argued that more subjective, indirect and deeper the questioning as with those of projective methods and in-depth interviews, that are associated with qualitative research, the richer the data to be interpreted and the deeper our understanding.

Haberson (2011) supports Robert’s comments through findings in social neuroscience that established that the majority of decisions are made by the unconscious brain. Yet, much conventional qualitative research is still focused on the rational conscious brain. It is now conventional thinking to acknowledge that most of our actions are not taken after conscious decision-making; they are made in a split second by the unconscious brain. As early as 1978 Eysenck provided some analytical reasoning in relation to the process of emotions and the important links to brand and consumer behaviour based on a more advanced approach to the problem that was being experienced in this area through lack of depth, as acknowledged in the work by Craik and Lockhart (1972: 671):
“On the one hand, use of the term ‘depth’, and the claim that depth of processing can be defined in terms of the amount of meaningfulness extracted from the stimulus material suggest that traces differ quantitatively. Perception involves the qualitatively different stages of analysis of physical or sensory features, pattern recognition, and the extraction of meaning, and that a major result of this perceptual analysis is the memory trace. We need a richer and fuller definition for market research purposes to capture the subtleties of modern marketing communication.”

Cooper and Pawle (2005) offer a ten-point checklist (Table 3.2) based on the findings of neuroscientist Antonio Damasio (1994) who identified the link between emotions of the mind and feelings in the body referred to as ‘somatic-markers’, which can be used both in marketing research and communications.
1. Emotions are felt mental and/or physical experiences of arousal directed towards changing consumer behaviour, or if not behaviour changing a view, value, disposition or attitude towards a brand, positively or negatively.

2. Brand emotions and the feelings associated with them originate from the brand and its total communications, but over time they can also arise from within through long-term memory images and associations via neural connections in the brain ('somatic markers').

3. Brand emotions can be essentially personal, private and difficult to articulate (e.g. how do you know what I mean by 'love'?), and are therefore communicated through labelling conventions of words, behaviour, body language, and metaphors for the emotional experience, which can also help articulation of emotions.

4. There are certain basic and universal emotions worldwide, but emotional expression is dependent on the consumers' social milieu and cultural context which need interpretation to understand local nuances.

5. Brand emotions generate conscious feelings or rational judgements, but there are typically unconscious connections too which play major parts in brand relationships and behaviour.

6. Consumer expression of emotions in interviewing is subject to social rules of what is appropriate or not and which can distort actual feelings, hence interviewing ideally is free of prejudice or influence such as computer self-completion.

7. Although there are probably an infinite number of emotions or shades of emotions, for practical purposes they are limited in number to those which are conventionally coded in words or other codes in everyday life.

8. There are two pathways in response to the emotional stimuli of brand communication: one cognitive and the other emotional.

9. Emotional responses to brands, purchasing and consumption in modern everyday life are also the result of lack of time, pressure, brand parity, etc., whereby emotionally-based decisions are increasing and cognitive functions are on 'auto-pilot'. The power of emotions in brand decision making is also dependent on the level of economic development of a market.

10. Emotional pathways in many product fields like FMCGs are usually rapid and impulsive, by-passing the cognitive functions of rational judgement and leading to direct action. Emotions, as has been said, are likely to lead to action where rational judgements can lead to conclusions.

**Table 3.2 Cooper and Pawle (2005) The Ten-Point Checklist of Emotions**

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“There is an implicit acknowledgement that qualitative research practices are naturally more in tune with behavioural economic theory and it is quantitative practices that have the most to learn.” (Wood, Samson and Harrison, 2011:347).

3.5 **Beyond Anthropology**

The essential for learning about human behaviour beyond anthropology, resides in ethnography, which has been found to be an inclusive method shared by other disciplines such as marketing, psychology and sociology, rather than simply the exclusive tool of the anthropologist. In the early 1990s, anthropology aimed to study primitive people. Cultural understanding could not simply be descriptive. It had to be interpretive, as all these elements weave together an understanding and a world view (Kelly and Gibbons, 2008). Elliot and Jankel-Elliot (2003) propose that the use of ethnography is arguably the oldest methodology of social investigation and characterised as “deep hanging out” (Wolcott, 1999).

Laying down the notion of ‘thick description’ was an example of the ethnographic work of Clifford Geertz (1973) who states that there is more to any given social situation than meets the eye. As Kelly and Gibbons (2008) describe how a social situation can be better understood by thick description and how other social sciences have started to use the keys of anthropology to unlock cultural or interpretive questions giving disciplines such as sociology to have a richer and broader perspective on research processes and outcomes.

Gale (1862-1945) was the first to undertake advertising surveys and experiments concerning the effects of advertising on attention and memory and appears to have been one of the first to conduct psychological experiments concerning attention. Gale produced mock-ups of concepts with ideas of attitude towards the ad, in particular unconscious attitude formation (Eighmey and Sar, 2007), though his more scientific positivist approach did not develop into an ethnographic style of research, which would be synonymous in gathering this type of descriptive subconscious and interpretive data. Thompson (1997) describes how transactions between marketers and consumers are above all, exchanges of meanings. Interpreted (or perceived) meanings are fundamental to marketing’s core interests, such as the study of exchanges (Bagozzi, 1975) and the management of customer relationships (Webster 1992). The development of interpretive frameworks for deriving marketing insights from the texts of consumer stories has been left largely to marketing and advertising practitioners. Glaser (1985).
Mariampolski (1999) described how humans are more multifaceted than mechanical and so statistical reasoning was not a substitute for hard thinking. Marketers began to realise that humans are both rational and calculating with deeper unconscious feelings, which drive irrationality and has been poorly developed by the marketing sciences. Ernest Dichter’s (1964) motivational research transitioned marketers closer to this understanding, though criticised by Vance Packard (1957) and considered simply ‘hypothesis generating, awaiting confirmation’, Dichter managed to revive qualitative research. As Mariampolski (1999) observes how animals in laboratories and zoos provide limited insights compared to that of those living in their wild natural habitat when studied by the likes of Jane Goodall (1991), who exposed a different side to chimpanzee behaviour in their wild state, providing more layers of understanding that those seen in laboratory conditions.

Boddy (2011) discusses how the beginnings of ethnography are usually traced back to the work of the social anthropologists Bronislaw Malinowski and Franz Boas. Qualitative research and processes has become the staple diet of the marketing profession and many others such as psychology and law from one-to-one interview to focus groups, to tease out the emotional layers of the consumer, yet the underlying roots are ones of spiritual storytelling Stallworth-Hooper (2011) understood that consumers expect and want brands to reflect them by way of how they think and feel. Consumers want honesty about what is being offered to them and connect to the brand as a friend or extension of ‘self’. Such consumers do not want to be misled, or more appropriately, ‘feel’ as though they are misled; they are happy going on a crest of a wave believing that they are in control of their decision making process, even though the underlying brand is manipulating their subconscious decision making. It may seem that the consumer is happy to be led or misled depending upon their emotional engagement with the product or service.

Boddy (2011) also notes that ethnography is sometime criticised as being something of a fad service in marketing intelligence because it periodically breaks out of its usual niche and becomes unusually popular for a relatively short while. Whereas we can see from work by Stallworth-Hooper (2011) that ethnography, with its roots in anthropology, is one of the oldest and most consistent and reliable forms of depth quality research.

3.6 Ethnographic Power for Multidisciplinary Insights

Conference 2005). The definition of ethnography from the US Marketing Research Association (MRA, 2008) is:

“Research conducted within the context of real-world consumer experience. It involves the study of a small group of subjects in their own environment. Ethnography allows researchers to better understand the consumer by determining what internal and external affect behaviour.”

Hoey (2008) defines ethnography as both a qualitative research process, or method (one conducts an ethnography), and product (the outcome of this process is an ethnography). Boddy (2011), notes that a useful definition of ethnography comes from the (UK) Association for Qualitative Research (AQR), whereby the term ethnography, originating in anthropology has reportedly been adopted within market research to describe occasions where market researchers spend hours, days or weeks, observing and interacting with research participants in areas of their every-day lives (AQR, 2012).

Hoey (2008:55) points out that Malinowski was the first to be published in 1922 and as potentially the founding father of ethnographic fieldwork; his diaries share two important stories:

“First of these is that at its heart, ethnographic writing is a means of expressing a shared interest among cultural anthropologists for telling stories – stories about what it means to be human. The other is that the explicit professional project of observing, imagining and describing other people need not be incompatible with the implicit personal project of learning about the self. Ethnography should be acknowledged as a mutual product born of the intertwining of the lives of the ethnographer and his or her subjects.”

Elliott and Jankel-Elliott (2003:215) suggest: “Ethnography reaches the parts other research approaches cannot reach.” It can access what people really do rather than what they say (or even think) they do. It can provide ‘thick descriptions’ of the ecology of brands and how they fit into the complexity of people’s lives. It helps us to understand the symbolism and meanings of consumption behaviour and explores how this brand related behaviour integrates with wider social and cultural experience in the life-world of the consumer. Ethnographic methods allow marketers to delve into the actual occasions and situations in which products are used, services are received and benefits are conferred (Mariampolski, 1999).

Some call it ‘ethnographic research’; some call it ‘hyper qualitative research’. But Dichter (1964) referred to it as ‘motivational research’. This is all about getting closer to users or potential users to ‘deep dive’ and ‘need find’ to develop a solution to marketing problems.
Quantitative research is great; it tells marketers what is going on. But it often overlooks the ‘why’ and the ‘how’ and even other opportunities (Elliott and Jankel-Elliott, 2003). In 2005 Elliot and Elliot collaborated using various non-traditional methods in ethnography to obtain a holistic picture to gain deeper understanding of general behaviour.

Such can be used to understand subconscious marketing techniques in relation to the CPRs and the perception surrounding this phenomenon. By applying a critical perspective on ordinary language, ethnography can bring us closer to the emotions and intentions that underlie people’s actions. Language has a profound impact upon shaping perception. “Copywriters and strategic thinkers are always pressed to talk about products and brands in evocative and original ways. Ethnography helps act as both a discovery and evaluation tool” (Mariampolski, 1999). Ethnography is no longer classified as a single method, it is a research discipline of both observational and interviewing tactics to record behavioural dynamics.

Culturally based consumer aspirations and choices are rooted in the deep structures of the brain. Ethnography permits a more holistic, multidisciplinary and better nuanced view of consumer behaviour Mariampolski (1999:75) also believes that ethnography is particularly effective when little is known about a targeted market, such as the sample population within this research study, or when fresh insights are desired about that segment such as the behaviour related to subconscious marketing techniques and the validity of the CPRs. Mariampolski goes on to say:

“Marketing discourse became somewhat seduced and clouded by a positivist model of how people think and behave. The operating assumption of positivism is that anything that is real can be objectively perceived and counted. Positivist thinkers have also held the corollary to be true; that is, if it cannot be counted, it does not exist.” Mariampolski (1999:75)

We can evidence this in the development of consumer marketing models, such as AIDA and the 7 P’s, which are designed on the basis that the consumer is purely a rational, creature who behaves at all times in a conscious and objective fashion. We now know today, that rational behaviour in decision making only occurs around 5 per cent of the time.

In recent ethnographic research, Marimpolski (1999) discovered the importance brand olfactory signals by connecting the smell of pine to the essence of ‘clean’ connected to memories of how Hispanic-Americans recollected their grandmother’s homes. These type of contextual connections can create high levels of compulsive purchase behaviour. Marimpolski goes on to discuss how ethnography can be used as a ‘truth serum’ to
documents behaviours and address flawed recollection and selective attention, checking congruency with verbal and non-verbal communication. We can also evidence now that neuromarketing can prove that rational models of behaviour and remote positivist quantitative studies are inappropriate and out-dated when it comes to uncovering the truth that resides in our black box of human emotions.

Hoey (2008) finds that ethnographers generate understandings of culture through an emic perspective, or the ‘insider’s point of view’, allowing critical categories and meanings to emerge from the ethnographic encounter rather than imposing these from existing models. An etic perspective is more distant, which would not provide the level of insight required to achieve the deeper and richer evidence required to complete the knowledge gap and make the significance of contribution necessary for this research and allow the new theoretical model to emerge. Hoey (2008) covers three points that are critical to an ethnographic strategy: 1. Must be more than observational; 2. Must be comparative; 3. Must use a cultural frame to provide a deep ‘insider’s point of view.’ This research embraces an emic perspective.

As described previously by the example of meaning, Geertz (1973) provided an analogy in terms of the cultural gesture of winking: “thin description” is the winking; this action could be identified through the linear approach of quantitative research. However, the meaning behind the wink may be misunderstood or omitted. “Thick description” is the meaning behind the wink and its symbolic importance in society and between communicators, which can better be interpreted as to the power of the intended gesture and response of the recipient through a more culturally congruent method of a qualitative ethnographic strategy, by peeling back the layers sandwiched together over generations of evolutionary cultural interactions.

3.7 Research Sample and the Relative Population

“In the ethnographic approach, the sample size ends up meaning something very different. It may be that the researcher wants to study one situation. It may help to conceptualise culture as being external to the individual.” (Kelly and Gibbons, 2008:279).

Elliott and Jankel-Elliott (2003) comment:

“It is probably impossible for an ethnographer to obtain a random sample as he/she will be unable to build a rapport with all informants, and without rapport the information is likely to be of poor quality (Agar, 1996). Most importantly, ethnographers are seeking to develop a ‘thick description’ where he/she is faced with ‘a multiplicity of complex conceptual structures, many of them superimposed upon or knotted into one another’ (Geertz, 1973: 10).
Initially this research intended a 3 tiered approach to the subject of enquiry with consumers, experts and regulators as below figure 3.1. However, the acquisition of the consumer group and the complexity of the methodology in assessing implicit reactions to the researcher’s questions and thus the reliance on congruent responses caused a change in approach. The original research was to interview consumers and put their responses to the experts and in turn put the expert responses to the regulators. The new 2 tier approach as shown in figure 3.2 was to utilise the experts both as consumers and experts whereby they were asked about their experiences in both modes. However, due to time constraints and the high quality of expert knowledge it was deemed more important with some to focus on their expert opinion, rather than their consumer experience, however, some experts volunteered private experiences whilst in consumer mode and these consumer experiences are therefore melded with their expert opinions in chapter 5. Adhering to ethical requirements of the university all interviewees were provided with anonymity.

Figure 3.3

Figure 3.4
Referring to the methodology framework (Figure 3.1) the research sampling strategy is a combination of non-probability and purposive sampling. This sampling strategy has been selected because non-probability sampling does not involve random selection, which is more in keeping with an in-depth study. It would not be feasible, practical or theoretically sensible in this applied social research to use random sampling. The sampling method is also purposive in nature as this research is approaching the sampling problem with a specific plan in mind and specific target groups of the population have been selected due to their direct or indirect influence relating to the research problem. The researcher has adopted a snowballing or ‘referral’ type of approach in requesting introductions from one interviewee to another trusted interviewee by formal introduction where necessary. To keep within ethical guidelines interviewees are anonymous, although it should be noted that the majority consented to be named within the body of the research. Therefore, for confidential authenticity interviewees’ names and anonymous descriptions are held within Appendix A dossier separate from the thesis.

Research sample population and sample groups have been selected because of the undeniable intertwined web that forms the inextricable interconnected relationship between the sample population, the research objectives, research questions and contribution to knowledge (Figure 3.3).
<table>
<thead>
<tr>
<th>Sample Population</th>
<th>Sample Strategy</th>
<th>Justification</th>
</tr>
</thead>
<tbody>
<tr>
<td>Government Representatives (such as Politicians)</td>
<td>Purposive / Expert / Snowball</td>
<td>Influencers who have a responsibility to ensure good legislation</td>
</tr>
<tr>
<td>Institutions (such as CIM, IDM DMA) Including Practitioners</td>
<td>Purposive / Expert / Snowball</td>
<td>Responsibility to their members for good practice and to ensure that new practices are adopted and to lobby</td>
</tr>
<tr>
<td>Regulators (such as Trading Standards, ASA, OFT)</td>
<td>Purposive / Expert / Snowball</td>
<td>Industry regulators responsible for ensuring standards are maintained in particular with reference to CPRs</td>
</tr>
<tr>
<td>Marketing Agencies and experts Behavioural experts and psychologists</td>
<td>Purposive / Expert / Snowball</td>
<td>Use every technique available for successful campaigns within the guidelines of CPRs and use of techniques to go under the radar of CPRs</td>
</tr>
<tr>
<td>Neuroscientists and Neuromarketers</td>
<td>Purposive / Expert / Snowball</td>
<td>Lead the way in neuromarketing techniques and new knowledge around the conscious and unconscious human behaviour</td>
</tr>
<tr>
<td>Lawyers</td>
<td>Purposive / Expert / Snowball</td>
<td>Experiences and opinions relating to the findings in the literature review as to the potential invalidity of the CPRs in the presence of subconscious marketing techniques</td>
</tr>
<tr>
<td>Academics</td>
<td>Purposive / Expert / Snowball</td>
<td>The connectivity of the findings in the literature review, in relation to subconscious marketing, homo economicus, and the validity of rational marketing models in light of the CPRs, coupled with the identified knowledge gap and empirical data from the other sample groups would form further expert opinions as to the research findings.</td>
</tr>
</tbody>
</table>

**Table 3.5 Sample Population**
Combining expert and snowball sampling within the Government, Regulators, Institutions, Marketing Agencies, Legal and Academic Professions, Figure 3.3 expands on the methodology framework (Figure 3.1). Expert sampling from senior professionals assists in providing expert validity of some of the data gathered to identify if these experts within groups of the population such as Government and regulators are indeed up to date with the opinion of the consumer and marketing agencies in relation to the CPRs and subconscious marketing techniques. It may also provide an insight as to some of the opinions of key academics identified in the literature review. The research takes into account that all these experts are consumers in their everyday lives. Provision is also made during the semi-structured interview process to elicit not only their expert opinions, but also their consumer experiences and compare this to their ‘professional’ responses. This sampling method is an extension of the original sampling approach utilised through the research conversations with a purpose from the initial inductive approach to the problem. Previous research is used to update these interviews from a previous pilot study, and will include interactions and observations from an ethnographic perspective. The detail of these interviews provides a multidisciplinary inter-connector synthesis of language and opinions related to the creation of the theory and adaptation of existing marketing models and new legal frameworks. Accessibility to the sample population is in most cases by means of the researcher’s contacts, and in particular the method of snowball sampling is key to the success of accessibility. Therefore, the sample size is a reflection of the depth of information as opposed to the breadth of the number of interviewees.

“The sample size is not defined simply as a number of respondents or one social situation. Instead, the sample should be thought to include all the interactions, all the important details including the number of respondents or the number of site visits” (Kelly and Gibbons, 2008: 279).

This research methodology courts the benefits of Gibbons approach to information gathering and develops this by following all interactions of transcriptions including the key narratives and themes in chapter 5. Stallworth-Hooper (2011) discusses how this process can be developed by being flexible in the inquiry rather than setting fixed ideas of questions, like the river which has tributaries, the flow of the question can lead one down many tributaries onto other plains of new questions of inquiry. Each of us, including the researcher experiences a different reality and following the flow leads us to better understand this. Therefore, flexibility and a good understanding of communication is key to the interview approach and the context. Ethnography can produce rich, detailed data, which may produce an important ‘Ah! Hah!’ and actionable ideas as can be evidenced in
Chapters, 1, 4, 6 and 7. (Kelly and Gibbons, 2008). This of course depends upon the context, relevance and purpose of the collection of the data. “Research practice that ignores context is doomed to misunderstanding and misrepresentation” (Mariampolski, 1999).

3.8 Data collection method, rationale and time horizons

Ethnography uses observation techniques to collect data on what is happening as it happens, rather than on what people say has happened (Serf, 2007). This can be observation of body language and various types of questions probing to assess congruence of the respondent’s statements and discussion. The benefits of ethnographic data collection relate to validity of the findings, sometimes there is no verbal communication, only simple observations, alternatively the interviewees might be responding to very detailed questioning, reducing rational or convenient answers. A study of doctor’s hand washing behaviour to stop the spread of super-bugs, showed a misalignment between belief and fact. Doctor’s believed they were washing their hands at a rate of 73% of incidence when actually is was only 7% of the time. This was a significant finding based on observation and questioning (Ferrari, 2006; Boddy, 2011).

Unique opportunities for ethnographic research are where the sample population cannot be wholly truthful, not out of malice, just purely because the respondent may simply trying to appear to be a rational person. In such cases it may be more useful to observe their actions and query them so that a more thorough accounting of the activities and thought processes involved can be generated, understood and documented. Ethnography is often promoted under a variety of data collection methodologies including consumer immersion, site visits, retail ethnography, ‘shop-alongs’, embedded research, and so on. These and other research questions are best served by the more contextual approach offered by ethnography (Kelly and Gibbons, 2008).

Cramphorn (2005:255) comments:

“Classic, short, logical quantitative questionnaire is likely to generate quite misleading responses because it is so easy for respondents to confabulate to support some position they have unconsciously adopted. Responses to open-ended questions and qualitative interviews may well reflect misleading confabulation. New methods will have to be employed. It appears likely that a longer, muddled, ‘fast’ questionnaire that minimises introspection opportunities will more effectively and qualitatively reflect the underlying feelings that drive behaviour in each particular situation”.
Barry and Howard (1990) disagree and believe that simply by asking a person what they intend to do is sufficient enough to determine the person’s intention, and one presumes the action resultant of their intention, and therefore to apply a hierarchical process. Determining hierarchical processes allows us to predict behaviour (Preston (1976) though this approach can mean that certain behaviour is taken for granted, therefore just by asking does not make the details of a certain behaviour accessible, this is evident when it comes to unconscious behavioural motivators which create repetitive patterns of buying behaviour when investigating emotionally positioned brands that create subconscious purchase patterns. Here traditional focus groups or in-depth interviews are insufficient. Other methods such as ethnography and neuromarketing are needed to get the results required for a meaningful narrative interpretation. (You and Kaltenbach, 2005) observe how ethnographers working in multidisciplinary teams gain better understanding of the research through interconnectivity, blending language, cultural, historical information in interviewing methods through data collection, interviews and personal observation.

Dependent upon the time, place and audience, Mariampolski (1999) suggests that interviewing situations, typically involve looking for gaps between expressed and non-verbal communication elements. Goffman (1959) talked about the interactive theatre of humans, as a reflection of their inner state and interaction, in playing roles to a given audience such as friends, family, work colleagues, new meetings and old friends can cause variations in behaviour of the audience we are performing to. Authenticity of behaviour should be taken into account based on the circumstances of the interaction and assumptions of these situations should govern our communication (Mariampolski, 1999). Elliot and Jankel-Elliot (2003) report that key issues in the study of human behaviour are the extent to which people are able to report fully and accurately their behaviour. The issues are: ‘limitations of asking’ (Mariampolski, 1999) and the problem that ‘people don’t always do what they say’ (Fellman, 1999).

Ovans (1998) found that people are not a reliable predictor of their own purchasing behaviour. Most people might believe they are not influenced by advertising and using this method in a focus group can be misleading. A study found that a mother in a focus group reported that her family only ate healthy food for breakfast. Upon observation of video recordings within the house at breakfast time, it showed the children refusing healthy cereal and instead eating the unhealthy option. There was no intent by the mother to mislead the group, instead she simply wanted to ‘believe’ they were eating healthily so she
omitted this from her reality because she was driven by an emotional need (Fellman, 1999). These issues pose problems for consumer research and it called for ‘brand ecology’ (Percy, et al., 2004) studying the lived experience of consumers exploring how brand-related behaviour integrates with wider social and cultural experiences of the consumer.

In some forms of ethnography known as quasi or commercial ethnography consumers are unable to live with their respondents to observe in detail, so ethnographers have developed a number of approaches that allow them to access the ‘lived experience’. Elliot and Jankel-Elliot (2003) reported that observation is rarely used in isolation and forms numerous data-gathering methods, including the focus on non-directive questions “designed as triggers that stimulate the interviewee into talking about a particular broad area” (Hammersley and Atkinson, 1983: 113) such as that in the semi structured interview process. The researcher spent years of immersion with the sample population groups as listed in Figure 3.3 and used this immersion to gain rich insights through the observational lens of an internal observer and external data driven inductive analyst. Nowadays we seem more advanced ‘lived experiences’ in ethnography with the use of technological advances we can get into the home, on the move and direct into the mind through implicit emotional responses.

“Much of the richest data which ethnography can capture comes from the realm of informal talk between researcher and informants; what Agar (1996: 158) calls ‘hanging out’ and places at the centre of ethnographic fieldwork,” such as this research has involved ‘hanging out’, listening and conversing with groups of influential experts such as politicians, lawyers, the judiciary, neuroscientists and expert marketers and other such chance encounters. Elliot and Jankel-Elliot (2003:215) comment:

“The essence of the informal interview is that the researcher does not have a written list of questions, but rather a repertoire of question-asking strategies to select from when the moment seems appropriate. It is also informal because the questioning may take place in a wide variety of contexts, e.g. while working with informants on a shared task, while attending a social occasion, or while networking at business functions.”

The objective is to get as ‘experience-near’ as possible (Geertz, 1973) allowing the informant to control the discussion: ‘everything is negotiable’. The informant can criticize a question, correct it, point out that it is sensitive, or answer in any way they want to (Agar, 1996: 140). Which occurred during the interview process and the result of the narrative presented in chapter 5. A whole range of techniques have been developed to approximate ethnography, leading the respondent towards modifying or contradicting a statement (Agar,
Burns (2000) notes that interviewing can be useful when extensive data is required on a small number of complex topics; probing may be used to elicit more complete responses.

3.9 Summary

This chapter has delivered answers to research question 3 about what can ethnographic research, combined with neuro-marketing literature reveal about how consumers make purchase decision at a rational and subconscious level within the legal framework of the CPRs. The methodology supports objective 1 and 3 to develop the inductive research approach and how we can reveal new approaches and understanding around emotions related to consumer behaviour. The methodological framework (Fig 3.1) is the linchpin between the concept, literature review and rich data collection.

Kahneman (2002) challenged the assumption of rationality in human behaviour proving that emotions are important determinants of economic behaviour. Therefore, qualitative research practices are more in tune with behavioural economic theory. The multifaceted consumer drives multi-complexities in depths of emotion that are best served by matching methods of approach with that of a qualitative study. There is an implicit acknowledgement that qualitative research practices are naturally more in tune with behavioural economic theory and that it is our quantitative practices that have the most to learn Wood and Harrison (2011).

Expert multidisciplinary responses and opinions were elicited over a three-month period using semi-structured interviews, which are interwoven throughout forthcoming chapters. Mapping of the methodological framework design is the pathway of progress from concept to conclusion, providing an opportunity to access comprehensive, complete and rich data collection, linking direct experience of the phenomenon. The methodology develops the dynamics of the conversations with a purpose through to semi-structured snowballing expert interviews, forming mesh-like patterns culminating in themes of authentic postmodern data presentation, thereby creating new theories and models introduced in chapter 4 and 6.

Chapter 3 touched on the tip of the rich depth of the iceberg of inductive ethnographic data commentary of storytelling, uncovered throughout the forthcoming chapters, and revealed in the depth expert findings in chapter 5. This ethnographic study involved small groups within their own environment taken from an emic perspective. Inductive ethnography
describes implicit empirical experiences uncovering new knowledge to fill a current day research gap.
Chapter 4: Theoretical Overview, Insights and Emerging Models

4.1 Introduction

Continuing with the phenomenological inductive ethnographic multidisciplinary methodology presented in Chapter 3, and building on the conceptual framework, (Fig 2.2) Chapter 4 uncovers theoretical constructs of questions posed in Chapter 1 relating to how combining ethnography with neuromarketing, along with multidisciplinary teams, may work in establishing subconscious behaviour in connection with the legal framework of the CPRs. This chapter expands and builds on the literature review in Chapter 2, and looks at the transitioning phases of theory from a traditional setting to new paradigms of experiential theory and integrates theoretical reviews with empirical expert proponents’ comments, divulging patterns from existing literature and expert commentary to illuminate current day thinking. The theory makes observations about entrenched ideas relating to marketing models and regulations, and how different disciplines view the research questions. It consists of an interrelated, coherent set of ideas and models. Discussion shows how research methods such as neuromarketing is in its infancy, whilst ethnography is in an advanced stage of knowledge, and how these may complement each other in field techniques as constructed models of reality for the future.

“…there are studies that start out with a deductive theory and end up generating theoretical arguments using an inductive process that integrates old theoretically derived ideas with new and unanticipated theoretical arguments based on data uncovered in the field research.” (Wilson and Chaddha, 2009: 549)

4.2 Neuromarketing meets Ethnography: theoretical expert experiences in neuromarketing

In Chapter 1, research question 3 asked what can neuromarketing combined with ethnographic research reveal about how consumers buy at rational (or conscious) and subconscious levels? The infancy of neuroscience as a research tool and the subsequent germination of neuroeconomics, neurolaw and neuromarketing warrant theoretical commentary from the small number of specialist experts who have provided cutting edge insight into this theoretical time capsule.

Breakthroughs in which neuroscience and marketing in the 1990s created the conjoint term neuromarketing began with a revelation in a Pepsi and Coke neuroscientific case study. The most seminal evidence of the neuroscience and marketing relationship was found in a
neural replication of the Coke-Pepsi taste challenge (McClure et al., 2004a; Singer, 2004; Herman, 2005). The research using the neuroscience technique of fMRI scanning produced results that demonstrated customers had branded preferences within different regions of the brain associated with emotional memories by using a blind tasting test most respondents preferred Pepsi. This was identified by the ventral-medial putamen within the striatum region showing strong activity, this region is related to the experience of reward, and can be interpreted as good taste, however then all the cups were changed and the Coke brand was put in all the cups, yet some were marked Pepsi and some were marked Coke, then the majority of the respondents preferred the cups marked Coke. In this marked test the regions of the brain were most activity occurred was in the medial prefrontal cortex and midbrain, relating to emotion, affect, cognitive control and working memory. The conclusion was that the greater the incidence of exposure to Coke, the better the memory of Coke and emotional ties to Coke created brand recognition and this arousal preference for Coke overwhelmed any taste preference for Pepsi. The research concluded that what one ‘knows’ about Coke is more important than what one ‘feels’ about Pepsi proving brand development is as, if not more important than product development (Conejo, Khoo, et. al. 2007; Fugate 2009). Plassmann et al, (2012) raise concerns over the interpretation of neuroscientific methods described as ‘reversed inference’ where by an activated region in the brain can in fact provide opposite dual meaning thereby providing contradictory meanings to the researcher.

Neuropsychology expert and ‘The Father of Neuromarketing’ describes some of the historic landmarks and antecedents in neuromarketing research (in conversation on 17.4.13):

“The brain produces electrical activity in various frequencies which have been arbitrarily divided up into various packages, so you’ve got delta waves which are very slow, theta waves, alpha waves, beta waves, gamma waves, and these are just referred to different frequencies, so alpha waves for example are the 8-14 Hz range. Back in the ’80s experimenting with this, I realised you could use them in a sense to get a handle on how the brain was responding to commercial messages, and I analysed various television commercials, not with any commercial view in mind; it was academic, just as part of my research, and that was picked up by various trade papers and advertising trade papers, and there was a mild flurry of interest. Tomorrow’s World made a part of their programme about my work.”

“That was 30 years ago, and then nothing happened for about the next 20 years. We were asked to look at this commercially by some people in advertising and marketing, and then it really took off, a man called Al Smith, president of marketing at Rotterdam coined the term neuromarketing in 2002, and a lot of
money was thrown at it: Nielsen’s, the survey company, put about £160,000,000 into it and set up laboratories all over the world to do this. The problem was that they found it wasn’t making them the amount of money they wanted, and it wasn’t something you could scale up, Nielsen’s were used to doing surveys which you could scale up, so if you’ve put people in laboratories and put electrodes on their head then the number of subjects you can run at any time is obviously limited, and it’s quite a time consuming, expensive way of researching things.”

“There was a surge of excitement mostly generated by people who didn’t know very much about neuroscience. Claims were made for the power of neuromarketing which were not justified; it’s been going now for about 10 years. We do certain studies, but I think you’ve got to be cautious and have some perspective about what you can actually tell at this stage. The marketing people made promises that went well beyond what the science was providing; they built a very big edifice on very shaky foundations.”

A world leading professor of cognitive neurology and neuroscience believes that neuromarketing does not work in theory or practice. In conversation on 15.3.13 he says:

“What neuroscience can tell you about how people behave in the real world and what influences their behaviour is extraordinarily limited. The brain is so complicated, and the brain works in a way that is completely different to any other machine that we have. Brains aren’t computers, apart from the trivial fact that they run on pizza and computers don’t, and they’re low-voltage, and computers aren’t, and they don’t have a central clock or a central processor. They’re a lot more complicated, each cubic millimetre of your brain has a 100,000 nerve cells and a couple of kilometres of wiring stuffed inside it.”

“On the one hand, neuroscience can do an astonishing job, given the tools we’ve got, of starting to explain how people perceive the world, how people perceive the world differently, and how people act on the world, and how people act on the world differently, and the interactions between those. But, most of that is done in a laboratory, in mostly artificial settings, and when it goes to real-world questions that are perfectly important, like ‘How do we increase the sales of Mars bars?’, neuroscience has comparatively little to say. It doesn’t mean that people don’t take neuroscience and talk about it an awful lot, but it has little to say, simply because we just don’t have the kind of detailed knowledge of all the different influences on people’s behaviour; how they all interact with each other and how they produce real-world outcomes. Neuroscience does not help the marketing process.”

The professor thinks it is better to measure human behaviour, rather than heat spots, using more traditional methods such as ethnography. He does not think that neuroscience can contribute to marketing or establish product preferences:

“The commonest situation I have on my side of marketing is somebody sitting on my sofa saying: ‘I want to use your brain-imaging machine to give me a better insight into whether people like Pepsi compared to Coke’. But the idea is that somehow the signal that I will record from the brain will be superior to telling somebody about consumer preferences. What I’ll point out to them is that the
signal reflects. That can only be helpful if, somehow, the signal in the brain is a more accurate record of people’s preferences, higher fidelity, than just asking them or doing a blind taste test, or whatever other behavioural test you have, or if it can reveal a hidden desire. But neither of those is really true in the sense that number one: It is remarkable, that non-invasive technology can record what’s going on inside people’s heads without having to poke them with needles or touch them. The signal is very noisy, and what we’re trying to do is use these very noisy signals. It’s a bit like having a heat map of your computer, dynamically, that’s pulsing, and you’ve got this really detailed heat map, which is incredible, and I can produce these augmented reality glasses so I can produce a heat map of the computer.”

“But the question is: ‘Can you tell me what word the subject is typing on a word processor right now?’ You can imagine that’s going to be a pretty hard; not impossible, presumably it is somewhere in code in the computer, the words they’re typing. It’s a signal like that that we have out of the brain, at that kind of level. To all intents and purposes, it is usually better to measure the behaviour than to go to the noisy brain signal.”

“And the second question: ‘Could it reveal a hidden preference?’ My intuition here is that what a business is interested in is selling their product, which comes about through the consumer making a choice to purchase Persil rather than Ariel: an overt behaviour. Say this customer has chosen Persil over Ariel, but really, my brain imaging device has told you that they secretly prefer Ariel. It wouldn’t mean anything in the real world, because they had already chosen Persil. So, you wouldn’t believe it. You’d say, ‘Okay, they’ve got a hidden preference for Ariel, but I don’t know what to do about that.’”

“Maybe, in some sort of future fantasy world, you could uncover hidden preferences and design a covert marketing campaign to actualise those preferences, but it strikes me that what most people who come to see me from agencies are interested in, is improving the power of their predictions about what customers are going to do, targeting their advertisement to influence behaviour, to illicit particular behaviours and then all you have to do is fiddle with the advert, measure the behaviour, and see what works. Neuroscience is interested in saying: ‘How do people make decisions about the world?’ and ‘Why are we here?’; ‘What is human nature?’; everything from the big, grand questions to much more detailed questions, such as: ‘Why do people buy alcohol and drink it and become addicted to it?’ and ‘Why do people make certain purchasing decisions?’ So it’s a legitimate topic for neuroscience, but whether the current state of the art says anything sensible will help you adjudicate in legal matters is a little bit more complicated.”

Providing theoretical and practical reasoning in conversation with an international neuromarketing and neuroscientific expert on 10.5.13:

“Neuromarketing is a term used to describe the application of tools and methods from psychology and neuroscience to marketing, and specifically it tends to be used to describe the capture of consumer subconscious responses.”

This professor disagrees with the professor of neurology on a number of points, including those of practical marketing applications:
“We know that most of our behaviour is actually driven by feelings and emotions that are quite deep seated; we’re fairly routine and habitual creatures so a lot of what we learn becomes automated and involuntary, and yet our behaviour, because it’s driven by subconscious reactions, is essentially the reason why marketing exists as a tool is to find out what consumers want and to give it to them. Most of our behaviour is driven by subconscious responses; people don’t do what they tell us, they don’t do what they say and as consumers ourselves we know this; we don’t wander around thinking about different brands 24/7…”

“They’ve been with us, some of these brands, for so long that we can’t remember what the benefits of the brand were: why we buy one particular brand over another. What neuromarketing does is try to measure and understand the perceived benefits of a product, a new idea, a prototype product or an advert, anything to do with marketing but also instant messaging or government communications. How is the brain responding, and when we say brain you know 90% of this stuff is subconscious so what is the brain actually picking up? What are the things that turn it on, what are the things that resonate with it; the communications that we say; the images we show; the colours we use. We try to find out how all that’s put together in order for manufacturers to have a much better understanding of what we want, because economically if they don’t make what we want, they lose billions in the global economies each year, spent on confirmatory market research where people are literally running focus groups, questionnaires, but they’re fine up to a point, only capturing the tip of the iceberg of all those responses that predict our behaviour. The motivations, the need states, all that stuff is subconscious, and therefore they’re missing that out. Now we’ve got these tools to measure not only the spoken words but what’s not spoken; it gives us a much deeper understanding of the benefits of products and what people really feel, what they really think about all manner of things.”

The world renowned professor of neurology and neuroscience believes that neuromarketing can be misleading and needs to be linked to other forms of research to authenticate results such as ethnography to uncover underlying behavioural complexities. He provides an example of how technology and results can be misinterpreted:

“I once showed, in some work we did for the ‘Today Programme’, that people’s political preferences are correlated with their brain structure. That is, certain parts of the brain are thicker or have more grey matter in people who describe themselves as right-wing, compared to people who describe themselves as left-wing.”

“Now, one of those areas was called the amygdala, an area in the temporal lobe of the brain, which was bigger in those who described themselves as Conservative. So that was written up in the blogosphere and all over the place as ‘fear centre larger in Conservatives’ because the amygdala also lights up when we show people scary faces, or fearful scenes. Does that mean that Conservatives therefore are scaredy-cats, or have an exaggerated sense of fear? No. Because the amygdala does other things; it activates to happy faces. For example, they didn’t write ‘Happy centre bigger in Conservatives’ and the actual link to behaviour is not shown.”
The professor goes onto discuss how focal psychology plays a part in research, how classical economics is a poor predictor of behaviour and how putting consumers under a scanner cannot reveal their behaviour:

“The area of focal psychology, which is essentially what are peoples’ beliefs about how mental processes and the brain works, and how does that affect their world view of what people happen to do next? So the whole world of economics has been revolutionised by importing focal psychology. That’s why Daniel Kahneman got a Nobel Prize.

“It turns out classical economics is quite a poor predictor of what people actually do, whereas if you import loads of heuristics and biases, mental shortcuts we all use, that helps explain an awful lot about how people misjudge risk, how people make random decisions.”

According to the professor, it seems impulse does not work in the real world. He says:

“There is a neuroscience of impulsivity. However, portability is a key issue with subconscious and impulse measurement; if, as a neuromarketer, you want to say: ‘Well, I want to understand what goes on in the brain when somebody makes an impulse purchase.’ The actual act of just recording brain activity can be done, but the interpretation that might help you understand this demographic of a shopper has this particular brain process going on; this demographic of shopper doesn’t. You’ve got to be able to dissect out the activity you measure.”

An international neuromarketing and neuroscientific expert disagrees, and counter argues by saying:

“The reality is academics haven’t done the experiments. They do not have access to the data, because they haven’t asked for those experiments, they haven’t asked those questions of the techniques. There are limitations of some of the tools. We do most of our work online; it’s not using brain scanners or EEG equipment anymore. In 1999 we used brain imaging, so (it was) fMRI for years, but then we realised that it wasn’t going to be scalable because not everyone can afford that, and it had limitations in terms of the interpretation.”

“In some experiments you have to really know what bits of the brain are actually doing, and what they are finding in this experiment. The more complicated the question, when you start to move away from simple visual processing and auditory processing and move into what are the brain areas that code for the sense of value or for the sense of conflict or refreshment and things like that, then it becomes very interpretative and you lose some of the hard science, as you get more complicated. Marketing is complicated; everyday life is complicated.”

“The limitations of fMRI at the moment, relates to the spatial resolution, because we can only see large bits of the brain with fMRI. It’s like looking at continents rather than countries. Now, that may improve in time, more than likely they’re going to get higher and higher resolutions, so if you can see smaller and smaller patches, and if you can see or track the trajectory of what happens across the brain and how things are coordinated, then you can get much more specific about what the brain areas are actually doing.”
“At (our company) we always do explicit and implicit approaches, so what we basically did was we started running behavioural reaction type studies. Things like semantic priming and implicit association tests, things which came out of cognitive psychology in the 1970s. We adapted them, adapted designs for commercial purposes and started running them alongside the brain scanning experiments, and after a while we started saying well hang on a minute, we’re getting the same results from the reaction times as we’re getting from the fMRI, so now that we’ve validated the tools with brain imaging alongside it, we don’t need to fMRI everybody anymore. This has completely revolutionised our business, and 90% of our revenue comes from online subconscious implicit reaction time studies which we’ve developed.”

“If you asked me ‘Where is neuromarketing going?’ I can tell you this, because we work with some of the global market research companies: they happen to be our clients. It turns out that the techniques have become scalable. Things like web tracking online, eye tracking, using webcams, and these tests which we’ve developed which capture your subconscious responses using reaction times, so we force you to respond in less than a second. Your conscious brain doesn’t have time to interfere, and the third one which is developing now which is using webcams from people’s laptops and computers which they can log into from home so they don’t have to go into a lab or whatever, is to capture micro expressions from the face. It’s non interpretive and subjective because you’re capturing people’s response times which you can’t fake. And there’s a big literature behind this as well. With all research approaches, you have to put in the context of what questions can they address, what are their limitations, but it’s better than just simply asking people, which when we know that 80% of all new products fail in the first year to market, backed by focus groups and questionnaires; quite frankly you might as well just toss a coin, at least you get yourself down to 50%.”

In conversation with a sensory marketing expert on 8.5.13, he expands on the comments made by the international neuromarketing expert:

“Research companies are getting much better at implicit research, which doesn’t involve asking a direct question. It involves something called implicit association task. It’s what some neuroimaging is going towards. It’s observing a response rather than asking a direct question. Only that way can we start to uncover what our emotional response is, and only then can we do better marketing and advertising. With focus groups, respondents are either working out what you want to hear or they’re listening to the opinion leader in the focus group. Or you’re trying to get them to scale an answer: you’ve got a seven-point scale, fit your opinion to this scale; you’re just self-editing.”

Cramphorn (2005) discusses how longer questionnaires can provide less introspection and elicit a more honest response from the consumer and a remote form of interviewing provides less skewed interpretation by the researcher. Cramphorn predicted that brand feeling would be used more so to extract implicit and explicit effects such as perception and feeling on advertising, which is currently being deployed by cutting edge neuromarketing companies today. Yet still today less reliable methods such as qualitative
and quantitative methods are used. Boddy (2011) thought that ethnography was powerful at penetrating insights from consumers into product and brand perception, with a richness beyond other types of research, opening up gaps that help expose fallibility in consumer communication messages along with elements such as product and service issues (Jankel-Elliott, 2003)

Fugate (2007: 386) wrote: “the potential for neuromarketing to reduce marketing failures and increase marketing successes seems quite promising; although not without controversy.” Plato used the image of a chariot pulled by two horses, reason and emotion, to help understand the human soul; this helped form the inception of the ‘black box’ theory. Throughout the centuries, the horse of reason has triumphed and is most commonly used to help explain human behaviour (the Economist, 2005 in Fugate, 2007) and throughout legislative approaches. Neuroimaging helps to reunite Plato’s horses of reason and emotion; it can demonstrate that not only do emotional and rational thinking coexist, but they are in fact co-dependent. Damasio (quoted in Fugate, 2007: 386), states:

“Neuroeconomics challenges the notion that emotions can only corrupt economic decision making. Indeed, emotions grab people’s attention and motives them to focus the rational brain on the issue at hand.”

In Figure 4.1, the researcher’s design encapsulates the links between new neuromarketing research technologies and paradigms linked with traditional ethnographic research methods, chaining together multi-research methods to expand our understanding of the effects of emotions on consumer decision-making
Meeting part of research objective 2 as outlined in Chapter 1, this section reviews traditional marketing theory and models as a platform for developing emerging new theories and models to enable a contribution to knowledge presented in this research and in Table 4.2 and Figure 4.3.

Cramphorn (2005) states: “In the past, it was presumed that behaviour was conscious, sequential and rational. The hierarchy-of-effects models of advertising, like AIDA, reflect this ‘old world’ thinking, where ‘emotional’ responses were somehow inferior.” Advances in neuroscience can link advertising to brain receptors and functions.

“Unconscious processes call into question the very foundation of our traditional marketing approach. Surveying consumers assumes that they can consciously identify why they choose a particular beverage, they are aware of the attributes and the critical thresholds for those attributes, and even remember what they chose. … The popular portrayal of the unconscious as illogical and unable to handle flexible, complex decision making, combined with the regular assertion that attempts to influence these non-conscious processes is manipulative and immoral, has hindered the expansion of unconscious research into commercial, consumer-centred applications.” (Martin and Morich, 2011: 485-486)
The Four Ps (McCarthy, 1960), product, price, place and promotional elements is a model born from James Culliton (1948) who described the role of marketing as a ‘mixer of ingredients’. The term was later used by Neil Borden (1964) in an American Marketing Association Presidential Address and in his article ‘The Concept of the Marketing Mix’. The four Ps are essential elements to create a brand. However, it focuses solely on the tangible product and does not take into account intangible service offerings, or indeed the augmented service that one would provide as a fundamental part of promoting a product, such as after sales service or customer service. Therefore, Booms and Bitner (1981) extended the four Ps to seven Ps to take into account the critical elements of people, processes and physical evidence. Kotler et al (1999) presented a preference to refer to the four Cs developed by Lauterborn (1990), consumer, cost, convenience and communication, in light of this being a more customer or marketing oriented approach; he referred to the four Ps as a seller’s mix. Möller (2006 in Goi, 2009: 4) provides criticisms against the marketing mix; namely that:

- “The Mix does not consider customer behaviour but is internally orientated.”
- “The Mix regards customers as passive; it does not allow interaction and cannot capture relationships.”
- “The Mix is void of theoretical content; it works primarily as a simplistic device focusing the attention of management.”

Goi (2009) notes that the concept of four Ps has been criticised by several studies such as those by Lauterborn (1990), Möller (2006), Popovic (2006) and Anon (2008). Originating from the single ‘P’ of price (Chong, 2003), today the 4P’s remain the standard default of the marketing mix. The marketing mix is a conceptual framework used to translate marketing planning into practice (McCarthy, 1960; Bennet, 1997). The marketing mix could be compared to the process of baking a cake; a person will alter the quantities of ingredients depending on the type of cake they wish to bake. The marketing mix can be adjusted in the same way based upon the product being promoted (Goi, 2009). “Marketing mix has been extremely influential in informing the development of both marketing theory and practice (Möller, 2006)” (Goi, 2009: 2).

Borden’s original marketing mix in 1957 had a set of 12 elements namely: product planning; pricing; branding; channels of distribution; personal selling; advertising; promotions; packaging; display; servicing; physical handling and fact finding and analysis.
Judd (1987) proposed a fifth P (people). Kotler (1986) adds political power and public opinion formation to the Ps concept. MaGrath (1986) suggests the addition of 3 Ps (personnel, physical facilities and process management). Vignalis and Davis (1994) added S (service). Goldsmith (1999) suggests that there should be 8 Ps (product, price, place, promotion, participants, physical evidence, process and personalisation). Goi (2009) states that most writers have serious doubts as to the role of the mix as a marketing management tool in its original form, proposing alternative approaches, which has new parameters to the original mix or replacing it with alternative frameworks (Low and Tan, 1995). This is extended in Chapter 6 under the new subconscious neuro-marketing mix.

Rafiq and Ahmed (1995) suggested McCarthy’s 4 P’s should be replaced by Bitner’s (1981) 7Ps framework as the standard mix. The mix has received criticism over the years from the services sector. (Rafiq and Ahmed, 1995; Kurtz and Boone, 1987). On the average, business persons ranked the 4 Ps to be of most importance in the following order: price, product, distribution (place) and promotion. Studies indicate that the ingredients of ‘product and price’ are considered most important (Kellerman, Gordon and Hekmat, 1995). However, none of these models address the key to unlock consumer behaviour, which is presented in chapter 6 table 6.6.

The concept of 4Ps has been criticised as being a production-oriented and not customer-oriented (Popovic, 2006). More of a managerial tool than a consumer orientated model Lauterborn (1990) claims that each of the variables should also be seen from a consumer perspective. The marketing mix was particularly useful in the early days of the marketing concept when physical products represented a larger portion of the economy. Today, the marketing mix most commonly remains based on the 4 P’s. Despite its limitations and because of its simplicity, the use of this framework remains strong and many marketing textbooks and courses have been organised around it (Kent and Brown, 2006); (Goi 2009). This research proposes a vastly different mix of those discussed previously. The new subconscious neuro-marketing mix, which focuses on consumer behaviour as opposed to a managerial check list in chapter 6 table 6.7.

In conversation with a sensory marketing expert on 8.5.13 he states:

“The AIDA model is history but there are areas of the industry that are still holding on to it. Marketing directors today, the Unilever’s and the PGs of this world; they’re like dinosaurs. I think in ten years’ time, young graduates who are getting promoted up towards marketing director level, will change things and I’m starting to see that, but I’ve been doing this for twenty years and it’s only in the last 2 or 3 years that I’ve seen a real sea change. Why are we over-
relying on vision and rational arguments and ‘talk at’ when it’s about creating great experiences?"

“I believe marketing and branding is setting up a promise, about creating a story and a promise. The problem is too often the promise is not congruent with what consumers really experience and the best brands don’t need to spend too much on the promise because the promise is lived out in the product experience. Everyone uses the Apple example but it’s true. You kind of know what to expect from Apple and you get it every time. So they don’t need to spend that much time creating the promise, in fact what they do is joke about it, and have someone with a sneeze and someone without a sneeze and say which one do you think is the PC user and which is the Apple user? That’s all they really need to do, but the brilliance of the brand is lived out in the product. So much so that when they come up with the one duff product people don’t care; they forget them don’t they? Their reputation is so strong because they’ve consistently delivered over the years they can get away with it."

“It astounds me the amount that brands will pay on advertising with no direct link between what they’re spending and increase in sales. They just say ‘oh no, it’s about building the brand,’ and that seems to be it. Yet, as a sensory branding consultant, we’re creating an environment where consumers are happy to come and spend and browse. The model is broken and the Chartered Institute of Marketing are living in the past. So the past was: ‘we just advertise – we don’t know why.’ A good example of one working with me is the owner of Abercrombie and Fitch. He doesn’t research anything and just goes with his gut instinct and says: ‘look, I think I want to create a nice fragrance here; it’ll be a fragrance that appeals to the kids; mums and dads will probably hate it but kids like strong smells.’

“Most research fails completely because it’s all research techniques: are they asking rational questions? The very act of asking a consumer a question immediately puts them in a rational frame of mind and you get rational answers. You’re completely failing to uncover that 95% is emotional response.”

Heath et al. (2006) contend that idea that advertising is based on processing of information underpins all formal advertising models. This places greater importance on cognitive informational learning, than it does on affective or emotional learning. This cognitive dominance, in turn, leads to an assumption, universal throughout marketing text books, that attention toward advertising is invariably beneficial. In relation to rational marketing models, Martin and Morich (2011: 483) observe that:

“Behaviour can be unconsciously influenced through the perception of others’ behaviour. We unconsciously assimilate the traits and stereotypes of others as we perform behaviours. Even our goals can become activated and pursued unconsciously. The consumer behaviour models that posit only conscious information processing and the deliberate formation of attitudes, beliefs and intentions lead to purchase decisions do not accommodate this reality.”

Despite years of economic theory being based on the ‘rational consumer’, substantial recent evidence provided in this literature review shows that emotional responses are
integral to the decisions individuals ultimately make. Ironically, the misleading regulatory
elements of the CPRs follow a similar process to that of the seven Ps of the marketing mix
as conceptualised by Booms and Bitner (1981). A dichotomous relationship exists in that
methods used by marketing are also used within the CPRs to counteract marketing activity.
Businesses are prohibited from misleading in areas such as the product and its nature or
availability; price, such as the manner in which it is calculated; place, in terms of
geographical or commercial origin of the product; promotion in the way the goods are
presented; people, in terms of qualifications; processes in handling of complaints; and
physical evidence in terms of awards and distinctions (Table 4.4 and Figure 4.3). The
CPRs are criminalised and carry heavy financial penalties of up to £5,000, and up to two
years’ imprisonment for serious offences.
### A Dichotomous Relationship Between Consumer Law and Marketing

#### The Marketing Mix: You must market on the basis of…

<table>
<thead>
<tr>
<th>Marketing Element</th>
<th>Marketing the Mix (Example)</th>
<th>Legal Element</th>
<th>Legal Requirement (Example)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Product</strong></td>
<td>Sell / focus on the benefits of the product, do not sell features</td>
<td><strong>Product</strong></td>
<td>Nature or availability: stick to the facts and product features</td>
</tr>
<tr>
<td><strong>Price</strong></td>
<td>Aim to get the best market price</td>
<td><strong>Price</strong></td>
<td>Manner in which it is calculated, such as VAT</td>
</tr>
<tr>
<td><strong>Place</strong></td>
<td>Do not tell consumers of unethical origins, show alliances that do not exist</td>
<td><strong>Place</strong></td>
<td>Geographical origin: be honest about the origin of goods and services</td>
</tr>
<tr>
<td><strong>Promotion</strong></td>
<td>Seek to promote offering better than competition to increase sales</td>
<td><strong>Promotion</strong></td>
<td>How goods are presented: must be legal, decent and honest in the portrayal of goods and services</td>
</tr>
<tr>
<td><strong>People</strong></td>
<td>Get the best sales people who can sell better than competition</td>
<td><strong>People</strong></td>
<td>Qualifications</td>
</tr>
<tr>
<td><strong>Processes</strong></td>
<td>Sell after sales service that does not exist</td>
<td><strong>Processes</strong></td>
<td>Handling of complaints</td>
</tr>
<tr>
<td><strong>Physical Evidence</strong></td>
<td>Make the company appear larger than it is</td>
<td><strong>Physical Evidence</strong></td>
<td>Awards and distinctions</td>
</tr>
</tbody>
</table>

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**Table 4.2: Theoretical framework table of relationships between the 7Ps marketing mix and the 7Ps of the CPRs: A tabular comparison**
The Dichotomous Relationship Between Marketing and Law

Figure 4.3: Theoretical Diagrammatical Network Presentation of Opposing Aims of Marketing Communications and Consumer Protection from Unfair Trading Regulations (2008)
Stuyck et al (2006) discuss how as early as the 1930s psychologists devoted attention to “what goes on deep down in the average customer’s head” (Laird, 1935: 15). It was found that decision rules define consumer decision making processes, such as human limitations, circumstances and the type of decision (Antonides and van Raaij, 1998).

“Commercial practices, fair or not, aim at manipulating these elements to influence the consumer decision. In that sense, commercial practices are about increasing persuasion by reducing resistance.” (Stuyck et al, 2006: 127).

Concession strategies and role-taking (Prus, 1989) aim at persuading consumers to take a particular transaction decision (Galbraith, 1958). There is a fine line between the practicalities of alteration from distortion, tricks of the sales person can result in persuasion tactics such as an impulse purchase when a product is seen in a window heavily discounted or when the positioning of an item on the shelf is such because the store is selling space to the manufacturer. (Stuyck et al, 2004:127) or “targeted advertisements that one receives together with the monthly credit card bill. They all intend to manipulate consumers into taking transaction decisions they would not have taken otherwise. In many cases the line between ‘persuasion’ and ‘appreciable impairment’ will be very thin.” Cramphorn (2005:255) notes: “long-trusted tools will become redundant.”

4.4 Theoretical divergence: an excursion into subconscious marketing

Subliminal marketing techniques have caused considerable controversy, with academics divided over the potential existence and effect of such stimuli. Nowadays, so called subliminal promotional techniques are banned under a number of regulations including Product Placement and Electronic Communications. However, subliminal and subconscious are not prohibited under the CPRs. This research focuses on subconscious marketing techniques. In order to understand subconscious marketing, we first need to establish how these techniques differ. For example, Moore (1982) argues that subliminal influence should not be taken as a possibility, and Silverman (1976) believed that any stimulus could be subliminal, whereas Heath (2012), having developed the subconscious model of seduction, forms a more stable modern day understanding of these techniques and separates the terms subliminal and subconscious with specific relevance to marketing techniques. This can be supported by neuromarketing studies carried out by Lindstrom and Calvert (2008) who unwrap the subconscious mind, yet who merge and confusingly interchange the terms subliminal and subconscious. New seminal research is uncovering the truth behind subconscious consumer behaviour. Mclean (1952) discussed that the
conscious mind is influenced by both the subconscious mind and genetic instincts of which the conscious mind is not aware.

Broyles (2006) wrote about how the notion of subliminal advertising began in 1957 when a movie theatre in Fort Lee, NJ experiment subliminally directed the audience to ‘eat popcorn’ and ‘drink Coca-Cola.’ David Ogilvy, founder of the international advertising agency Ogilvy & Mather, noted: “unfortunately word of [this] found its way into the public prints, and provided grist for the mills of the anti-advertising brigade.” (Ogilvy 1983, 209). Psychologist and marketing research James Vicary was said to have conducted a study which involved flashing projections onto the screen instructing movie goers to “eat popcorn” and “drink Coca-Cola”. This was presented onscreen below limen at 1/3,000 of a second. Vicary claimed to have increased sales of these products by using this method, which alerted the media and there was huge public concern over psychological manipulation (Moore 1982). After other researchers attempted to replicate his experiments and failed, Vicary admitted to creating the hoax to revive his research business. (Gray, 2000). The ‘experiment’ and results having been an exposed hoax, the concept of subliminal advertising continues to be an issue today. Heath (2012: 80), discusses how the term ‘mere exposure’ was coined by similar to the term ‘subliminal’ defining exposure that could change attitudes. Though subliminal is often referred to below 40 milliseconds. It is thought that advertising which operates below the threshold of perception has been shown to be weak at best and generally ineffective (Moore 1982): a conclusion supported by a meta-analysis of 23 studies by Trappey which showed that the effect of subliminal marketing stimuli on influencing consumers’ choice behaviour or selection process is negligible (Trappy 1996:). Though recent experiments have shown that words exposed subliminally, even if not perceived, can be conceptualised, and can cause us to manifest the same feelings as would be created if they were exposed at normal levels. However, there has been a recent successful replication by manufacturers of Liptons Tea, PepsiCo, which showed when people were thirsty they could encourage them to drink Liptons Tea.

The researcher was privy to empirical evidence following a research conversation with a senior expert psychologist who divulged anonymous corporate information. The researcher then presented this information in a set of circumstances to the OFT lawyer, whereby a multidisciplinary team of neuroscientists and psychologists, excluding marketing representation, were invited to use their skills to help launch and promote a new grooming product into the UK market place. Methods such as priming were used in a quest to
understand if certain priming or subconscious marketing methods can in fact go under the radar of legislation. The OFT Lawyer responds on 16.5.13:

“In that question there is kind of implicit assumption that consumers don’t want to buy this product. There is likely to be a problem when they over-consume, where they don’t need it or want it, but buy it anyway. In the case of the grooming product, there is a market for it and people want to buy products so the question is well, is it a product that is being sold to people at a price they want to pay, is it not a very good product, but have been encouraged to buy in an underhand or misleading manner? We might be concerned if people came up with cunning ways to get people to buy a product that was not actually very good, and that is one of the things we say in relation to personalised pricing and areas where we would be concerned where business invests a lot in personal pricing and we would have a problem for harm to the market, if businesses invest loads of money in neuromarketing, if prices go up and the quality does not improve.”

The same circumstances were presented to the CEO of the ASA on 24.4.13; he refutes that multidisciplinary experts can manipulate the consumer:

“I’ve got to say, I think that’s a slightly alarmist view. It implies too much that gets those sorts of people in a room and they’re going to be able to manipulate us. Marketing is, for all of the discipline involved, and the theory behind it, and the evidence of what often works and what doesn’t, for all of that, marketing is pretty hit-and-miss and it’s difficult to do. There is an element of magic to it. Knowing what I know of how often marketers fail, or partially fail in what they’re trying to do. I don’t think it matters whether you’re talking about marketers, psychologists or any expert professional. Anything that paints a picture of them being able to manipulate people is naïve.”

Bornstein argues in 1992 that the most obvious application of subliminal or subconscious is in the area of repeated exposure to advertising to develop consumer’s emotional connections to product, Bornstein thought that the less aware consumers are about these emotional signals then the better these messages would work, as rational evaluation by the consumer could weaken the effect. (Bornstein, 1992). An improved psychobiological explanation of emotional processing was provided by Damasio (2000). He provides evidence that emotions and feelings are formed in what he calls the ‘proto-self’, whereas thoughts are formed in what he calls ‘core consciousness’. He shows that; “exposure to subliminal stimuli actually results in attitude enhancement greater than that produced by briefly presented recognisable stimuli” (Bornstein, 1989: 278). Synodinos (1988) describes a recent approach which uses phenomenal awareness as a basis for distinguishing between conscious and unconscious perceptual processes. Disagreements revolve around the effectiveness of subliminal stimuli and not around the existence of unconscious mental activities (Glucksberg, 1982).
We see divergence of behaviour as outlined in the researcher’s new Internal Consumer Subconscious Marketing Processes model (Figure 4.4 and further extrapolated in Chapter 6, Table 6.6) detailing the subconscious behavioural model of human decision-making and post rationalisation reasoning, creating and constructing new models of reality, thus supporting the exposition of the theory by ideas from experts.

4.5 Marketing communications regulatory frameworks and theoretical insights

As we see in the theoretical framework of traditional marketing models and the CPRs in 4.4 (Table 4.2 and Figure 4.3), a dichotomous relationship exists between marketing communications processes and marketing communications regulations.

Icardona and Poncibo (2007: 31) state:

“The Unfair Commercial Practices Directive accordingly establishes a list of the information the consumer needs before purchasing: the main characteristics of the product, the price (inclusive of taxes), delivery costs (where applicable), and
the right of withdrawal. It also introduces…that the traders should give it in a clear, intelligible, and non-ambiguous way.”

Aditya (2001: 743) says:

“deception has a pejorative connotation implying negative intent … A psychological understanding of deception in marketing is pivotal to an effective policy on the issue. Moral and legal issues are inextricably intertwined and revolve around the perceptions of consumers and policy makers. Legal mandates on the issue of deceptive marketing practices are abundant in terms that can be interpreted only from a moral standpoint as, for instance, the question of unfairness (Petty, 1998) or the thin line between creativity and deception (Davidson, 1996).”

Care needs to be taken when using the term ‘deception’ as there is often misuse of this word by researchers, Preston (1982) comments how the word itself carries an assumption that that a person has already been duped. Richards (2009) raises concerns about the reliance on secondary sources of data instead of focusing on the primary statute and court opinion. Deception can take place at various stages of the sales process, prior, during and post-sale. Deception frequently comes to light long after a sales transaction has taken place, for example spare parts and durables such as printer ink being unduly expensive if not stated at time of purchase constituting deception by omission. This type of deception has been witnessed in the UK within a number of markets and a recent example is that of banking staff blatantly, yet under the radar of most customers, including, in most cases unnecessary, Payment Protection Insurance (or PPI) on customers’ accounts such as credit cards and loans. The controversy had caused a huge problem in banks having to repay money to these customers and offering a ‘boom’ opportunity to legal firms to be employed to retrieve these monies on behalf of consumers (Aditya, 2001)

Another type of deception involves packaging a product to make it appear similar to a better-known and more popular brand. Some brand packaging can be deliberately designed to cause confusion by providing very similar designs to leading brands. Supermarket own brands are particularly well known for designing their packaging along the lines of well-known household brands. Several private-label brands in many countries engage in this practice on a regular basis (Kapferer, 1995). Such deception is often dismissed as brand confusion, whereas brand confusion is seen as arising from a combination of consumer characteristics, situational effects, and/or marketing actions. Aditya (2001) believes that service industries provide more room for deception than manufactured goods. Services, being intangible, force the consumer to think in abstract terms. Products that have a highly
desirable image are particularly prone to deception by the seller. Such products and services may result in high consumer arousal and excitement that is likely to inhibit rational cognitive evaluation, making it relatively easy for the seller to close a sale without disclosing all relevant information.

In conversation with a senior commercial marketing lawyer with a leading British law firm on 19.4.13, he outlines some of the principles of using surreptitious marketing techniques:

“There is a fundamental long-standing principle that runs through advertising regulations which prohibits surreptitious advertising and requires, certainly in the CAP code, and in the UCPD, that advertising must be recognisable as such.”

Stuyck et al. (2006: 148-149) state:

“…the UCPD could have been drafted more lucidly by deleting and rephrasing the now redundant notion of ‘material distortion of the economic behaviour’. Apart from that observation … if it is true that commercial practices are about increasing persuasion by reducing resistance, in one way or another, commercial practices will always aim at manipulating the ability to take an informed decision in such a way that a consumer does what he would not have done otherwise. And if that is true, the criterion ‘thereby causing the consumer to take a transactional decision that he would not have taken otherwise’ will be a very hard criterion to distinguish ‘manipulation’ from ‘appreciable impairment’, possibly leading, again, to ‘diverging interpretations’.”

In conversation with regulatory expert consumer policy regulator on 7.3.13 he discusses how laws are generally a bad attempt at dealing with anything. He believes that a complaint driven system is an appalling way of dealing with matters of consumer disputes.

“Regulators are always accused of falling down on the job; they have two responses: we need to change the law and we need more resources. Rarely will they say ‘We can deal with this’. Estate agents are a very good example with very few complaints and very few people knowing they’ve been ripped off. Once a sector is regulated there is pressure for more and more regulation of that sector. Regulation is wholly disproportionate. If you look at what they do, it is to provide the best value to the customer. If you want outrageous mark-up what about water, the mark-up that Starbucks is making on coffee? If you look at buying a house, the biggest transaction people do, it’s the house that is the transaction, not the mortgage, and it’s completely unregulated. Yet if I’m buying something for ten quid and there is no logic in the weight of regulation across the board, why is general insurance regulated and not bus services?”

Arkush (2008: 1365) says:

“law and legal theory treat emotion primarily as an object of reasoned decisions and policy making and as a source of interference in decisions, but empirical evidence suggests that emotion is a behavioural process that is critical to
decisions. This shift in viewpoint has widespread implications for law, legal theory, and policy. … it suggests that we should re-evaluate legal doctrines that rely on the assumption that humans are mostly emotionless actors and re-examine areas of law that concern consent, states of mind, and the causes of behaviour. [This] suggests that we have no … internally consistent definition of welfare on which to base policy.”

In conversation with a member of the House of Lords, 13.6.13 the Rt. Honourable member explains the procedure of processing a Bill in Government and Parliament.

“Every bill goes through both houses, some start in the Commons some start in the Lords and they have a number of stages. The first reading is not a debate it is just a getting permission to print a bill, second reading is a debate in principle, then it goes to committee stage and report reading stage and then goes to the other house. The committee stage is in the commons and normally in standing committee which is comprised of 18 members. In the 4th stage, this gives opportunities to amend the bill. We have more flexibility to move amendments in the Lords and because no one party has overall majority in the Lords. The law can be a rather blunt instrument sometimes; you need to educate and inform people. You can’t run a nanny state.”

Another member of the House of Lords provides his contribution to the matter of procedures. In conversation on 28.3.13, he informs how the House of Lords works in practice and how it interfaces with the House of Commons, along with concerns he raises about the quality of knowledge and understanding by communities such as marketing, as to how to engage with the likes of the lobbying procedure.

“Every piece of legislation has to be signed off by Ministers presenting that it is compliant with European legislation. If it’s not done there’s some civil servant who is going to go home with less monthly pay than he came. And that’s exactly what Parliament is for, that’s exactly what the Upper Chamber is for particularly. The Lower Chamber looks out on a political basis. The upper chamber is what’s known as the revising chamber and has a slightly different set of rules in that it does not have a guillotine. It’s totally different. When we’re doing these things means we can talk forever. We can go on and on and on forever and you’ll find most pieces of legislation, complicated legislation are when they come into the House of Lords as opposed to coming up from the House of Commons. They may not even be in a bill. It may just be passed on a nod. There is a major lack of understanding, a sort of lethargy amongst nations. There is a vista; there is this view amongst some people who are totally uninformed that Parliament and Government is the same thing which it is not as we are there to hold Government to account. What I find particularly disturbing is that in areas of great importance, a lot of people do not canvass us, talk to us or give us the benefit of their grievance.”

According to Parliament UK, a Bill is a proposal for a new law, or a proposal to change an existing law presented for debate before Parliament. A Bill can start in the Commons or in the Lords and must be approved in the same form by both Houses before becoming an Act
(Law). A bill starting in the House of Lords follows the format of a first reading, which takes place without a debate and is read out by the member of the Lords in charge of the bill, which is then printed. At the second reading the members of the Lords debate the main principles and purpose of the bill and propose amendments. The bill then goes to the committee stage where a detailed line by line examination and discussion of the amendments takes place. A key point of difference between this process in the House of Lords as opposed to the House of Commons is that the Government cannot restrict the subjects under discussion or impose a time limit. At the end of the committee stage the bill moves to report stage, which gives all members of the Lords a further opportunity to examine and make amendments to the bill. The report stage involves detailed examination of the bill. The bill is then printed and moves to the third reading, which is the final chance for the Lords to amend the bill, which is not an option in the House of Commons. After the third reading if the bill started in the Lords it goes to the House of Commons for its first reading. However, if the bill began in the Commons it is sent back after its third reading for consideration of the Lords amendments. If there are no amendments in the Lords the bill is sent to the Monarch for Royal assent. Anon (Parliament UK 2015)

Rotfield and Taylor (2009) caution about the problem of focussing marketing regulatory issues and research around fad headlines in academic research such as those relating to obesity and alcohol consumption, which then becomes an overriding issue of headline research, potentially blocking out more important issues. There should be no presupposition that by intensifying these headlines that we should expect to adjust a law or alter the basis of regulation. Understanding behaviour may have long-term gains for marketers but gives regulators little benefit. Often researchers produce material that support their arguments and ignore opposing conclusions.
The Passage of a Bill

Figure 4.5: Procedure of the Passage of a Bill  
(Source www.parliament.uk 2015)

Key: 1= First Reading; 2= Second Reading; C=Committee Stage; R= Report Stage; 3= Third Reading; A= Consideration of Amendment
In conversation with the CEO of the ASA on 24.4.13, he explains how the ASA adjudications and CAP codes mirrors the CPRs:

“The CPRs are the UK implements. The UK regulations that implement the UCPD and the UCPD is a maximum harmoniser. Maximum harmonisation means that member states cannot be stricter than the UCPD, nor can they be more lenient with the law they set. Directives that are not maximum harmonisation, is within the gift of the member state to be even stricter, if they want, and that sometimes happens; with maximum harmonisation you cannot be, and UCPD is a maximum harmonisation, so even if we choose to be stricter than the UCPD has implemented into the UK law, through the CPRs, we couldn’t. We cannot be more lenient.”

“The CAP codes can’t give the green light to an advertising practice that is against the law. The CPRs don’t cover everything, of course. There are claims that fall under the codes, that we assess on the grounds of whether they’re misleading or not, that are not covered by the CPRs. Whatever the definition is that is in the CPRs, if the advertisement is caught by the CPRs, then the codes have got to reflect the CPRs when we bring the codes to bear on that advertisement, within the view of the CPRs, namely the Unfair Trading Practices, including misleadingness. Importantly, an idea does not get caught by the CPRs, as they only cover goods and services; this is where CAP code fills this important gap.”

The CEO goes onto provide an example of this type of advertisement:

“An ad by an anti-wind farm campaign group published in their local newspaper made claims about how, when this wind farm is built, the value of property is going to plummet. They were unable to substantiate it, because there isn’t good enough evidence demonstrating this assertion. We would tackle that under the code, under the misleadingness clause in the code. My understanding is that this ad would not fall under the CPRs, because it is not directly connected with the supply or transfer of goods or services but directly connected with promoting an idea, which is not caught by the CPRs, though the reality of the situation is that there is no case law so adjudications on matters of misleading offences is often a matter of judgement.”

He continues, explaining:

“In practice, we must look at the wording of the CPRs. We know that the transactional decisions test the average consumer tetra. We’re very familiar with that. But, there is no authority on how that law and those tests are applied for the overwhelming majority of advertising and marketing type claims that appear in ads. There is just no case law. So we might end up in arguments with complainants or advertisers on a particular case, along the lines of: ‘You’re not properly interpreting the CPRs; you are going against the law. You can’t do that, it is maximum harmonisation’. The response is: ‘Well, you might be right, but you might not’. Our view is that what we’re doing is in line with the CPRs and is defensible, and is a good fit, and there’s no case law that proves you
right, in the same way that there’s no case law that proves us right; it is a matter of judgement. That’s the reality of the situation.”

The CEO believes that the ASA has a good model with intuitive expansion and often takes into account the behaviour of the complainant.

“We are almost always dealing with issues that involve at least a bit, and often a lot of subjectivity. Hardly ever is a decision black or white for us. One relies on the institutional experience within the organisation, making good judgements. Occasionally we have to make adjustments. We will very often be writing back to someone, saying: ‘Look, We’re sorry you’re upset by the ad. We hear what you’re saying, but we’ve got to say that we don’t think your view is likely to be shared by enough people to make us ban the ad’. That is very often our reply. Because someone has either got a very strong view about something, and their view isn’t typical."

“However, some products or services attract stricter rules, because of the nature of the products or the services, such as alcohol. Notwithstanding that, if a product can be advertised, albeit subject to restrictions, then we need to just look at the way it is being advertised. There are lots of occasions where products and ideas are being advertised that the majority of people would say are demonstrably good. Take an example of a charity, this is a force for good in the eyes of the majority, yet they’re using very dubious tactics. Say they’re using shock tactics, for example, they’re causing serious or widespread offence, and they are misleading people about where their charitable contributions are going to go. That’s just as misleading as an ad. They’ve got a bad ad, a good cause, and there are other occasions where products which a lot of people think are bad need to be regulated, but where the advertising is perfectly good. It is complying with the rules. So, I think it’s about the ad, what’s happening at the subconscious. This is a fascinating topic, to look at in the context of advertising, but it is really important to recognise that it is part of a wider issue than just advertising.”

A senior commercial marketing lawyer with a leading British law firm finds that over regulation can often destroy marketing effectiveness. In conversation on 19.4.13:

“I think that in some areas the regulation perhaps doesn’t work in the way it was intended to work and in the end there may be better ways of doing it. It could be more effective or better. For example, financial services advertising regulation has become very complex and so form based that you end up with a massive display of disclosures on advertising that possibly reduces its effectiveness, because there’s so much text that people have to read, or text that has to be spoken very quickly at the end of a radio broadcast – this ends up being less effective than if there was less that had to be said.”

According to the Vice Chairman of an international marketing agency, in conversation on 29.4.13, he states that the advertising industry wants to be regulated:

“It is in the interests of the advertising industry for advertising to be regulated, because if anybody can just say any nonsense like this car goes 200 miles per
hour, when it doesn’t. If that were the case, then advertising would actually lose some of its power.”

Rotfeld (1992, 2003) suggests that the mere existence of advertising regulations has a positive effect on practice because such regulations generate a strong incentive for advertisers to tell the truth. A consumer regulatory expert and Chairman of the AAC explains, in terms of acceptable marketing communications, where the weathercock of law and regulations is right now in the spectrum of tolerance. The gap between real life and what people want to see in ads is growing. In conversation on 11.4.13 he says:

“We’re not getting more tolerant as a Nation. You might have thought Britain was becoming more liberal. People seem to have a separation between what they have in their own households, or might come across in everyday life, and what they want to see on TV advertising and what they see as acceptable. FCUK isn’t acceptable now, it wasn’t 10 years ago, it wasn’t 20 years ago, and it probably never will be; not in Britain.”

Incardona and Poncibo (2007: 35) contend there is testimony to the fact that:

“The average consumer test reflects the economists’ idealistic paradigm of a rational consumer in an efficient marketplace. This notion may be useful for economists’ calculations and projections, but departs from the unpredictable realities of individual human behaviour and is hardly an appropriate standard for legislative or judicial sanctions. The European average consumer does not fully correspond to his or her legal construction.”

Everson (2006: 106) raises the point:

“Law proves to be too self-contained and too blunt an instrument to allow for the coherent translation of economic and political conceptions and constructions of the consumer into an integrated legal framework of regulation.”

Rotfeld and Taylor (2009) Figure 4.6, (adapted in Chapter 6 Figure 6.2) presents a network diagram of political conceptions and constructions of the consumer into an integrated legal framework of regulation. The central element is the box labelled laws and regulation as Rotfeld and Taylor (2009: 8) contest that the “laws themselves form the foundation of government-based consumer protection”. Rotfeld and Taylor then consider the impact on other stakeholders such as self-regulators and multidisciplinary elements such as advertising strategy, consumer behaviour and economics, which they believe has gained influence in the regulatory realm. However, the legacy to past links with economics remains. In addition, the model does not show how consumers process information as they contend that there is minimal gain to the regulatory agencies in understanding this matter. The model is purposely limited in the ability to look at the relationships between the
different boxes themselves which may present a challenge to its concept, although Rotfeld and Taylor (2009: 12) note:

“…recent advances in neuromarketing techniques, particularly the combining of technologies such as fMRI (functional Magnetic Resonance Imaging), galvanic skin response, or eye tracking studies with traditional methods appears to have increased the potential of this type of research (Wilson, Gaines and Hill 2008).”

Figure 4.6: Rotfeld/Stafford Model of Advertising and Public Policy Research
Source: Rotfeld and Stafford (2007: 72 in Rotfeld and Taylor, 2009: 8)

4.6 Melding multi-disciplines

Limited consideration is given to the multidisciplinary nature of consumer decision-making during the buying process. Limitations of one discipline and one method with multiple growing channels of communication are potentially missing opportunities for our understanding of this complex area, often referred to as ‘cross-disciplinary collaboration’. A preferred term in the context of this work is ‘multidisciplinary marketing’ as we are discussing multidisciplines within marketing and more external newer theories, such as behavioural economics and neurosciences technologies, which are only normally used in more elitist corporate environments with higher budgets. The core of this multidisciplinary work is the ‘mother discipline’ of marketing as the platform of the multidisciplinary research setting of meeting the criteria of research objective 1 in Chapter 1, in support of a multidisciplinary setting to meet the overall research questions and objectives and the continuation of the inductive conversations with a purpose (Crowther and Lancaster, 2009).

“Decision-making crosses all disciplines, with the social sciences exporting empirical research studies to many applied fields, including economics,
government, organizational management, marketing, public opinion and jurisprudence” (Tetlock, 2002:94). “Recent findings of neuroscientists have brought us much closer to a realistic conceptual understanding of the process underlying how advertising affects brand sales” (Cramphorn, 2005: 274).

In conversation with a world renowned professor of neuroscientist on 15.3.13, discussing how neuroscience works with law:

“A multi-disciplinary approach that involved neuroscientists is probably not directly relevant to regulation of the press. On the other hand, a multidisciplinary grouping of people that includes representatives of Hacked Off might be very good, although the Prime Minister seems to think otherwise.”

“Yes, in general, scientific knowledge should be used in an approach to drafting the law. Criminal competence is a good example. At what age does criminal competence begin? Legally, that is set by legislation that dates back to the 19th century. Since the 19th century, we’ve learned an awful lot about the moral and emotional development of children and adolescents. We’ve learned an awful lot about the development of adolescent brains into early adult life, and we can say some quite complicated things about how well children and adolescents and early adults can distinguish right and wrong.”

The professor poses the rhetorical question: “Should that information control how we draft laws about criminal competence? Quite possibly.”

In conversation with a professor of cognitive and computational neuroscience, and expert in consciousness and a multidisciplinary collaborator, on 18.4.13 he discusses the value of neuroscience in a multidisciplinary setting:

“Neuroscience would be of value in a situation of arbitration, or even framing policy, where arguments or decisions that rest too much on things such as homo economicus or assumptions about what the extent of subliminal stimuli could be used. This area of research could benefit from consultation with those people who study precisely that. If the impact of some advertising is being judged by assuming homo economicus, it might be useful to consult with a neuroscientist whose work is challenging that model or refining it. It might make a more informed decision. If this is the way that the regulatory system is going, we will need, in the future, to take account of individual differences in perception. The fact is that more choice can make people feel worse, and we shouldn’t embed these assumptions into regulatory frameworks. Internet advertising is much more personalised; privacy issues are in abundance, and things even like eye tracking can be really interesting in terms of what exogenous cues attracts peoples’ gaze. These things can be studied, and I would imagine that in the near future we have eye tracking. I can use eye tracking software to see where people are looking at on a screen to decide how I place adverts, and that has a massive economic impact.”
In conversation with the chair of the Advertising Advisory Committee on 11.4.13, who operates as an independent panel advisor to both the ASA and BCAP which advises the Advertising Standards Authority and Broadcast Committee of Advertising Practice on TV and radio advertising standards, the chair discusses the diversity of backgrounds of the variable disciplines that operate within these organisations:

“There are a mixture of industry and laypeople. There are people there from all the various industry backgrounds, advertisers or advertising agencies. There are people there who have a particular interest in social policy, education, and young people. People who have an interest in fair trading issues; people who have an interest in environment; because, advertising can touch on all those kinds of things. And what you will have is an adjudication mechanism that quite clearly excludes any industry player that might have a significant interest in the advert being discussed.”

The chair of the AAC did not see the relevance of involving experts such as neuroscientists and psychologists on the Council, but did feel that there was a place for this level of expertise to be involved in the ASA. The perception of laypeople varies, so having laypeople would require them to be representative of all groups.

“I think it’s very important that you do have laypeople there, who can replicate and represent, to a sense, what the general public are thinking, or might think, and can also be credible to the rest of the world as not being policy-makers, but people who have a deeper understanding of social concerns and latent issues.

“What I do think is important is the work of people like neuroscientists and child development psychologists, for example, which is a big issue at the moment, such as health experts. There are a lot of people at the moment whose work needs to input into the world of the ASA, both in terms of the adjudications and the nature of the risks that are being assessed, and also in relation to advertising rules themselves, which is set up by something called the Committee on Advertising Practice. Technically, the advertising could be capped there, on the broadcasting. It seems to me that the more relevant expertise one can get to feed into that, the better, because advertising regulators need to be on top of that sort of thing. You have got to understand what the public thinks of these various things, and you’ve got to understand what sorts of risk is necessary to provide a proportionate response.”

The professor of cognitive and computational neuroscience and expert in consciousness thinks:

“A multidisciplinary approach to consumer marketing is a very laudable thing, and I think in your context there are clear cases when it is valuable. So, if things like homo economicus are so central and concepts like subliminal are so enshrinined in how your field views its subject matter, there are clear lines at which multi-disciplinary becomes of theoretical and practical importance. With online advertising and eye tracking experimental methods, there are ways of
characterising the impact of things that we can measure in the lab that could very well be useful for advertising people, whether on the generative or the regulatory side. It takes time to see the concrete value of multi-disciplinary, it takes time to get people from within their particular specialism to effectively communicate. This is evidenced in more collaborative projects between my group and the medical school, and mathematicians getting involved with psychiatrists, and it is working.”

The vice chairman of a leading international marketing agency believes it would be wise for the drafters of legislation to be considering at greater depth some areas such as behavioural economics and neuroscience. In conversation on 29.4.13:

“I think multidisciplinary consultation is essential. I think that at the core of our development of legal frameworks that a more consultative role of behaviour economics and neuroscience is essential. I think that one of the cruel things of economics, Richard Thaler says this, is that it’s seized control of the levers of decision-making with an essentially autistic model of human behaviour. Homo economicus is effectively a non-social entity. As a result, I would argue that quite a lot of business decisions and quite a lot of government decisions are taken without reference to anyone with a background in psychology, behavioural economics, and neuroscience, any of the softer social sciences”. As Richard Thaler says: “economics has a completely undeserved monopoly among the social sciences. I also go as far as to include things like design and advertising as well.”

Chamberlain and Broderick (2007: 199, 201) consider that:

“The use of observation methods cannot only enhance our understanding of the consumer emotion experience but also enable us to collaborate with researchers from other fields in order to make progress in understanding emotion. … Emotion is a key explanatory construct of consumer behaviour.”

This research provides an overview of theoretical and methodological considerations drawing from the fields of psychology, neuromarketing, law and marketing. Quantitative “scales ignore some of the emotions that are particularly central in people’s lives” (Chamberlain and Broderick, 2007: 206).

Martin and Morich (2011: 484) state:

“This initial assumption posited by John Howard and Jagdish Sheth in their seminal work ‘A Theory of Buyer Behaviour’ has shaped and influenced the theoretical and practical approach to consumer behaviour for 40 years.”

From a methodological perspective, Genzuk (2003: 1) discusses how ethnography lends itself well to a multidisciplinary approach:

“Ethnographers often work in multidisciplinary teams. The ethnographic focal point may include intensive language and culture learning, intensive study of a
single field or domain, and a blend of historical, observational, and interview methods.”

“…a theoretical framework representing a multidisciplinary phenomenon will always be dynamic and may be revised according to new insights, comments, literature, and so on. As the framework is multidisciplinary, the theory should make sense for those disciplines and enlarge their theoretical perspective on the specific phenomenon in question.” (Jabareen, 2009: 55)

![Figure 4.7: The Multidisciplinary Marketing Mesh](image-url)

**Figure 4.7: The Multidisciplinary Marketing Mesh**

In adaptation from the Neuromesh created by the researcher and introduced in Chapter 4.2, the multidisciplinary marketing mesh shows marketing as the central core as the mother discipline; gathering within the nest of the mesh are neuro-marketers, psychologists, regulators and neuroscientists to form a coherent team of consumer experts to conquer the challenges of multidisciplinary research.

**4.7 Summary**

Interlinking existing frameworks and models with newly created definitions of emerging models to review theoretical options have presented in-part answers to questions posed in Chapter 1. Specifically, Chapter 4 has addressed an opportunity to expand on theoretical contribution to knowledge. Previously polarised traditional and new research methods are magnetically drawn together and framed in the new neuromesh model presenting ethnography working hand in hand with neuromarketing techniques.
Issues relating to theoretical models and legal constructs, like the dichotomous role between marketing trajectories and prohibitive marketing practices outlined in the CPRs and the fine line of interpretation of the equilibrium of promoting goods and services within a framework of outdated legislation, have been examined and addressed. We see the dichotomy of regulations and marketing tactics detailed in Table 4.2. The theoretical framework of the study is a structure that can hold or support the theory of this research work Swanson (2013). This Chapter has specifically delivered responses to research question 3 regarding neuromarketing and ethnographic research relating to rational and subconscious levels of behaviour linked to the legal framework of the CPRs as well as meeting the first and second objectives listed in Chapter 1: thereby enabling a review of the variables of this research and maintain continued symbiosis between the research questions, objectives, theoretical literature and empirical data.

(Some aspects of ethnography research, such as participant observation, are almost by definition inductive, as researchers try to make sense of new findings uncovered in the field) (Wilson and Chaddha, 2009: 549)

Duneier (2002: 1572) argues:

“The ethnographer who allows theory to dominate data and who twists perception to cover the facts makes a farce out of otherwise careful work.”

A general framework to explain, predict and master phenomena as a basis of conducting research has been provided. New frameworks such as the Multidisciplinary Marketing Mesh (Fig 4.7) and The Internal Consumer Subconscious Marketing Process (Fig 4.4) have been developed to crystallise new phenomena in the inductive ethnographic theoretical process. Chapter 5 further examines and develops narrative themes based upon the initial inductive data-driven ethnographic fieldwork conversations to deliver specific empirical answers to all research questions through expert ethnographic communication, which extrapolates from the literature review in Chapter 2 to present current day expert opinion and theoretical advancement of knowledge.
Chapter 5 Findings

5.1 Introduction: brief encounters with reality

The research was initially inspired by my previous similar research, which involved a number of expert interviews in a marketing and regulatory setting. During discussions with my mentor; then Chairman and Partner, of the marketing law firm Lewis Silkin. This was further expanded by conversations relating to ‘marketing’ propaganda in World War 2 whereby the French Resistance used material in plain sight of the Nazi war machine. The French were able to deliver propaganda in plain sight using metaphors, which would only be understood by the French people. It persuaded me to enquire how this might have evolved, and how it could apply to current day marketing practice.

Immersion has been part of the inductive approach through hanging out, conversations and observation of behaviour. (Goulding, 1999)

This was expounded by my attending a number of presentations given by experts such as Rory Sutherland, Professor Anil Seth and Professor Barry Smith along with marketer and author Martin Lindstrom and immersing myself in the knowledge imparted by a number of experts. This revealed intertwined and interrelated disciplines of opinions and literature, which produced a curiosity led investigation using blue skies empirical research. This formed the emerging themes presented in section 5.2. Some of the questions posed during interviews, along with the main research questions and objectives, led me to uncover and decipher the literature as outlined in chapter 2.

A continuation of the data driven inductive ethnographic process has progressed this catalyst from conversations with a purpose to snowballing into semi-structured expert interviews, which are threaded through the theoretical underpinning in the narrative of this research in Chapter 4. Narratological models of meaning provide an important linkage between philosophical tenets and hermeneutic interpretation (Goulding, 1999). Anderson makes a strong case for the inductive theoretical approach. His inductive fieldwork has been influenced by theoretical work and theoretical perspective. Anderson’s fieldwork precedes this perspective helping him to formulate questions concerning the social organization of the subjects (Anderson, 2007: 1536):

“The most penetrating ethnographic questions often resulted from a fusion of concern that reflects both the ethnographers engagement of the social setting as well as his or her own sociological orientation.
Theoretical knowledge aids in the interpretation of new findings uncovered in the field also the researcher’s ability to formulate creative insights in the discovery and integration of empirical findings and theoretical ideals is paramount.

Duneire points out that:

“The idea of diagnostic ethnography is not that ethnography extracts a theory out of clinical data. Rather the idea is that the ethnographer comes to a site with the sociological equivalent of the doctor’s medicine bag of diagnostic tools derived from already-existing sociological theory and uses these tools to generate a specific explanation of the ‘symptoms’ in the site” (Duneire, 2002: 1566).

The nature of this research required a high quality standard of knowledge and authenticity from the experts interviewed. Experts were identified from a number of disciplines including: Marketing; Psychology; Neuroscience; Neuromarketing; Philosophy; Regulators; Government Representatives; Law and Academia, totalling 26 expert respondents.

Morse and Mitcham (2002) summarise the approach in relation to the constants of qualitative research, comprehension, synthesising and theorising. With regard to comprehension, the phenomenologist attains this by first reflecting on his/her own experiences. The next stage is to enter into dialogue with others to gain experiential descriptions, after which transcripts are examined and key words highlighted. Phrases are sought that will provide or enhance an understanding of the experience and literature that is used for further experiential descriptions and compatibility with the findings of the research (Goulding, 1999).

Ethnographers can draw on a wide body of existing literature to allow them to make sense of their experience, restoring some of the detail that other types of market research reports simplify and obscure (Roberts, 2005). Ethnography is good at getting to the detail and truth that respondents miss out in direct questioning (Serf, 2007).

Synthesising involves merging the data and applying thematic discourse analysis in order to identify common ‘structures’ of the experience (Figure 1.7). These structures provide the researcher with an understanding of the world which contributes towards the development of theory. On the issue of theory, Morse and Mitcham suggests that phenomenologists do not label themselves as theorists in the strictest sense; rather linkages from the data to theory are based on reflections of theoretical or, more commonly, existential literature. This chapter illustrates the complexities of the implications of
subconscious marketing techniques and the impact on the marketing profession and regulations. Therefore themes of a variety of undiluted expert observations and interactions are presented through many voices using critical theory.

5.2 Emerging themes: a phenomenological ethnographic presentation of deep encounters with reality

Using a theoretical sampling approach (Spradley, 1979) the key component of this research is its data driven inductive approach utilising themes and patterns derived from initial conversations cascading into themes and patterns across respondents’ contributions and the theoretical literature. It requires the researcher to move back and form between the empirical data and the literature (Ozuem, 2004) in order to understand the depth of the intertwining links.

Phenomenology studies conscious experience as experienced from the subjective or first person point of view. The aim is to discover knowledge through an open unbiased description of experience without any attribution of cause or other explanation (Habershon, 2011). Fusing data from multidisciplinary experts presenting inductive observational patterns the words of expert respondents accepting both their perception and provenance of experimental reality, in order to preserve the quality, their words are presented in the context of empirical narratives. Using semi-structured interview techniques their statements were probed to extrapolate out further narrative to become depth informants of their discipline. The data collection and the insightful literature is intertwined and glued together by the structure of the inductive interview questions and the responses given by the expert research sample. The researcher’s interpretation is selectively spotted throughout the respondent’s narratives. (Figures 1.6 - 1.7)

There are many ways to analyse informants’ talk about their experiences (Mayher, 1983 Spradley, 1979; Taylor and Bogdan, 1984) and thematic analysis is one such way. From transcribed conversations, patterns of experiences can be listed: this can come from direct quotes or paraphrasing common ideas. Thematic discourse analysis combines and catalogues related patterns into sub-themes. “Themes are defined as units derived from patterns such as conversation topics, vocabulary, recurring activities, meanings, feelings, or folk sayings and proverbs” (Taylor and Bogdan, 1989: 131). Themes are identified by bringing together parts of ideas, thoughts or experiences.
When gathering sub-themes to obtain a comprehensive view of the information, it is easy to see a pattern emerging. This is done by reading the related literature. By referring back to the literature, the interviewer gains information to make inferences from the interview. Once the themes have been collected and the literature has been studied, the researcher is ready to formulate theme statements to develop a story line. (Aronson, 1994)

Focusing on identifiable themes within patterns from expert respondents; key main themes emerged, which are: Misleading Marketing Communications: Perception: The Average Consumer in Life and Law and Impulse. Description and definition of the main theme emerged as integrated summaries within each main theme. Patterns of synergistic keyword themes developed, which appeared threaded through the expert responses (See Table 5.1-5.4 and Figure 5.5). In addition, isolated key words emerged with direct links to the summarised description of the main theme.

Table 5.1 – Misleading Marketing Communications (5.3): Keywords presented are threaded through as commonalities within differing disciplines by narratives demonstrated from regulators, lawyers, marketers and a representative from the House of Lords all intermittently lending to the discussion of common words such as: ‘pricing’, ‘horse meat’ and ‘misleading’. The key word repetition becomes endemic throughout this chapter, as expanded within the body of the structure of summarised description of the main theme being mentioned in relation to 5.3.2 adjudication process. We see extrapolated out from regulators, marketers and neuroscientists key words such as: ‘Puffery’, ‘Regulations’ and ‘ASA’. We see a similar process occurring during responses from marketers and regulators within 5.3.3 summarised description of behavioural decision making and marketing intent and we find synergy in keywords such as; ‘Intent’, ‘Consumer’ and ‘Advertising’. Synergy continues within 5.3.4 under the radar: A force for good or covert creativity?, whereby key word patterns from various types of marketers, regulators and researchers of ‘Force for Good’: ‘Creativity’: ‘Social Marketing’ and ‘Nudge’. 5.3.5 Proportionality of fines, enforcement and redress, multidiscipline debate key areas such as ‘Consumer Restitution’, the balance and appropriateness between ‘Fines’ and ‘Custodial Sentences’ and ‘Priority’ over proportionality in the regulatory decision making process.
<table>
<thead>
<tr>
<th>Main Theme</th>
<th>Summarised Description of Main Theme</th>
<th>Keywords</th>
</tr>
</thead>
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<tr>
<td>Misleading Marketing Communications</td>
<td></td>
<td>Food Labelling: Horse Meat: Pricing: Misleading</td>
</tr>
<tr>
<td>Psychology of Adjudications</td>
<td></td>
<td>Puffery : Regulations: ASA</td>
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<td>Behavioural Decision Making and Marketing Intent</td>
<td></td>
<td>Intent: Consumer: Advertising</td>
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<td>Under the Radar: A force for good or covert creativity?</td>
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<td>Force for Good: Creative: Social Marketing: Nudge</td>
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**Table 5.1 Misleading Marketing Communications**

Table 5.2 – Perception (5.4): Correlating keywords from multidisciplinary respondents suggest ‘Priming’: ‘Preconditioned’: ‘Memory’ and ‘Perceive Advertisements Differently’ are key indicators of consumer perception. Summarised descriptions were Transparency and Manipulation (5.4.2), distilled keywords, were ‘Trust’: ‘Manipulated’ and ‘Celebrity’. Subconscious State of Mind: Perception of unconscious attention (5.4.3), represented key words such as, ‘Nudge’: ‘Subliminal’: ‘Limen’: ‘Flashing’ and ‘Non-conscious’.
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<tr>
<th>Main Theme</th>
<th>Summarised Description of Main Theme</th>
<th>Keywords</th>
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<td>Perception in Memory and Emotions</td>
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<td>Priming: Preconditioned:</td>
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<td>Memory: Perceive advertisements differently.</td>
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<td>Transparency and Manipulation</td>
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<td>Trust: Manipulated:</td>
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<td>Subconscious state of mind:</td>
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<td>Nudge: Subliminal:</td>
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<td>Perception of unconscious attention</td>
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<td>Limen: Flashing: Non-conscious</td>
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Table 5.2 Perception

Table 5.3 - The Average Consumer in Life and Law (5.5): Sparked passionate debate from some expert disciplines such as marketing, neuroscience, neuromarketing and psychologists, academics in law and a member of the House of Lords as to how such a measure could still be in use in regulations; although practising regulatory and legal disciplines upheld the notion of the average consumer as a good measurement in law. However, they remained in the minority and their position was not well defended. Overwhelmingly it was agreed that consumers perceive advertising messages differently. Key words emerged as ‘Clapham Omnibus’: ‘Non –Existent’: ‘Perceive Ads Differently:’ Rationality: ‘Economic Man’: ‘Homo economicus’ and the ‘Rational Consumer’ (5.5.2) experiences a similar pattern of response with deep concern from experts about this draconian measurement. Words such as ‘Profoundly dishonest’: ‘Heuristics’: ‘A Dead Concept’: ‘A Nonsense Measurement’: ‘Economics’: ‘Decision Making’ and ‘Post Rationalisation’. 
Table 5.3 The Average Consumer in Life and Law

Table 5.4 - Impulse and Persuasion: The Conscious and Unconscious Consumer: All experts admitted to making impulse purchases, some to a very high value from works of art to a house purchase. One senior regulator in particular was very keen on impulse purchasing on a weekly basis. All got a great amount of enjoyment and excitement out of their purchases, with very little regret. Key words presented by respondents were: ‘Unconscious’: ‘Compulsive’: ‘Addictive’: ‘Persuasion’: ‘The Persuasion Industry’ and ‘Lidl’.

Table 5.4 Impulse and Persuasion
Fig 5.5. Network Diagram: Connecting the Core Problem with the Themes and a Presentation of the Thematic Interrelationships and Key Words

Can Marketing Communications go Under the Radar of Consumer Regulations?
5.3 Misleading marketing communications

Previously, determining whether or not an advertisement was misleading proved difficult and controversial. (Russo, Metcalf and Stephens, 1981:119).

“Naturally, advertisers and consumer advocates rarely agree on whether a particular ad is misleading. More disappointing, however, is the failure of researchers to agree on a broadly applicable definition of ‘misleadingness’ or a procedure for identifying it. The problem is further complicated by the conflict between the behavioural paradigm of researchers and the jurisprudential view of regulatory organisations.” (Gardner, 1975; Preston, 1976).

During semi structured interviews, a major topical news item emerged regarding a case relating to a misleading food labelling. The news broke on 11th February 2013 and involved certain pre-prepared food products such as beef burgers, lasagna and spaghetti bolognise being sold by major British supermarkets such as Tesco and Aldi and proven to not be containing the beef produce stated, but instead containing large proportions of horse meat and some contained pork. This scandal dominated headlines and was therefore on the minds of the experts whom I interviewed as a prudent reminder of how misleading communications can appear in various guises. (BBC 11.2.13). Custodial sentences were latterly ‘Dished Out’ to the perpetrators, with up to 2.5 years’ imprisonment. (Glum, J., IBT 18.10.15)

One marketing agency owner commented:

“The big crime in horse meat was the misrepresentation. If someone actually sat down and said you know what, we as a nation have been eating horsemeat in a percentage of 4 or 5% in our foods for years and it hasn’t done us any harm, so therefore if you see horse meat represented as 4 or 5% of the ingredients of Findus beef burgers, but don’t say it’s 100% beef when it’s not, but if we can get over that, and actually recognize that we’ve been eating horse meat for the last 10 years in all sorts of things and it hasn't done us any harm then, there might be some good in it, but people aren't brave enough, we've been conditioned that horse is bad, but why is a horse any different to a cow?”

He goes onto discuss that the consumer may not perceive the misleading element as the crime, but the fact is that they are eating horse meat:

“Some people will feel how horrible it was that they were misled. Other people will think how terrible it was that I was eating horse meat. They’re not looking at it in terms of the misleading part of it, they're looking at it in terms that they might have eaten Shergar!”

Marketing journalist and head of CIM research, agreed:

“The problem is we read the label and we thought it was one thing, and it actually turned out to be another. The reason it blew up into such a story is
because we’ve got this kind of cultural resistance to eating horse. It’s interesting that the way things get reported, that it’s about being ‘contaminated’. The issue is very squarely a misleading one. Tesco in particular has been so on the case when taking out full page adverts to reassure customers, because, our trust can quickly come tumbling down.”

He goes onto describe how misleading consumers through labelling on products such as cereal bars can be done in a way, which is not so obvious:

A legal director from the Office of Fair Trade provides the argument on where to draw a fair line between law and marketing on 16.5.13:

“I think challenges for regulators and legislators are to draw a line between what is fair game for marketers and advertisers to do and what is illegal and they have come up with a line and there it is. Things that side of the line are legal and the other side are fair game; clearly a significant part of marketing is to influence people to buy your product. The whole point of doing this is to tell people attractive features of products to create brand awareness and loyalty and make sure people want to buy your product and that is money well spent for businesses. The problem is where we advertise in a misleading or aggressive manner.”

This however, takes no account of the unconscious effect of marketing communications on the consumer. The director goes onto discuss how the Office of Fair Trading have acted in connection to misleading supermarket pricing:

“It is not always straightforward to know when a real discount is a real discount and when it isn’t. We produced some principles last year for supermarket pricing where we had some concerns about the way that supermarkets were advertising prices so we said: Look let’s agree some principles that you will follow and they did, for example, so they should not have this kind of yo yo marketing pricing. We made sure that offers were transparent.”

A leading British Professor of Academic Law disagrees with the Lawyer from the Office of Fair Trading from his personal experience of shopping; he asserts that supermarkets potentially prey on our pain of having to ‘do’ the shopping. In conversation on 2.5.13:

“I think that the way supermarkets present special offers is often quite misleading and the reason why you don’t actually pick it up is because the main aim is to get the stuff in the trolley and get out of there as fast as you can, and not really wanting to be looking at every detail on the product to see whether this is actually the best buy. The less it hurts to spend more time than needed in the supermarket then you can probably say: OK I probably could have got that a couple of pounds cheaper if I’d really taken a hard look at it all, but in the end I’d rather get out there quicker than worry about the £2 I might have given the supermarket.”

Supermarkets have long capitalised on consumer confusion and ambivalence over supermarket pricing promotions. For example, weight content and special offers promoted
as ‘bargains’ or ‘only £2.00’, special offers and so on can present a myriad of complexities to a person on the weekly ‘grand prix’ shop, that the mind, unlike homo economicus, just cannot disseminate quickly enough and is overridden often by time constraints and oppressive visual marketing techniques. We see later in this work mention of ‘doing the shopping’ and ‘going shopping’, which are fundamentally different routines for the consumer based upon basic ‘needs’ and ‘wants’. The chore of the need to do the shopping in basic Darwinian type terms that we need to eat to survive, yet conversely ‘going shopping’ is about free-will and enjoyment and fulfilment of our wanting to derive happiness from an experience, such as buying clothes. Therefore, the opportunity for supermarkets to mislead and entice people within seconds during their speed purchasing is perhaps a good trick indeed.

One member of the House of Lords revealed an illuminating behind the scenes insight as to a visit from senior industry food processing representatives rallying support before the shock press announcement regarding the horsemeat scandal. In conversation on 28.3.13.

“I heard it here a few days before the whole horse meat business scandal started up. I had a visit from about 70 people from the food processing industry and they represented themselves and represented two hundred and twenty thousand employees.”

The Rt. Hon. Member goes on to define the importance of marketing communications:

“The purpose of marketing communications is an opportunity to communicate ... Marketing communication is to let people know that there is a product available which might fulfil a need but it’s also got the other equally important point about trying to develop a need.”

Expert respondents focused on the issue of horse meat, which mirrored the approach by the tabloid press at the time. Not one expert mentioned the fact that pork was surreptitiously swapped for beef by the perpetrators of the crime. In conversation with consumers, the researcher found that this caused outrage in a number of religious factions such as the Jewish community, many of who considered this a worse crime than the covert horse meat content.

5.3.1 Expert definitions of misleading

Many definitions were gathered within the literature review in chapter 2. The researcher elicited current day expert definitions in order to understand expressions of similarity and differences in meanings within the groups of experts. The dictionary definition of definition means: ‘A statement of the exact meaning of a word, especially in a dictionary.’
However, one expert disagrees with the definition of definition as not to be an exact meaning of a word, but expressed how we as individuals perceive definitions, in terms of our perception of a word or phrase. A leading British Professor of Philosophy and multidisciplinary sensory collaborator describes the process of establishing meaning of a word, phrase or term. In conversation on 1.5.13, he describes how we anchor a definition:

“You reach for something in your history that associates with those words rather than giving a definition.”

<table>
<thead>
<tr>
<th>Dictionary Definition of Misleading: ‘Giving the Wrong Idea or Impression’</th>
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<td>Expert Type</td>
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**Table 5.6 Definitions of Misleading**

An expanded expert definition in conversation with a Vice Chairman of an International Marketing agency on 29.4.13:

“Well, the first thing is obviously dishonest. Dishonest is obviously misleading, because you’re saying something that’s not true. However, the experience is a product of expectation.”
5.3.2 Psychology of adjudications

A legal director from the OFT explains how the CPRs have an exclusion for puffery, even though the ASA uses this term in adjudications. The OFT believe in the ordinary sensible person's judgement not to take messages literally. In conversation on 16.5.13:

“The CPR's has exclusion for puffery. That's not without prejudice to marketers who produce creatives such as Red Bull gives you wings: it clearly does not give you wings, does not enable you to jump out of buildings and fly - it doesn't, but that would not be on any basis be ruled to be a misleading claim because clearly an ordinary sensible person would not assume that literally Red Bull gives you wings, but there may be a subliminal thing going on there by saying hey Red Bull is really going to pick me up and make me feel great and I will enjoy drinking it, but it quite difficult to start getting in someone's brain and start thinking something is wrong with that.”

This is the challenge and dichotomy of consumer regulations. Puffery is not a term well understood by most people in the marketing profession so exclusion in the CPR’s seems. Though the ASA does use the term in self-regulatory commentary.

The Chairman of the Advertising Advisory Committee explains the extent and boundaries and limitations in ASA adjudications and how they need to follow the law, yet the ASA cannot be proactive. In conversation on 11.4.13:

“The ASA can and does regulate misleadingness in relation to advertising, and advertising is interpreted quite broadly, but it doesn't, for example, extend to product labelling. It doesn't extend to what companies might say in their press releases or their annual reports. It doesn't necessarily extend to what might be in give-away leaflets. It does extend to, most recently, to the commercial material on websites, which is quite proper. Obviously it extends to things like TV, radio, posters, film, cinema advertising, advertising in the press. Their remit has quite a clear boundary, and up to that remit, they will certainly deal with stuff which is significantly misleading and there are lots of definitions of that, but there's an overall misleadingness requirement to. The ASA has got reasonably wide powers in that area. They can't get massively out of step with what the law says, or with what the technicalities might be in food regulations, and that kind of thing. So if there's something in a bottle that looks like orange juice, but isn't, is that really a breach of anything much? I mean, it's misleading packaging, but it's difficult to rule against that. ...Perhaps, more seriously, their ability to do things proactively without waiting for complaints is a bit limited. So, they may have to wait for complaints, and, quite often, when people are being seriously misled, they won't complain because they don't know they're being misled.”

He goes onto discuss that some advertisers want to push the envelope:

“The whole idea of advertising regulation is not allowing you to do everything you want. The advertisers will always try to push the envelope a little bit, but most of them, if they're sensible, don't want to push it too far; what will happen as a result, is a major loss of consumer confidence in advertising as a medium.”
The main issue is related to those companies who perceive the ASA to be a weak regulator as persistent offenders who gain profits providing low cost products attract a certain type of consumer who is often not bothered by some underhand tactics.

The CEO of the ASA provides an example of a complaint where they decided not to ban the advertisement and how their job is not about being social engineers. In conversation on 24.4.13:

“...The issue of gender stereotyping in ads, and it is featuring on people's radars now; particularly the younger generation are much hotter on this. They don't like seeing women in ads in the, sort of, traditional women's role. So, the Morrison's ad that ran at Christmas, which featured a family, and she was doing everything, basically, and he was doing nothing. We didn't end up banning it. We took the view that, look, whether we like it or not, whether some people like it or not, this is actually the reality for the vast majority of people. We've got to make sure that we are representing society, with all of its warts, and aren't trying to be social engineers.”

A marketing agency owner describes the ASA’s common sense adjudication process. In conversation on 28.2.13 he recalls:

“There is an element of science. The people at the ASA do a brilliant and very thorough job. They go into tremendous detail and are fair, and more often than not they get it right, we see Government and Europe making what we think are stupid decisions. Very often the ASA rulings are based upon the common-sensical approach.”

Another advertising agency owner concurred:

“As a regulator, the ASA is thought of as one of the best; in terms of the best example from industry to industry. It does a very good job of absorbing what is going on at a European level, and making sure that is reflected in advertising rules as they develop, and that's a constant- it's like painting the Forth Bridge: it never stops.”

Another marketing agency owner and direct marketing expert discusses the need for a level playing field in law and adjudications for advertising on the Global stage. In conversation with on 1.3.13:

“What's the risk and what's the reward of breaking legislation. We're in a global economy now so the fact someone is allowed to do something in a region where someone else isn't allowed, gives them an unfair competitive advantage, so I think generally regarding legislation, it is the people who behave that get punished and the punishment for the people who break the rules isn't generally bigger than the reward for the company.”

One expert consumer policy regulator, firmly believes that there is a need to prioritise and not to keep redrafting the law: In conversation on 7.3.13.
“The trick for regulators is to prioritise. Most will prioritise the easy tasks; others what the boss likes doing. From experience with working with regulators, a change in the person running the regulators can change the entire approach. The weakness is lawyers, government lawyers who think all you need to redraft the law that bans certain things.”

An advertising agency owner thought that the ASA used a heavier handed approach than the actual legislation required them to use on 28.2.13:

“When regulations came in in terms of high fat, salt and sugar in terms of the advertising and promotions of those products, the ASA code went far heavier into restricting those than the legislation required. I think what there has to be is something which is fair and balanced, but in order to maintain your status as a self-regulator doesn't mean that we can come in really tough on those things where it doesn't need to be so tough.”

A vice chairman of an international marketing agency explains the psychology of the upper class consumer: In conversation on 29.4.13.

“That's why Dukes don't wear Dolce and Gabbana. The logic is if you're a middle class person you're desperately afraid of being thought working class. But if you're upper class you're not really afraid of being thought working class, but you're frightened people might think you're middle class.”

He also explains the cultural differences and the dichotomy of how advertising can reverse sales of produce:

“There are cultures where absolutely highfalutin language is de facto, so any Spanish language luxury hotel has to go into a sort of orgasmic use of adjectives. Whereas in Britain there tends to be an understated elegance heuristic, which is places that are really 5 star don’t have to go on about it. There are also categories where advertising is counter-productive. In wine for example, in areas where people prize connoisseurship and try to maximise this, actually advertising wine would probably reduce its sales, because the idea is that all the best wine is so good that demand exceeds supply, and advertising sends the signal that supply exceeds demand.... This is the actual case in Eastern Europe. This is how different people can react heuristically in a different way to the same signal. In Eastern Europe after Communism, advertising depressed sales, because they’d grown up in a place where for 30 years, the only reason the Government ever advertised anything was that it was so shit they couldn’t get rid of it. So for anything that was any good in 1970s Poland, there was a queue for it. So the only reason the government would ever say heat your house with coke or eat lots of potatoes was that they had a surplus of really bad potatoes that were starting to rot and desperately needed to get rid of them, so you didn’t buy anything that was advertised. So when Western companies first went to Eastern Europe and started advertising things, people said well, these BMWs must be rubbish because BMW are trying to get rid of them! So that’s saying that any communication and any message and any product and any decision, is framed, based on experienced heuristics by the receiver; not by the sender.”
World renowned professor of neuroscience, on the matter of context, goes on to explain how all may respond in perception in different ways to an advertisement which may call into question the appropriateness of adjudication based on marketing intent: In conversation on 15.3.13

“So, everyone has a different personal history of sense in the world. We've seen different things; we've heard different things. Everyone’s brain is slightly different. There are commonalities; that's how we can have things like advertising, because if advertising didn't produce a certain commonality of behaviour, it would be pointless. So, if people seeing an advert, one person started laughing and the other person started crying, the other person ran away screaming, that wouldn't be a very effective advert. The purpose of an advert is presumably to inform us about some product and to influence our behaviour, to make us buy it.”

Xie (2009) notes that the constant exposure to marketing tactics can make an average consumer more suspicious about the sincerity of marketers and truthfulness of the persuasion messages (Boush, Friestad, and Rose 1994).

5.3.3 Expert Definitions of Puffery

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<th>Dictionary Definition of Puffery: Exaggerated or false praise</th>
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<td>Definition of Puffery</td>
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Table 5.7 Definitions of Puffery

The purpose of eliciting the response from the marketer was to establish if this term was well understood by marketing experts. As we can now see, variance existed between respondents.

Discussing the origin of the term puffery with the Chief Executive of the Advertising Standards Authority (ASA) he relates to the term as current day exaggeration and obvious boasting. In conversation on 24.4.13
“It was the carbolic soap company court case, in the 19th century - because it was or it wasn't 'mere puff', and the term 'puffery' has derived from the expression 'mere puff', and by being a puff. The judge meant this is just a bit of floweriness; people aren't going to take it seriously. So puffery, to us, means a claim that the audience is not going to think is supported by objective evidence; a kind of boasting, obvious boasting, 'We're the best fish and chip shop in Wigan'. Has this advertiser got empirical evidence demonstrating that it is the best fish and chips, or is this them just expressing their own opinion about how wonderful they are... We would expect them to hold appropriate evidence. The take-out here for the audience is not that this had been proved in a study or a trial, or a piece of market research but an opinion. If that's what we think, we'd say that's probably puffery.”

When the researcher presented that some marketing experts were unaware as to what the term ‘puffery’ meant in definition and that asked about whether the term might be outdated or more so a term used in American law, the ASA CEO responded:

“... It doesn't surprise me that people aren't aware of the term. It's obscure. When I first started here, I had not heard of the term 'puffery'.”

The researcher’s experience from marketing informants strongly suggests that the majority of marketing professionals had no idea what the term ‘puffery’ meant. In fact, when the researcher presented expert marketers with advertisements which had been banned due to puffery; they could not recognise the flaws in these advertisements as that of ‘puffery’. With these limitations it may disclose that marketing intent is indeed marketing ignorance.

The vice chairman of an international marketing agency exclaims his surprise that the ASA is still using the term ‘puffery’ as this term lacks definition. In conversation on 29.4.13

“I'm surprised it's still in the ASA actually, because it's something you can’t define. Also you have to allow for a hyperbolic exaggeration, because a lot of advertising is based on a product appearing to have magical powers, and that’s not treated as though it’s a product claim. So what’s quite interesting there I suppose is I don’t quite know why you have to legislate against it. Generally, exaggeration is extraordinarily ineffectual.”

5.3.4 Behavioural decision making and marketing intent

In order to understand whether the ASA adjudication process, which is based around marketing intent, is in fact the correct way to adjudicate, the researcher elicited responses from experts as to whether or not people may perceive marketing communication messages differently in any sensory modality. If we perceive messages differently, is the ASA correct in basing its adjudication process around marketing intent?

Various studies in behavioural economics and neuroscience provide insight into the limitations of human decision-making. It falls within the purpose of advertising and
marketing to influence the economic behaviour of consumers, and it follows from the wording of the UCPD, that it is legal to distort the economic behaviour as long as the distortion is not “material” or as long as the practise is not contrary to the requirements of “professional diligence.” Trzaskowski, (2011).

A senior commercial marketing and advertising lawyer with a leading British law firm succinctly stated: “Yes we do perceive messages in differing ways.” He goes onto comment as to why the ASA uses marketing intent as the basis of their adjudications:

“I think the reason why they take that line is to protect the consumer to a higher degree, so if an advertiser says "we intended to achieve X, Y, or Z, or we intended our message to be A, B, or C, the ASA isn't hamstrung by that and can say that's all very well to say that's what you intended; nevertheless, in our judgement we think that the likely effect would have been 'this', and if they deem that to be harmful because it might have been misleading then they will ban the advertising, so I would have thought that it's preferable, reasonable and sensible to take the line that they do, rather than to be questioning what the intention was.”

The lawyer goes onto explain the important role advertising plays in terms of innovation:

“Advertising plays an incredibly useful and important role in society; if you didn't have advertising then there would be no incentive for companies to innovate, or improve their products, or to become more efficient and reduce their prices; there would be no way of informing consumers of how one product is better than another. All sorts of nonsense is spoken about advertising, and all sorts of criticisms are made.”

He goes onto provide an example of how advertising regulations around plastic surgery and financial services have impacted upon these industries:

“At the sharp end ASA has been looking a lot at advertising for plastic surgery, I think one could make a case that advertising that makes women feel inadequate about their body shape and that they should undertake plastic surgery as a result of that, that is a very serious concern, and it is worth noting of course that advertising in this country is very heavily regulated, no advert gets on television that hasn't been through a very serious screening process in advance, at the script stage and at the final film stage. The ASA has been around a long time and is very effective at dealing with non-broadcast and TV ads that once they've been on air... Financial services advertising regulation has become very complex and so form based that you do end up with a massive display of disclosures on advertising that possibly reduces its effectiveness, because there's so much text that people have to read, or text that has to be spoken very quickly at the end of a radio broadcast, this ends up being less effective than if there was less that had to be said, but you know it could be said more effectively.”

One public sector marketing communications expert commented on 26.2.13 with surprise that marketing intent was not considered in the adjudication process.
“I’m surprised they don’t take marketing intent into account at all. I think you should really be looking at some sort of balance between the intent and the consequence.”

One consumer goods editor of ‘Which’ magazine thought the adjudication was the best it could be: In conversation on 22.4.13.

“Well, I think it’s the best they can do. They have to do it that way. It can never be the perfect system because of course they can’t know that, but I think it is also assumed that the advertisers and marketers are honest about what their intentions is and you can’t trust that either.”

One marketing expert agrees with the ASA process of adjudication basing their procedure of consumer perception, however intent is very difficult to prove and the offence experienced by a consumer can be simply that the consumer is having a ‘bad day’:

“I think protecting the consumer is paramount. To the best of my knowledge the consumer does come first so if a consumer makes a complaint about an ad, then the ASA should consider the seriousness of the offence as if was truly unintentional. Companies don’t do things intentionally it might be out of innocence of our design. If the ASA is driven by complaints about one brand they are bound to look into it more, but they do rule against consumers as well if the code has not been breached in a way that is damaging to the individual and some individuals quite frankly have a go to see what they can get out of it.”

A member of the House of Lords commented on the process. Referring to the ASA on 13.6.13 he said:

“I thought that they (the ASA) were concentrating on ads that were misleading and dishonest and grotesquely deceptive and doing it for the consumers. So, the advertiser wants to send a message out and the consumer may not always get the message in the same terms then something has gone wrong there...”

The CEO of the ASA, provides an example of a stubborn advertising offender with a huge budget spend on advertising, who repeatedly breaks the code of practice:

“When we interpret how we think people understand ads, we do take into account quite subtle behavioural, psychological things. For example, anchoring and adjusting, people see an initial price, and they go, ‘Oh, that’s interesting’, and when they go through the three or four-stage process on the website, they then find out at the penultimate stage that there’s an additional fee, as a surcharge. Vistaprint have got form! And they are still featured on our non-complying advertisers blacklist.”

When an advertiser repeatedly breaks the code, this should be an indication that the advertiser has no respect for ‘naming and shaming’ and therefore large fines relative to profits might be a better approach to bring the offender back in line with the law. The CEO continues to expand on other examples of pricing practice which is considered misleading to consumers and how the ASA has operated ahead of legal reform in the area of pricing

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transparency linked to consumer psychology. It could be argued that with research to illuminate how vastly differing human perception is of simple day to day matters, let alone targeted advertisements, that the ASA may wish to review the adjudication process to take into account other factors of significant human variations of perception of the many senses, and to anchors of experiences such as belief systems and general behavioural psychology. (See Table 6.3)

“We have published some report adjudications in the last few months that all sorts of prices, such as theatre ticket prices being one example, letting agents’ fees being another example, and last year, VAT pricing for hotels where, basically, the practice for hotel websites was to quote the VAT-exclusive pricing. On the one hand, we always get from individual advertisers we approach on this, the reaction, 'But, look, it's really clear. We say 'excluding VAT', how much more obvious could it be?, and then we tell them what that VAT is', and it actually helps us, to be able to say now - in a rather better and a more informed way than we perhaps could ten years ago - but we now know from consumer psychology research that this does mislead people; this sort of practice does mislead people. People anchor on the initial price and they don't adjust enough for the surcharges. That's one example of what can go wrong. We tackled VAT-exclusive pricing in the nineties, soon after I joined the ASA, and it was a real headache, getting decent compliance across the piste. It was years and years and years before the law caught up, and insisted on it. We’d already done the job in advertising; in the media that we cover, we’d already long-insisted on VAT-inclusive pricing. And there are quite a few examples of that, I think. To the extent to which we bring this important theory, this empirical research on consumer psychology, I wonder the extent to which we bring it to bear on some other elements of the work that we do. I suspect that's work in progress, and there's probably more that we could do”.

The member of the House of Lords communications committee member pointed out that advertisements are potentially aimed at different people:

“Don’t forget I would say people are not taught to analyse ads in the way you do and the way ASA do. One looks at these things a bit differently. I look on ads on TV and think that one is a complete disaster you know there advertising is a complete nonsense nothing ethically wrong with the ones I am thinking about it is just jolly well not going to sell anything because it is just stupid to my judgement it is not going to sell anything but then may be the ad wasn't aimed at me anyway”.

To some extent the CEO of the ASA agrees with the member of the House of Lords and goes on to talk about the interpretation of the UCPD and what matters is what the audience understands, not what advertisers intend to communicate. He discusses how looking through the eyes of your audience is a skill:

“What does 'reasonably well-informed mean'? What does 'reasonably observant' mean? What does 'circumspect' mean? We know from other parts of the UCPD
that this is supposed to be interpreted in a way that protects consumers. I would be wary of people picking one bit of the UCPD and saying, 'Look, this proves that there's a really low bar to consumer protection', because you can equally pick another bit and make the opposite case. Like a lot of law, there's some bits that support one side of the argument and there are some bits of wording that support the other side of the argument and it's just a matter of judgement. So, from our point of view, we're looking at what the consumer is likely to do. What the viewer or listener to the ad is likely to understand from the ad, and what matters is that; what they infer. It doesn't matter what the ad says. The letter of what is said in the ad doesn't necessarily matter; an ad can be very carefully formulated in such a way that when you look at each claim, you can defend them. What matters is what the audience understands, what they infer. It doesn't matter what the advertiser intended to communicate; what matters is what was communicated... There are plenty of occasions each year where we uphold complaints against advertisers, and they feel a bit aggrieved, because they say, and we believe them. 'It was not our intent to mislead people'. And our response is: 'Actually, we accept that, but the problem is that was the effect. In our view, that was the effect; you needed to be a bit more careful, perhaps you weren't looking at it through the eyes of your audience', you know - It's a skill.”

He goes onto concede that we do in fact perceive messages differently, but that good advertisers can play to our emotions within the remit of the law and remain within the ASA’s mantra to be legal, decent, honest and truthful:

“Good advertisers understand the way people will respond to advertisements. They understand the potential for ads that really play on our emotions, to have an impact. Logically, rationally, you think, 'Why would that ad work?', but we know that, for the right product, if done in the right way, this, sort of more emotional approach could engender positive feelings about brands. People associate these brands with positive emotions, they like the brands. Advertisers, yes, are skilful at that, and that's something that obviously advertising regulators are aware of, and need to take into account when considering whether or not ads are legal, decent, honest and truthful, but still, we’re not talking here about something that happens in advertising that doesn’t happen in other forms of communication.”

However, if consumers perceive ads differently, intent of the communicator should form the basis of the adjudication process. Explaining the ASA Average Consumer Transactional Test, he says:

“Looking at it from the point of view of the audience; just because one person complains about something does not mean that there's a problem with the ad. So, when it comes to misleadingness, we have the Average Consumer Transactional Decision Test, and to apply that sensibly, we undertake research, consumer research about what's misleading, what they think is okay, we have access obviously to other research, so there's an extent to which we can benchmark our decisions against that type of research.”

A direct marketing and data protection marketing expert, she agreed with the CEO of the ASA, on 4.3.13 saying:
“It’s about the perception, the perception of the individual. Marketers may claim innocence about their motives, sometimes. But it is about the impact it actually has on the average person, or people.”

The vice chairman of an international marketing agency argues that large brands are less likely to mislead due to reputation reflux and only have the interests of the consumer at heart:

“British Airways or Easy Jet could say ‘only 4 seats left at this price’ when there are 25. Why don’t they do it? I’d like to say it’s because large companies only have the interests of the consumer at heart and actually it’s for the betterment of mankind. The truth of that is that it’s because they’re afraid of being found out. But that’s ok, because the way consumers react to that is: ‘I will buy products from people who would be embarrassed if it were found out that they’d ripped me off.’

The legal director at the OFT gave an example of a Court case whereby behavioural bias was taken into account, when companies exploit the optimistic long-term outlook of consumers. In conversation on 16.5.13:

“An example into investigation into gym contracts, against Ashbourne Management Services High Court case that case we advanced the argument that consumers in fact sign up for long contracts when they find it very difficult to predict the level of their future usage and they have got a behaviour bias. They are over optimistic. I will be a member for the next year. In fact, it was a notorious fact as indeed the other side admitted in the case that many people agree to become a member of gym and go for a month and then they stop and in that context people are locked into 3 year contracts and being pursued aggressively, and even the judge felt this, for subscriptions which they were not obliged to pay as it turned out. In that case the judge placed a lot of weight on what the behavioural bias that the business had exploited that they knew that people are over optimistic therefore they lock them in for long contracts knowing then they will have to pay even though not using gym and the judge thought this was not acceptable practice.”

Another agency owner and direct marketing expert believes it is hard to prove exactly what the marketing intent was:

“It’s quite hard to prove what the marketers intent was, people who are complaining to the ASA, or writing in to some TV shows tend to be a little bit loopy and then potentially the people that have good intent, but maybe got slightly wrong, are being punished, so I think it's a really difficult balance, so if you could prove mal-intent that would definitely be the way to go, but I just think it's very difficult to prove.”

Another marketing expert and business owner agrees with this sentiment. He says:

“I would never advocate a censorship system... Looking at the marketing person's intent in terms of measuring whether or not that person or company should be fined or reprimanded. People do make mistakes and sometimes they
cannot be aware of other people's sensibilities. But whether or not you quantify that as one person's complaint, or 10 person's complaint is another matter.”

Often marketing organisations tend to support self-regulation as the better of the two evils of that and censorship, the latter would have a huge negative impact on industry, profits and freedom of speech, also Government social marketing propaganda. CIM Head of Research, believes that the ASA is in a difficult position. On 11.3.13 he says:

“I would say from having looked at a lot of ASA rulings that, first of all, they’re in a very difficult position. Because, generally speaking, one person’s “nanny state” is another person’s “you can never do enough.” And I think... I almost always look at an ASA ruling, and think “yeah that’s got it, spot on.” I think they do get things the right way round; I like the fact, for example, that one complaint can be taken seriously and lead to a ruling. You know... it doesn’t have to be “well, we don’t do anything until at least ten people have complained.”

The Advertising Advisory Committee Chairman goes onto explain the reasoning behind the decision to adjudicate based on the intent of the advertiser:

“Assuming we go beyond the marketing intent, what we do is to look at the range of people who are, on average, likely to see that particular piece of advertising. In some cases, that will be pretty much the general public. If you advertise on ITV at 10pm, just before the News at Ten, you can assume that there will be no chunk of the general public that is not represented there somewhere. So, if you put an advert out which is aimed at young people and is moderately offensive towards older ones, or moderately offensive towards people who aren't particularly fit, whatever the story might be, then you could expect to be censored, even if that wasn't your target market, because you are actually hitting a large number of people outside that target market, then you can expect to be ruled on in relation to that impact. The difference comes when you have advertising within a very specific channel; not necessarily a TV channel, but, for example in print or in a magazine or something. The rules in relation to top shelf magazines or, for example, encrypted TV programmes - pornography normally, but it might be other things in theory. The rules in relation to those would be much more liberal because you wouldn't expect the general public to come across them, or to be affected by them. And if they did, they were probably deliberately trying to nose them out. So there would be a difference there, when there was a very clear cut-off of who was going to see things. It's a very similar issue with the watershed on television.”

The vice chairman of an international marketing agency on 29.4.13 expounds that upfront advertising expense is proof of long-term commitment from the advertiser.

“The engagement ring is a game theoretic device. The upfront expense is proof of long-term commitment, so that’s exactly the same as advertising – it’s upfront expense as proof of long-term commitment.”

Anderson (2007:35) notes that: “Making decisions is a universal activity that reflects the shared inheritance of human beings.”
5.3.5 Under the radar: A force for good or covert and overt creativity

Covert manipulation has been regarded by some writers as a serious possibility entailing an unconscionable invasion of privacy Moore (1988). Opponents were worried that a technology existed that could permit the user “to break into the deepest and most private parts of the human mind and leave all sorts of scratch marks” (Cousins, 1957: 20).

The matter as to whether marketing can be used as a force for good and as to whether regulations can force marketers to operate under the radar of regulations, or the possibility of regulations making marketers think more creatively and produce better quality campaigns was discussed with the CEO of the ASA. In terms of how advertising can go under the radar as part of our natural communication process, he says:

“I think it is essential that that aspect is looked at in the wider context of how we communicate as human beings, because, I mean, you and I are reacting to each other's body language now, and have been since we met, and our impression of each other is, in significant part, a result of subconscious as well as conscious cues. I mean, we're human beings, this is what we're like, this happens, and it, of course, advertising is like that too, and the impact that advertising has on us happens below the radar too, the same way that every piece of communication happens, in part, below the radar.”

In conversation with marketing journalist and head of CIM research on 11.3.13, he believes that buy-in from an individual, if it is under the guise of social marketing, is not manipulation as it is using the benefits of behavioral change as a force for good:

“Marketing can be used for a force of social good. What we call “social marketing,” which is the application of commercial marketing techniques to areas like smoking cessation with very significant successes. I would say that marketing is a tool, and you can use that for good purposes. You can also, use it for pretty terrible purposes. Marketing can be used to manipulate; but when we're looking at a good social marketing, that isn't about manipulation, that's about using marketing techniques to get “buy in” from the individual. If we look at that example of smoking: thirty years ago, your campaign might have been a doctor in the white coat wagging his finger at you, saying “don’t smoke because it’s bad for you,” which doesn’t hit the right buttons with the person whose behaviour you’re trying to influence. A social marketer will say: “Well, let’s look at this situation from a smoker’s point of view; what are the things that make me smoke? What are the barriers stopping me giving up smoking?” And we then address them, and the idea isn’t to manipulate, but it’s to try and communicate with the individual in ways that they start to understand the benefits of the behaviour change that you’re trying to suggest to them. I think more recently “Change for Life” is a really good example of a very effective social marketing campaign, because it recognizes the barriers that stop us from doing the things it’s suggesting. The “Change for Life” very noticeably doesn’t ever use the word “exercise,” it shows you ways which getting that exercise can

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be more fun. It talks about taking the dog for a walk, and going out with it and playing Frisbee with them... And that’s why I would argue quite strongly that it isn’t about manipulation; it’s about using some of the psychological effects that marketing can have. It is all about getting buy-in from the individual. If you’re trying to stop teenagers smoking—teenagers are always going to want to smoke, because smoking looks cool. So as, on the one hand, you might be trying to do things to make smoking look less cool, what you certainly can do is say to teenagers “well, you know, your teeth and nails aren’t going to go yellow if you give up smoking, you’ll have more money, you’ll smell nicely, you’ll be more attractive to the opposite sex,” that kind of thing. So it’s not about manipulating them, it’s about showing them the benefits.”

Manipulation of consumers or the masses whether by companies, charities or Government has a similar aim, that is to achieve gain over the target audience. Social and commercial manipulation can achieve both psychological and monetary gains. A marketing agency owner and direct marketing expert goes further to say that most marketing is a force for good. In conversation on 1.3.13:

“I think most marketing is a force for good, most companies and people are trying to do good, but the problem is that we get legislated and punished by the minority that are trying to do the wrong thing; customers will decide who is successful.”

Another marketing expert, and business owner, firmly disagrees, and believes social marketing to be unethical behaviour by the Government:

“No, advertising cannot be a force for good in social marketing, because I'm extremely cynical about why I think there is always an economic factor driving most forms of marketing so the Government does not drive anti-alcohol. I think they can drive change I just question their motivation to do so. It’s not about social marketing, not about for good, it’s about invested interest. The Government are not trying to stop us drinking booze because they want us to stop drinking booze, it’s because ultimately there is a cost saving to be made. I just question the ethics behind it.”

A creative advertising agency owner thinks that clever people will find a way to be covertly creative around legislation, which he believes is not enforceable. In conversation on 28.2.13: “Whatever legislation you bring in, clever people will try and work their way around it. It’s not necessarily wrong but it’s not enforceable.”

One public sector marketing communications expert believes social marketing is about influence and behaviour and you are not ‘selling’ anything with social marketing, so essentially it is more ‘ethical’. She discusses the example of how being part of a crowd means a change in our behaviour to comply with Government requests and how the Nudge Unit in the Cabinet office works:
“It’s all about influence and behaviour; you’re not selling anything. I think it’s absolutely right. They have a nudge unit in the Cabinet office, which is basically what little changes in how we do things could nudge people it’s not necessarily about advertising, it could be just a simple redesigning a form could encourage people. In the Highways Agency; we have an issue with people throwing litter out of car windows because... it could cause an accident. We talk about how much it costs the taxpayer to collect rubbish; it puts worker's lives in danger, because people have to pick it up could cause a dangerous environment; it could block up drains cause flooding; it can injure wildlife... lots of negative things about litter. We were in the third round of trialing in different areas with rotating the messages. We'd run a different adverts about litter on each one, so one might say based on an article on hotels, where in hotels they want you not to put towels in the wash every day, and what they found in this study they tried different messages in the hotel bathrooms to see what would work. What they found actually worked best was, appealing to people's wanting to be part of a crowd, fit in, the message said ‘Use Your Towels Again, Lots of People Do’. That was the message that seemed to work best. ‘Bring Your Litter home, Other People Do’.”

Nudge is a new term for priming and priming is the psychologists term for subliminal. Therefore Government social advertising is using the same techniques by another nam to manipulate the public, which are banned from use by commercial organisations. She went onto discuss the psychological success of a seat belt campaign:

“‘Julie Knew Her Killer’... the seatbelt ad. A woman gets into a car, daughter in the seat next to her, teenage boy sitting behind her, drive along and have a crash, and he kills his mum. ‘Julie Knew Her Killer’. That advert completely transformed the seat belt wearing and how they arrived at it, they did psychological research with teenage boys... They're full of bravado, they don't think it'll happen to them, they don't care for their own safety, what do they care about? What would really hurt them? Their mums! And that was entirely based on psychological insight and literally took seat belt wearing up to about 20% up to about 70% in a very short space of time. A fantastic advert and no one can say that isn’t a good thing. An absolutely good reason, but that’s different to selling Coca Cola.”

In conversation with Retired partner, marketing lawyer and chairman of an international law firm on 4.4.13 discusses how every law enacted will make people think how to get around it:

“Every law will make people think up ways to go around it. There was a time at which, when tobacco advertising was being restricted, Marlboro started trying to associate its products with the colour red, and this goes back twenty-odd years. So you don't actually need the name 'Marlboro', but, somehow, that particular red you associate with Marlboro.”

Laws create greater creativity and covert intentions. Lindstrom (2008) discusses how, as a consultant he was called to a project in the Middle East to advise on the exact colour of ‘brown’ there needs to be in egg production in order for it to be most attractive to the
organic consumer. The perception of a certain pantone brown would create a perception with the consumer that these were free range organic eggs and encourage consumers to buy these eggs over competitor’s eggs: a creative strategy that would go under the radar of consumer awareness.

The retired legal partner and chairman disagrees with the marketing experts’ opinions on the use of social marketing by Government. He comments:

“Helping promote road safety; making people think about putting on their seatbelts, and not drinking and driving, things which are illegal and are a mixture of common sense and the law, are easy. You can get into areas where it gets more problematical, and it may be the, the policy of the Government of the day, that they should promote a particular view of the world, but it may not be that. There may be a lot of people who have a very different view of that, and whether Governments should be able to spend taxpayer’s money on promoting something which is, as they perceive it, for the general good, but which is not accepted by a lot of people. I think that can be quite dangerous. When I say dangerous, I think it can put into question the advertising by Governments of very good causes, so I think Government needs to be careful about where it puts money into promoting so-called ‘healthy eating’. You know, what's healthy eating today, in five years’ time may be found out to be the cause of bowel cancer.”

The Chairman of the Advertising Advisory Committee believes that legislation causes the marketing industry to be more creative and that it ceases to work if it becomes too covert in its message, in conversation on 11.4.13:

“It doesn't make them more covert, it encourages creativity actually. If it gets too covert, marketing doesn't work; it has no effect at all, it has to have some effectiveness to arouse you from your stupor.”

In discussion with the CEO of the ASA about whether legislation makes brands more covert or more creative in their advertising he believes that building a campaign around emotions is not sneaky; it is in fact a fundamental part of what builds a brand:

“I think that's a good question, that's a really good question. I think it depends, and I wouldn't say that building an advertising campaign around emotions was sneaky. I don't think of that as being sneaky, I think lots of good advertising, has always recognised the value of trying to create a connection between people and the product. A connection, a relationship that goes beyond the product or the service, and as soon as you do that, you have a brand. You have something that is a bit more than just the product or the service. You have something that is a brand: it means something that goes beyond functionality. There are some intangibles wrapped up in it, and those intangibles are things like trust and love. Trust and reassurance, people associate with things like that and. We all respond to brands. Some people more than others. We don't, don't, use the
It would be useful if the ASA started utilising techniques available to have better benchmark assessments rather than laypeople who can be as fallible as consumers with engraed opinions and beliefs. Scientific options such as ethnographical technology, behavioural economics and subconsciology could provide better assessment models. He goes on to provide an example of cigarette advertising and how this turned from very basic to surreal after legislation came in.

“A really good example that plays to your point, though, is cigarette advertising. So, in the seventies, really severe restrictions came in on cigarette advertising. It was banned on TV, and there was a very, strict code of conduct that was applied to non-broadcast cigarette advertising, and we here were tasked with pre-vetting cigarette ads. It was my job, years and years ago, as the manager of the copy advice team, to be in the front line of pre-vetting cigarette advertising in non-broadcast media. Tobacco advertising went from being advertised in a way that was, pretty crass from a marketing perspective at least, I don't know whether it was ineffective. I doubt it was ineffective from a market-share perspective. It might well have worked, but it was perceived by the cognoscenti as being bad advertising. It revolved around testimonials and endorsements, either of famous actors or made-up people like the Strand Man, or doctors, you know, ‘8 out of 10 doctors smoke Camel’, being a classic example. It was pretty low-grade advertising; the sector was pretty low-grade. Bring in these strict rules, and suddenly you've got some of the most classic campaigns in the history of advertising, the Silk Cut... They were forced to go surreal, because of the strictness of the rule. And suddenly you've got these campaigns that really resonated, and people really recognised as being wonderfully creative, imaginative campaigns. I don't know what good they did the brands; I don't know how effective they were. That's actually another question, because you can have campaigns that are famous but ineffective. It's interesting, that's a good example of how tighter rules have forced more creativity, albeit in a sector where you probably didn't want more creativity, and certainly didn't want more effective advertising, because the point was that you were trying to restrict, not make them better”.

The vice chairman of an international marketing agency agrees:

“There are always unintended consequences. A lot of people said that cigarette advertising was absolutely terrible until it started being restricted and policed. And then you had ten years of the most creative tobacco advertising anywhere in the world. Silk Cut, Benson & Hedges Gold; really, artistic and brilliant advertising. So you've got to be careful about that, that by making advertising more restricted you actually make it better. So I think that's something to be alert to”.

One marketing agency owner alerted the researcher to Loi Evin – the French marketing regulations which restrict any emotional engagement, which differs significantly from the essence of UK regulations:
“The Loi Evin in France, says in essence you can't present any kind of emotional engagement at all, you can simply present the product as it is, and only present it in terms of firm, fixed ingredients and everything else, no emotions.”

Maybe the UK regulators could collaborate with the French to understand if there might be some viability in a similar form of regulation in the UK. Some marketing tactics are more socially acceptable, in certain countries, such as free product trials, entertaining commercials, redeemable coupons and rebates; while others are perceived as tricky, devious, deceptive, and even immoral (Deighton and Grayson 1995)

5.3.6 Proportionality of fines, enforcement and redress

Kirkbride and Letza (2005) describe how punishment and deterrence are obvious aims from a crime control perspective, however from a victims point of view retribution is a key aspect. One senior marketing lawyer with a leading British law firm outlines the regulations and explains the fines and punishment:

“The consumer protection from unfair trading regulations state that companies, if they mislead consumers, can be fined up to £5,000 and imprisoned for up to two years, if they are prosecuted through the magistrate’s court. If they are prosecuted through the crown court then the sanctions are much higher, though it does depend on the nature of the prosecution. If you look at regulation 13 from the consumer protection regulations 2008 somebody who's guilty of an offence under regulations 8-12 (which were the ones we were talking about) on a summary conviction is subject to a fine not exceeding a statutory maximum of £5000 per offence, but on indictment, through the crown court they can be fined without a limit or imprisoned of up to 2 years, or both. Regulation 15, if a company does something and is prosecuted but it is done with the knowledge or connivance, consent, or negligence of an individual officer of the company, an individual director of the company, then they can also be prosecuted themselves, so people can be personally liable; you can't hide behind your company. If you'd been engaged in deliberately trying to defraud people, then absolutely you should be fined and in appropriate circumstances imprisoned.”

One marketing expert would like to see the ASA powers extend to being able to fine those who break the rules:

“Many of the trade associations require their members to abide by the cap code. I've often thought that the ASA ought to have some financial powers to fine the moment: it is just name and shame. I would be happy if ASA was given the brief especially with new online responsibility to actually go further than name and shame.”

On the other hand, another one marketer thought the custodial sentence was a bit drastic and believes hefty fines are appropriate:

“I think that sounds a bit drastic. I think a hefty fine; hit them in the pocket, absolutely, for misleading customers, but probably not prison.”
She goes onto discuss the circumstances in which she believes fines are appropriate, such as misleading pricing or the Tesco horsemeat scandal:

“If they breach any of the existing laws, like the Sale of Goods Act, or all the scams to do with pricing... Advertising at one price and then when you go into the shop it is: ‘Oh, no, it’s much more expensive’. That kind of thing... With the horsemeat scandal, If Tesco say they’ve done everything they possibly can, and it was a problem in the supply chain a long way back, they couldn't have really known about, then the prosecution has to be to the people who perpetrated it.”

In conversation with a legal director at the OFT 16.5.13, he discusses how the OFT operate a set of priority principles and how their resources are limited:

“We operate a set of priority principles those principles are broadly about things that impact our actions whether we are the best place to act at all or whether somebody else would do the work and what resources available at the time and we have limited resources so we have to make choices - I have a small number of lawyers who can do consumer investigations we can’t humanly speaking do everything therefore we try and work out what we should be doing.”

The Chairman of the Advertising Advisory Committee believes that we need to allow Courts’ discretion and potentially develop a scale based on variables, he says:

“You have to allow the Courts enough discretion. But I would expect them, in the circumstances, to take into account how many consumers are affected, what their losses had been, how big a deal was it, and what element of venality or criminality or wantonness was actually involved? Was it just carelessness, was it a commercial mistake, or was it deliberate and intentional? And I think you've got to develop a scale which is based on all three of those different variables, and be prepared to flex them according to the cases concerned. In the worse cases, they may not be enough.”

He goes onto say that fines are just a part of doing business:

“And one of the greater problems with trading standards type fines generally is that, for a lot of companies, they just become part of the cost of doing business. £5,000... just write it off in the annual accounts and no one will worry.”

And he believes strongly in restitution for consumers:

“I’m really keen on developing this idea of restitution to consumers, and giving people back things that they’ve actually lost. A very good example of that recently is Npower which was discovered through consumer focus to have been systematically overcharging consumers for years by putting them on the wrong tariff, with a bit of forensic detail, they managed to unearth the fact that roughly £75million of detriment had been caused to consumers. Npower were fined that amount and made to give it back. So many people had refunds of £60, £70 in their bills. It just came back automatically. And that seems to me a very sensible form of redress that needs to be explored.”

Another example of redress which he discussed is his involvement in the case of Rover:
“Rover had fixed the price of their cars against EU rules, and they admitted it, but by that stage they could no longer trace the people who'd bought the cars because they had long since disappeared, so what the commission did, at my involvement, was to make an award of £1,000,000 to consumer research, part of which went on a research project run by ‘Which?’ for research into car security, and developing new methods of testing; another part went on assessing people with disabilities. That was making the punishment fit the crime, and giving the money back to a not for profit organization that could make good use of it, to promote the consumer good, I think that's a really interesting example and I wish there were more of them.”

Restitution and fines need to be proportionate and fit the crime and he went on to say:

“If you look at America possibly Australia you'll find that individual or mass consumer restitution is a bit more common as a phenomenon. There’s a really strong case for it, and I definitely feel the punishment should fit the crime, and to pay £5,000 for something that's made them £10,000,000 is no good.”

The chair provides another example of his involvement in private and public sector enforcement with the Phone Pay Plus case of restitution:

“One of my regulatory jobs in the past was on the boards of Phone Pay Plus, which is the board that regulates premium-rate services you pay £1.50 a minute for, also services to your mobile phone which are charged through reverse charging SMSs. When I was on the board, there were an enormous amount of problems with things like ringtones. Kids were buying these, and either not getting them or getting dud ones that didn't work, and they were getting billed for ages and ages. And what Phone Pay Plus was able to do, is both rule on these as a breach of the code, which they were, because they'd breached in several respects, including misleadingness, but also inadequate technical standards and a whole range of other things which are built into their code, and as part of the redress, as well as naming and shaming the company concerned, fining them if appropriate, we also were able to demand that they pay restitution to all the consumers affected.”

He goes onto elaborate as to how restitution might be enforced:

“You can do that off the back of things like a code breach, or a breach of the law, if the regulators have sufficient powers. There are things you can do to make refunds automatic. An interesting straw in the wind is that TfL, Transport for London, has systems for paying people in the event of serious delays on the Tube. They've recently changed their rules. Previously, it was trains that were more than fifteen minutes late. Now it's only for things that are half-an-hour late, but you can get an automatic refund to your Oyster card, if that happens. There's scope for mass-remedy, without major complexity.”

Marketing Journalist and head of CIM research agrees with the chair and gives the example of the T Mobile case:

“The T-Mobile case; where employees were found to be selling data to a third party. I think that shows that the fines were perhaps not enough. Because, the cost of a gamble of a £5,000 fine against the potential hundreds of thousands
that you might make from committing that offence; that isn’t going to be enough to put you off.”

A former editor of ‘Which’ does not think that regulations are effective enough; in conversation on 22.4.13:

“I tend to favour heavier financial penalties rather than custodial sentences. But I think that these should be stronger, because I don’t think there’s enough to dissuade companies from misleading behaviour and I think that a lot of it goes on. I don’t think the current legislation and regulation is effective enough. If you introduce legislation that doesn’t have proper resourcing, then that’s certainly the lever to push for more resourcing.”

Leading British professor of academic law discusses disproportionate fines and custodial sentences and echoes the statement from the chair of the AAC on 2.5.13:

“When it was a criminal offence to trade on Sundays, firms like B&Q started opening their doors for business on Sundays and found that there was a rush of people wanting to buy, and in those days again there were occasionally £2,000 fines handed out, but the businesses were taking in billions on the day, so if the business case was breaking the law here... So on the one hand I do think that the financial penalties aren’t adequate, they’re not proportionate. To the gravity of the offence, generally we would reserve prison for those offences that we think are the most serious, so if this was life threatening, and the traders were knowingly or recklessly marketing in a way that was life threatening, then that would seem to be a candidate for a custodial penalty. That case today where a chap who was selling supposedly bomb detecting piece of kit that would detect bombs... But it was really just an aerial on a hinge. He managed to sell these kits to countries like Iraq, and made millions of pounds out of this so it was completely fraudulent. This chap got sentenced to ten years in prison, the maximum, the judge said. Potentially, there are some people who thought they got some bomb detecting kit here who weren’t detecting anything; there could have been lives that had been lost because of this, it is a particularly extreme case.”

A member of the House of Lords is adamant that there is a significant lack of resource to enforce regulations. In conversation with the Rt. Hon. member he thinks regulators are weak and feeble 13.6.13:

“There will always be people trying to pull a fast one particularly in the service area and I think some of the regulators are much too weak. I think they have been a bit feeble; not nearly robust enough. You have all these armies of experts in the City and a lot of it is done through inertia. They offer building society accounts with good interest rates and once you have got it, they lower it and don’t tell you properly what they have done. They said you should have looked at the bottom of the statement and you will have seen low interest rate. That is just a con they are just cheats. I think some of the regulators are not robust enough; maybe they don’t have resources, but they could be more robust in the way they operate.”
To some degree the vice chairman of international marketing agency agrees with the Rt. Hon. Member, on the matter of misleading instruments in the financial services industry. He also points out that consumers with resources tend to be pretty astute and how legislators ignore neuroscience and psychology:

“Consumers with resources to spare are pretty astute. I think a lot of legislation is about competition as defined by economists. Mobile phone operators create pricing plans so baffling that it’s impossible to engage in direct comparison between any of the people actually offering the service... I buy a disappointing shampoo; next time round I won’t buy it. The shampoo hasn’t killed me. Then you get the question of things like pensions, where the degree of asymmetry is extraordinary, and where most people have the impression that the whole thing is rigged anyway to make sure that the pension provider makes money no matter what. So for example those short term loan, payday loan companies. You might argue that if banks weren’t such rip-off merchants with overdraft charges the market for the payday lenders might not have been so acute.... So it is complicated, because the decisions are taken by people who use homo economicus as an excuse to take 4 million years of evolution, a ton of neuroscience and a ton of behavioural economics and a ton of other cognitive theory and psychology completely out of the equation.”

The CEO of the ASA, disagrees, he does not think it is a case of proportionality but one of priority 24.4.13:

“I don't think it's a question of proportionality, it's a question of the issue of whether or not you take a decision as an organisation to turn away complaints that are valid, but don't raise significant enough concerns to justify regulatory intervention. That is largely a question of resourcing and prioritisation. If you don't have the resource to deal with all of those complaints, you have to prioritise. You have to find an efficient and a defensible way of prioritising; the way organisations like the OFT do that.”

He believes that proportionality is how you deal with the gravity of the issue:

“That's where the proportionality comes into it. If it's a relatively minor issue, and it's fairly clear-cut, it's perhaps been a mistake by an advertiser who is quite inexperienced, we may not know much about them, perhaps it's someone working from home and they've got a website, and they've said something on their website and they didn't realise, we will try and resolve the matter quickly. What we do is ask the advertiser to provide us with is an assurance that the situation will change, and we close down the case. We call them 'informal investigations'; in truth there's often not much investigation going on, although it is established that there is a breach of the code. We close the case down, and we get on with other stuff. And we know from our customer satisfaction research that informal investigations are the most popular case type with complainants; they're the most popular case type with advertisers; we're proportionate and we're not making a mountain out of a molehill.”

Awareness about both the existence of the CPR’s along with the fines and custodial sentences amongst the marketing profession who were interviewed was surprisingly limited. Many were visibly shocked to know that they could receive a custodial sentence
for misleading consumers and were unaware of the fines that could be imposed. The potential to educate the industry in their legal obligations to the consumer is something of an opportunity for the future. In addition, the consumer would benefit in awareness of their consumer rights.

The Vice Chairman of an international agency spoke in a broader sense about the behavioral effect of a consumer’s ability to punish or show loyalty to a brand 29.4.13:

“Loyalty, and establishing a relationship, is a game that is theoretically rational, because it means I can disproportionately punish the person for behaviour that’s bad, or I can disproportionately reward them for behaviour that’s good. If I cast myself as chasing low prices all the time and if the entire market works like that, then what you would have done with the investment business is you would have put the entire UK savings base into I-saver. It’s perfectly rational to avoid the bank that’s paying the highest rate of interest because paying the highest rate of interest is usually a mark of desperation. They’re dangerously under-capitalised and basically need deposits at any cost.”

Fines should be based on proportionality and priority, be communicated effectively and expedited, so consumers are aware of their rights and communicators are aware of the penalties and repercussions if they fail to conform. The Vice Chairman goes onto describe how brands are a mark of provenance in consumer decision making and punishment:

“Under Communism in Soviet Russia, they realised factories had to mark their product with the brand of the factory, because otherwise you’d get in a supply of 100,000 dodgy nails and you didn’t know whom to blame. So Communism and Marxism, which believed it could function without brands because nuts and bolts were a commodity, rapidly discovered that it couldn’t. The earliest example of a brand is brick factories involved in the building of some Church, which were required to put the makers name on the brick, so if a lot of dodgy bricks came in, they could ring them up and go ‘Oi mate! Your bricks are dodgy; I’m not paying you for these.’”

5.4 Perception in memory and emotions

Craik & Lockhart (1972) argued that perception involves the qualitatively different stages of analysis of physical or sensory features, pattern recognition, and the extraction of meaning and that a major result of this perceptual analysis is the memory trace (Eysenck 1978).

The Chairman of AAC agrees that perception is individualised and advertisements are targeted to appeal to specific groups 11.4.13:

“There are almost no ads in this world that are designed to appeal to the public as a whole. On the contrary, most advertising is aimed at a particular segment, and the rest of us aren't really bothered. Sometimes, that leads to what's even
known as collateral damage. So, you target, for example, a chunk of the youth market, with something that's a bit risqué and has got some slightly dodgy language, or people misbehaving in nightclubs or something, that anyone over the age of 25 is deeply offended by.”

However, in the 1980’s prior to stricter regulatory rules being developed advertising was more target to the masses. The vice chairman of an international marketing agency, discusses how we can perceive messages differently both in time and context:

“I think everybody would perceive an ad completely differently now than in 20 minutes time. I think that we have evolved to make decisions within a given context at a given moment. A guy who grasped this intuitively was Ludwig von Mises, the Godfather of Austrian Economics, in his book ‘On human action’. The Austrians believe that economics should rest on psychology, not on mathematics. We are prisoners of our own biology.”

Another agency owner agrees, in conversation 28.2.13, he states:

“We're all different: we all see things differently.”

One public sector marketing communications expert believes that 26.2.13:

“Children definitely do read stuff in marketing literature; they do take it uncritically and face value.”

Expert Neuro psychologist and the ‘Father of Neuromarketing’, explains on 17.4.13 how we perceive messages differently and how priming works:

“I think possibly from one culture to another, and possibly depending on your education and social background, the way your brain has been programmed to look at the world, a message which might work very well for one person might not work particularly well for another person, what is more interesting is the fact that we are very much persuaded by things that we are not aware. It is called priming. Studies in America have shown that when people are exposed, even briefly below the level of conscious awareness, what you would call subliminally, to fast food logos, things like the arches of MacDonald’s, they actually become less patient.”

A Member of the House of Lords goes further to say that genders perceive messages differently. In conversation on 13.6.13.

“In terms of fashion and cosmetics women think differently because that advertising is intended to aim at them. I think women might be a bit more rational about some of the shopping and consumer goods advertising. I don’t want to typecast women as being all one type and men of another type. Certainly advertising is directed at women more than men, and whole range of fashion and cosmetics will be more women as they are the main purchasers, unless it is intended to advertise to men that they should give something as a gift to a woman.”
Leading British professor of philosophy and sensory collaborator explains we do perceive sensory messages differently and there are variables and commonalities 1.5.13:

“We don’t all perceive things differently. We have gross differences such as our tongues are different and our eyesight and hearing is different, there will be some things that are common and it is these commonalities that you can tap into. It is a way to do mass marketing very effectively, like green being the colour fizzy mineral water. How that came about was very interesting it was sand colour. They used to recycle their glass, and not being very careful about reaching and separating wine bottles from their own water bottles so the bottles would come out a bit green or greener than others and everyone knew their water was green and eventually people realised that is the fizzy one and it became a kind of standard. It was by accident it came there, it is now absolutely set; fizzy mineral water brands are always green.”

He goes onto explain:

“My collaborator, Professor Charles Spence who did this research, thought that you can charge another £5 for every 3 grams extra weight in the wine bottle; it is interesting why. It is because the heaviest bottle we know is your champagne bottle which has to be a thick bottle because of the fermentation, getting the gas in the bottle and bottles used to explode when they weren’t strong enough. We think of champagne as expensive and high quality so when you pick up a bottle that is heavy it is just associated in your mind that it is quality because it is heavy.”

He also explains how auditory perception and visual illusions work:

“When you are in the cinema you think the voices are coming out of the speakers’ mouths. They are not, they are coming out of the sides of the cinema, under seat or behind you, not coming from the screen, but that is where your auditory attention is captured because you are getting simultaneous mouth movement and sound. Your attention is captured, if sensory marketing people can use those ways of capturing your attention without you choosing that is very powerful. The brain also pays attention to contrast. Some people are very susceptible to visual illusions and other people are not and some people get very detailed information in their vision and some people do not. That might be a genetic difference. If you are using the same tricks it might only work on some parts of the population.”

Leading professor of academic law agrees that people do perceive messages differently. In conversation on 2.5.13:

“Yes, I think people do receive the message differently. We rule out certain things, and we will be receptive to others, and I think, very often, it does depend on the individual. I think that’s what a lot of the targeted advertising is increasingly starting to show.”

A marketing data protection and direct marketing expert agrees with the public marketing communications expert 4.3.13:
"I think people react to different things, so I react to humour. The Meerkats: other people prefer more factual types of ad. I mean, I think the ones that are quite funny and those that are not very funny, not meant to be funny, rather 'up themselves' car advertising, and you get to the end of whatever slot it is, and you look at each other and say 'What was all that about? What exactly are they selling there?' And what kind of an image are they trying to portray? Are they trying to say this is a hip car, or this is a reliable car? Really, some of them are obscure beyond belief. The more obscure, the more likely that it is to miss the interpretation."

Another marketing expert believes that people perceive messages differently and can be persuaded to buy beyond their means:

"I think people take different messages away from an ad. Some people can be persuaded beyond their means to buy things they don’t need and simply because there’s a bigger push towards purchasing and being a bit more aggressive."

Marketing journalist and head of CIM research, believes we perceive advertisements differently and explains how claims in advertising science may encourage people to buy because they are given information beyond their intellectual knowledge 11.3.13:

"I do think people perceive ads differently. We’ve become very credulous about the kind of claims that people make in adverts. On the extreme end, adverts of shampoo will start doing diagrams of atoms, and they start talking about very big words that you don’t understand, they say all kinds of important scientific stuff and you just go away with a kind of vague, mind-blowing feeling that product is somehow going to be better than the competition."

In pre conditioned sensory perception, smell can anchor our perception. Sensory marketing expert, comments on how sensory perception can have much more fine-tuned variables. On 8.5.13 he says:

"They’re entirely personal; there are different propensities, and it’s also linked to age. It’s linked to whether or not we have a cold, whether we’re smokers, but it’s also cultural. Broadly speaking the Far East has a very high olfactory acuity. In other words, they’re very sensitive to smell and they like their fragrances extremely subtle or not at all. In the Middle East, culturally, it’s the opposite; they like really strong smells, pungent and impactful. Roughly speaking you can classify the rest of the Western world somewhere between the two. So there’s a real cultural variation in terms of intensity."

Our attention to advertisements in our peripheral vision may also impact on our decisions and change our perception of what we think we are seeing. In conversation with a professor of cognitive neuroscientific expert in consciousness on 18.4.13 he explains:

"We perceive motion much more easily peripherally, and you can think of evolutionary reasons for that. We want to be sensitive to things that might be moving, and then we can fixate and focus. And there’s no colour vision in the periphery at all, although we experience colour, which is also interesting. If you
actually mapped out what the world looks like to the retina, not to our brain, it's
detailed, and coloured, and then it gets less detailed and more greyscale as we
go further out. That's one of the most interesting challenges about
consciousness. Because the world doesn't seem like that to us, it seems uniformly
detailed and equally colour-rich all the way to the edges, but it isn't in terms of
the retina. So, in one sense, if there's a bunch of ads going in your periphery,
you may not be able to resolve the images or the text or whatever, so there are
some fundamental limits about the periphery. There's some recent work by, by
Freeman and Simoncelli where they talk about perceptual metimas. A metima is
basically things that are different, but have the same function or, in this case,
appear the same. They have images which, if you look at the centre, fixate at the
centre, and then they flip the images, you don't notice the change but they're
radically different. They map them so that to the retina they will appear the
same; if you look around the images you will see that they're completely
screwed-up in the periphery.”

Perception is in fact, an understudies area due to the restrictions that scientist put on the the
requirement to apply quantitative methodology and replicate natural behaviour in a
laboratory, thus the scientist have stunted the growth of literature in this area. The
professor goes onto to describe how perception can be very individual and can be based on
experience, memory and culture:

“Perception is a very understudied but important area. There are cultural
differences, and within culture, individual differences, in how people see the
world and see themselves, both as agents, actors, how they perceive their own
body shape and things like that. This has typically not been a focus of study,
partly because of pragmatic reasons that for many experiments, you have to
assume that everyone's the same and you take averages and put them in different
conditions. Every act of perception is an act of memory and an act of
imagination. We will interpret what we see in the light of what we've seen
before, and what it's meant to us. When you drink wine and you maybe go on
some tasting courses, you learn to tell the difference, but you learn different
experiences. It's not that these experiences were different and then you learn
labels for them.”

A world renowned professor of neuroscience explains how people perceive advertisements
differently and how the more diverse our reaction can lead to the advertisement being more
effective. In conversation on 15.3.13:

“The simple answer is yes people do perceive ads differently. The more
complicated answer is no! There are technical uses of the word 'perceive' in
psychology. From an everyday perspective, do people and their brains process
messages differently, that are the same in the outside world: yes, they do.
'Perceive' in psychological terms has a technical meaning, which is the
processing of the stimulus up to the point of extraction of meaning. The idea is
that there's stuff in the outside world that affects our sensory receptors, like our
eyes, and that causes nerve impulses to go to our brain, our brain processes
them and, at some point it processes them, and it says: 'Aha, I'm looking at a
banana'. And then there's a whole series of consequences. After that, we might
want to eat the banana; we might want to buy the banana; the banana will be in
different social contexts. There are all sorts of perspectives of what happens
next, which depends in part on context, and in part on the person. So, the more
complicated answer is that the act of perception, that is, the act of seeing the
banana, is shared, to some extent, and common to you and me and to everyone
else. That's how we can agree that those things out there in the outside world
are bananas.”

The professor of philosophy and sensory collaborator, presents how subtle sensory
marketing can prime perceptions and how perception is pre conditioned 1.5.13:

“Green, especially dark green; we are definitely preconditioned to have
expectations of liquids if they are red we think they are sweet if they are green or
lime colour we think they are sour and we have done lots of psychological
experiments on this where you can show people that if you give them a whole set
of waters and you colour them, the dye is tasteless but they will still feel think
that that lime green ones are sour and the deep red ones are sweet. We are
conditioned probably because green fruits are unripe and red fruits are ripe. To
think sour and sweet, the brain is set up to do this, so if you want to give
someone an expectation that you are giving them a drink that is a little sharp, a
little harsher seems to me that is OK to use the natural expectations to meet
them that is what sensory marketing is all about. Finding green more associated
with sour and red more associated with sweet is common across all cultures so
these are effects that we don’t often notice happening. You might say
subconsciously that a lot of them tend to be universal: not all, some of them tend
to be conditioned, so we can use sensory marketing for things that appeal right
across the board, and other times they just have to do their research to find out,
so how did the Japanese respond to the smell of vanilla? We think it smells
sweet; they think it smells salty because of what you do with it in your cooking is
different.”

The ‘father of Neuromarketing’, discusses how memory can impede us and our legacy of
thought can easily be manipulated in our perception 17.4.13. Interestingly Heath (2012)
believes the less attention we pay to advertisements that the more powerful the implant in
our memory:

“Memory is one of the most fallible of the senses. People think memory is a bit
like a video recorder or a tape recorder, but it is not. All memory is a
reconstruction; every time you think back to something you're not going to a
filing cabinet and pulling out a file that says 'my 5th birthday'; you're actually
reconstructing that from different bits and pieces of other memories, and it's
wildly unreliable, eye witness in court is one of the most unreliable forms of
witness, and it's terribly easy to manipulate. We did a study in our lab where we
used hypnosis to implant memories into people, not major ones, not like they
were members of a satanic cult! One study we asked people how they'd slept the
night before, and then we hypnotized them and took them back in their mind to
the night before and said you remember how at 5 o'clock you woke up and there
was a loud sound, you wondered if it might be a gun going off, but you thought
no, it was a car backfiring and you went back to sleep, then a week later we talk
to them and we say can you remember that night and they say oh yeah, and we
say do you remember if anything happened to you and then they say yeah I woke up in the early hours of the morning and I think I heard a car backfire but I’m not sure, of course they didn’t. We just told them they did and they believed it."

The world renowned professor of Neuroscience, agrees that memory is an active reconstruction process and how marketing can potentially control our brains 15.3.13:

“A memory in human terms is not like a photograph or a recording. So, we might think of it like that. I can remember the day my daughter was born as clear as day, but that's not true. What psychology and cognitive neuroscience show is that memory is an active reconstructive process. You're reconstructing the past out of stuff that's stored in your head. So, undoubtedly, stuff is stored in your head, and you can recall details about your childhood, doubtless, that are accurate. It doesn't mean it's inaccurate because it's reconstructed. It means that the process of retrieving a memory is less like going to a file on your computer and opening it, and more like there being fragments that are correct, that are gathered together, and that's how memories can be embellished or change or be re-interpreted. It's a reconstructive process based on what happened at the time, and that can introduce inaccuracies as well as be accurate. People can genuinely misremember events about things that happened. You asked, is the brand in control? 'Can a marketer control people’s brains?' and I think the answer to that is ‘yes’, in some sense as the word 'control'.”

Sensory marketing expert, discusses how multiple senses can multiply brand experience and how senses are interrelated and the link to emotional triggers and brand marketing 8.5.13. He only discusses the 5 main senses, whereas new research mentioned by the professor of philosophy and expert sensory collaborator now identifies 22 senses. This might suggest that the complexities of sensory marketing are significantly greater than initially thought:

“There is an over-reliance on the sense of vision. About 83% of all brand communications and this is across all categories, appeals to the eyes alone. And when we’ve researched the book “Brand Sense”, with my colleague Martin Lindstrom, with a company called Millwall Brown. We found that human beings actually relate to the brands that they love and buy, and virtually equally across all five senses, they weighted all five senses equally in terms of the importance of their relationship to brands. Vision is largely processed by the cortex, or the rational part of our brain, and because we sort through visual images rationally, we tend to screen out a lot of that which we feel isn’t of interest to us. Whereas with the senses of taste and smell, these have a direct connection to a part of our brain which is more emotional and about creating memories through the limbic system. The olfactory bulb in the nose is directly connected via the olfactory nerve to the limbic system. That tends to slightly bypass some of our purely rational thinking, it means that we’re not as efficient at screening out those signals. Some senses have a more direct emotional connection: a hypothesis that psychologists have, that the more senses you add in a relationship between a consumer and a brand, as you add senses the emotional impact isn’t added. There is a synergistic impact so it’s multiplied. We did some research with a brand a couple of years ago where we were looking at adding sensory attributes
to the brand communications, and we used brain scanning techniques and we found that this [super analysis] effect was very strongly indicated. So, there’s a synergy about the senses, and also what we know is that our perception, or when we receive a stimulus in one sense, often our perception of it is through our other senses, this is what we call cross-modality. So, the impact of one sense can often be felt in another sense and they are very much inter-related. For example, if you were to try and eat green meat you probably couldn’t because the vision is sending out a strong signal that the meat’s bad, or if we tried to eat fresh fruit that smell rancid, even if it was perfectly fresh, but there was just a rancid smell in the room we probably couldn’t bring ourselves to do it. So it’s all about context. Impulse, can trigger sensory impulses.”

5.4.1 Expert definition of Perception

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<th>Dictionary Definition of Perception: The ability to see, hear or become aware of something through the senses.</th>
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Table 5.8 Definition of Perception

An expanded definition was offered of perception in conversation with a member of the House of Lords on 28.3.13:

“Perception is all down to what sort of mood a person is in and what they’ve done the previous couple of hours or the previous hour; what their education is: there’s a lot of stuff feeding in there to say how you’re going to react. I know nothing about cars, but I can’t charge big fees if I go up to an office in a small car. They’d just laugh at me, but if I go up in a big car they’ll say to themselves: He must be doing alright, so his advice must be good, just look at the car. If I was going to meet civil servants, I would wear par dress and I’d stick on chalk stripe civil servants hate anybody who doesn’t acquiesce to them!”

A marketing expert agrees with the definition of the member of the House of Lords in that he says:

“Depends on your own personality and ethics; if you’re a keen environmentalist for example, your take on adverts for food and everything will be completely different to mine.”

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5.4.2 Transparency and manipulation

In 1961, in response to Vance Packard’s book ‘The Hidden Persuaders’, Rosser Reeves (1961:70) declared: ‘There are no hidden persuaders’. Advertising works openly, in the bare and pitiless sunlight.” Doubtless there are some who believe that this is still the case.

The senior commercial marketing lawyer thinks that transparency is the key to regulations and he explains the historical distinction of advertising transparency19.4.13:

“Transparency is really the key. It runs through advertising regulation, it's the key to recognition in advertising. When advertising regulations started on television in the UK in 1955 with the advent of commercial television, there were really two concepts, separation and transparency, you had to have a bright line distinction between the editorial mintage for programming and the advertising mintage for TV commercials, and you had to have transparency by having some an audio-visual indicator when you got to an advertising break to make clear to the audience that you are moving now from the program to the advertising and then back to the program from the advertising, we've all grown accustomed to that, and when they changed the rules to allow product placement, the arrangement has been "we're going to compromise a little bit", and allow a marketing message within the content of the program, but we're still going to achieve transparency by the use of various visual indicators. So they plumped for the use of certain symbols and disclosure requirements both in the opening and the closing credits, so transparency remains critical. If you look at social media, and the use of word of mouth marketing within social media the OFT has produced guidelines which are now being effectively enforced by the ASA, if a celebrity has a deal with a brand, and then tweets, or puts something on their Facebook page about the brand, then they have to disclose the fact they have a relationship with the brand. One can point to occasions when the system breaks down, but basically it is well established and compliance is generally at a very high level, and transparency is critical.”

Product placement can go under the radar of regulations by exposing children to the likes of certain brand cars such as BMW, whose target market is 6 year old boys. Their marketing tactic is to create an urge to aspire to these products in later years. The public sector marketing communications expert agrees with the commercial lawyer and commented 26.2.13:

“To be transparent would be something that was clearly an advert with Advertisement written on it. Where its product placement, it’s obviously meant to be more subliminal. Some are a bit more subtle. Equally there are loads of adverts where people say "That’s a good advert" like a car advert and then after "What is it advertising?" No one can remember what it is advertising. The advert is so good it detracted from the thing they were trying to sell.”
The OFT legal director explains how airline surcharge prices lacked transparency and how the OFT intervened to make the market work better and be more transparent for the traveler 16.5.13:

“Airlines were competing on headline pricing which did not reflect the actual price that you were likely to pay because there was a payment surcharge for the use of your debit card that could inevitably be quite a substantial sum. With some airlines is was £6 per person, some would be £6 per person per leg of the journey: still many pounds you would have to pay, we felt that this was an area where the market was no longer working well for business to compete on price and consumers to compare on price. The best way to deal with this was to remove the difference between the up-front charge and payment surcharge by requiring the payment surcharge to be in the headline price. We had an investigation involving 14 airlines last year (2012) where we said to them you have to stop charging an additional sum for credit cards and you should put that in the headline price and that was the outcome we achieved in the end and made the market work better. Credit card surcharge was not an optional extra because most people would inevitably have to pay surcharges and they would not be able to travel for the headline price.”

On the point of transparency an Institute of Direct Marketing representative commented that companies should be as transparent as possible yet remain creative 4.3.13:

“I think it is bad if legislation stifles creativity and innovation. Marketing has to be fun and inspiring and make you want to buy the product, social media barriers having gone down. I agree with transparency. Companies should be as transparent as possible.”

On the question as to whether advertising is totally transparent, an editor of ‘Which’ said succinctly 22.4.13: “No”! As to the question regarding whether marketing can manipulate us into making decisions, one marketing expert disagrees and thinks that our whole lives are manipulated into legislation trying to make us all the same:

“Our whole lives are manipulated in so many different ways; not just by advertising, but by peer groups, aspirations. We are manipulated constantly. They’ve forgotten we’re human beings. You have different needs to mine. Wouldn’t it be a sad world if we were all the same? Legislation is trying to make us all the same.”

Marketing agency owner and direct marketing expert and former IDM chair, agrees and thinks that celebrity endorsements and editorial have much influence on consumers. He gives the example of Nike and how this can also backfire on the brand when things go wrong, when celebrities behave inappropriately 28.2.13:

“You can definitely get people to think in a certain way, if it's done properly through things like editorial and celebrity, if it is not obvious advertising. People are quite cynical towards advertising and trust brands less than they used to, due to previous behavior. If you look what's happened to Nike, with Armstrong, and Pistorius people very quickly associate the story of the people that Nike sponsor, tend to be criminals or do something awful in their sport. Nike by being
attached to that celebrity gets a slightly more damaging reputation; it's unfair on Nike. They can't foresee that someone's going to be a drug cheat or shoot their girlfriend in the toilet. We live in a very celebrity culture situation at the moment, so if a celebrity is seen wearing a pair of headphones, or endorses a particular product or song, people will take that as trust.”

Marketing journalist and head of CIM research, talks about consumer buy-in using transparency for data mining purposes 11.3.13:

“The Tesco club card is a fantastic benefit because it looks at all our data, and it offers us the things that we want. Or is it a huge breach of our privacy because it examines all our information, and then uses it to offer us what we want? Of course, all you really need is the word “transparency” written in large letters at the top. As long as the customer knows that you are taking their data, and has a reasonable grasp of what you're doing with it, and that there is an implied 'you are only doing the things that we might reasonably expect you to do with it’, then I think the customer is happy, and that’s why Tesco club card is OK. Amazon remains trusted. Because we can see what Amazon is doing; we can see all those books and videos popping up underneath.”

Unfortunately most consumers are not aware of what brands such as Tesco, Google and Facebook are doing with their data and how they are mining it to target them specifically with products and services. A Data Marketing expert, commented on how consumers like to think they are not manipulated by brands 4.3.13:

“It's almost a matter of pride to some individuals that they are not ever, and never have been, and never would be, affected by advertising and marketing. And then you walk into their kitchen and they've got every single branded product that's on the telly that week. And you just smile quietly. I have a number of friends who swear blind that they're never affected by advertising, and then you look and they are brand queens, all of them: particularly the men!”

In the experience of the researcher falling foul of a scam to extort money developed by a company with the knowledge that very few people read the terms and conditions on websites, is evidenced by the OFT legal director, as he discusses transparency in terms of Terms and Conditions 16.5.13:

“It is the sort of issue where something is hidden in plain sight so a completely rational look at a website it says ‘x’ there this is what the terms and conditions are for example, but everyone knows that the viewer is not going to look at those Terms and Conditions. There was an interesting case last year: Spreadex against Cockran which was a high court unfair terms case about where people click read T's and C's and a judge felt this was not sufficient disclosure of certain terms and conditions so there is quite a lot of scope there for courts to say that you have disclosed, but clearly it is not adequate disclosure. I think that there is something that is worth exploring more.”
He finishes off to say that the purpose of marketing is to appeal to consumers to buy products, which is a legitimate purpose of marketing:

“Presumably the whole purpose of marketing is to appeal to the people and to get them to buy your product that seems to me to be a legitimate purpose of marketing to see if you can encourage people to buy. There is a problem if things are being done deceptively and if a business is exploiting the fact that people don’t look on a certain place on a website making an important disclosure that contradicts certain claims elsewhere that are misleading then I think that is where they risk falling foul of the law.”

5.4.3 The subconscious state of mind: perception of unconscious attention

Subliminal perception is claimed to have occurred when a person is not able to be aware of the stimulus that is eliciting a particular response (Dixon, 1971). ‘Subconscious forms of marketing are not included in the Consumer Protection from Unfair Trading Regulations (2008), but it is included in the auditory visual Regulations for BCAP. An observation led to the question as to why the term subconscious is not used in the CPRs when it is used in BCAP auditory and visual as ‘Subconscious AKA Subliminal’, and can be used in many sensory modalities: The professor of philosophy and sensory expert discusses how subliminal in psychology terms is known as priming, using association and how it has its flaws in consumer decision marketing 1.5.13:

“Subliminal is supposed to be when you get something presented to you so quickly so that you either didn’t consciously see it or, you consciously saw it but it happened so fast it airbrushed out of consciousness immediately and you can’t remember it, but it subsequently has an effect on what you then say or do. We know there are such effects and nowadays we don’t use subliminal. This is ‘marketing talk’, and in psychology they call it ‘priming’ where, for example, if you flashed up very fast for about 150 milli-seconds a semantically associated word, people are better at quickly recognising the word that follows, so if you have doctor and nurse, fish and chips, bread and butter you flash up bread so fast, they think was there something on the screen, and then you show them butter. They are quicker at judging that is the word butter than they are if they did not get that happening first. That is priming and that is very reliable. Is it true that you could use this technique to go and get people to buy your product? I doubt it: if you did this in cinemas, you flash up a pure orange quickly before the break that this will mean people would go out and buy Kia-ora. If they wanted to go out and buy something to drink because it made them thirsty, they would not necessarily buy Kia-ora, so it was only half successful. It was good at getting them to think drink, but not this type of drink.”

In conversation with sensory marketing expert, he disagrees and refutes the idea that subliminal associates work. He does not believe that this affects our decision making process 8.5.13:
“With subliminal you could say it is messages that happen in the non-conscious that compels us to behave in a certain way. I don’t think it exists; maybe through hypnosis, although that’s perhaps the only form of subliminal compulsion or behaviour that I can think of. Subconscious signalling ‘yes’, subconscious processing and decision making ‘yes’, but I still don’t believe it can make us behave in ways we’re not predisposed to do. That for me is the Rubicon that I don’t think it is possible to cross, and I don’t think marketers should claim that we can.”

Subliminal does work, which is why it is banned under other regulations. The researcher explained how subliminal marketing is banned under the auditory and visual elements of some regulations, but not in the CPR’s. He asserted his beliefs and discussed his reasoning why:

“Subliminal in that context is very specific, there were messages that were put in that were flashed up so fast that our brain couldn’t process them consciously, but there was the belief that subconsciously the brain was processing them. Again, I repeat, I don’t think they had the capacity. This is where I completely refute this idea that just putting up the image of say Tetley tea, for a millisecond in a TV ad, a TV commercial or a Coronation Street episode is going to compel people to buy Tetley tea who didn’t want to buy Tetley tea anyway. My view is that it is pointless, you might as well put out a ten second advert for Tetley tea and say, here’s an advert for Tetley tea, those people who are Tetley tea buyers might think ‘Oh you know what, I need to buy some more Tetley tea’, and go out and buy it. If you don’t drink tea, it’s not going to make you drink tea, whether it’s for 1 second or 1 millisecond, on a conscious level or non-conscious level.”

Neuropsychologist and the ‘Father’ of Neuro-marketing disagrees, although he also prefers the term unconscious. He explains how subliminal techniques have been used in the advertising industry for years 17.4.13:

“I don’t like the word subconscious; I prefer the term below the level of conscious awareness, the problem with subconscious is it's got something of a Freudian overtone. Unconscious is probably better. Subliminal means unconscious perception, it means below the limen, which is the level in which we can consciously perceive something. If I was to flash an image on the screen to you, at say 1,000ths of a second you wouldn't be able to be consciously aware of it, but it would still have a difference on your brain, so subconsciously you are aware of it. We have completed studies looking at subliminal. The advertising industry will strenuously deny that they have ever used subliminal advertising: in fact, that's not true. I suppose the man who in a sense put the whole study back by considerable decades was James Vicary.”

Professor of cognitive neuroscientific consciousness agrees with the professor of philosophy and explains how ‘masking’ works18.4.13:

“The more fundamental distinction, and I would define a subliminal stimulus, image, or whatever, as something that you're not aware of having seen. So, there's no difference between it and a blank screen. If you flash something up really fast for less than 10 milliseconds, then I will not see it. I will not say that
I've seen anything... It can be in any modality, typically, with visual stimuli; you manipulate it in terms of the timing. There are many ways to make stimuli subliminal. You can present them very quickly; you can present them for a bit longer, but then follow them with another image; that's called masking. People will see the mask, but they won't see what's presented before the mask. There are many ways you can do it, and in different modalities you will use different methods. But the common thing is that you don't perceive the actual stimulus.”

The professor explains subconscious Artificial Grammar Learning:

“Subconscious is a bit broader, or unconscious. There's a paradigm called ‘Artificial Grammar Learning’. You see apparently random strings of letters. Not words, just strings of letters. And you look at all these strings of letters, you have to classify them as belonging to Group A or Group B, and after a while, you're able to do this, because there are some rules determining, maybe in Group A, C and D always come together. And people can start to classify these letter strings, but still do not know what the rules are. I would say that's subconscious, because they're seeing the letters, but they're not conscious of the rules.”

He goes onto discuss subliminal conditions and cognitive control:

“So the advertising, flashing up an image, that's supposed to be subliminal; the idea is that you're not even supposed to see it. Now, that got discredited, more recently in psychophysics, people have asked again, under much more stringent conditions: 'Okay, so, what ARE the limits of the impact of actually subliminal stuff?' It turns out there are quite a lot of things that one can do with subliminal stimuli. One of the big things that I think might be relevant is decision, cognitive control and inhibitions. It was thought that you can make certain responses more likely if you prime them subliminally. This has been shown in many ways. You can have an ambiguous word like 'bank'. It could be a river bank, it could be a money bank, and you ask people to decide on an interpretation. But if you show them an image of a river or a money bank, subliminally, so they don't see it, nonetheless that will affect their response, and that's priming. A typical experiment would be every time you see a cross you have to press a button as fast as you can. But if you see a cross followed by a circle then you do not have to press it. People always make mistakes, even when the cross and the circle are very visible, and it's a good way of measuring how much cognitive control people have and how able they are to inhibit their responses. It had been thought that if the circle was subliminal, then you would never be able to inhibit your response; that you would have this automatic see a cross and push the button. Under certain circumstances, it is possible to prevent a response through an influence that you don't even see.”

We trust our vision, but smell and taste can go under the radar chemical signalling, and description labelling can change our perception on subconscious sensory impact. The professor of philosophy says 1.5.13:

“Smell is the most powerful of the senses. There are not different levels, but on different occasions they can be weighed differently. We are going to trust our vision. If something is the wrong colour, you are not going to eat it, however good it tastes. We select things with our eyes and if the colour is not right we
might think twice. Smell is interesting because smell can work in a way which gets under the radar. People can smell fear in other people; they can recognise other people’s state of excitement or arousal odours like fresh lemon make people more awake and more alert, so if you are in an environment and they have sprayed this around, you might not really pay attention to this, but it will have an effect on your mood. Descriptions can make a difference. A famous experiment with Heston Blumenthal and Mark Newman was when Heston made a smoked salmon ice cream which was very odd. Mark split tasters into two groups; one was told it was an ice cream and another told it is a frozen savour mouse. The ones who were told it was an ice cream hated it; the ones who were told it was a frozen savoury mouse said ‘Hey, this is nice!’ The label has a huge effect on your expectations and your enjoyment of something similarly sensory. Marketing again, if you have an ice cream and it is creamy are you going to call it fresh or fraiche? Fresh sounds creamier.”

‘Mood Marketing’ is profound in many ways; not least in the personal knowledge that those who are untrained marketers, yet with knowledge of scents apply various ‘mood enhancing mechanisms’, which the researcher is aware of is being placed in spas across Europe. Lemongrass is a most interesting observation as one fragrance predominantly used; ironically lemongrass fragrance is the closest related to that of the Queen bee pheromone, which is how the Queen maintains control over her colony. It is arguably the most powerful fragrance known in the natural environment to ensure control, happiness and contentment. A marketing expert disagrees, and asserts his belief that subconscious marketing techniques are science fiction 13.3.13:

“I don't believe in it, there are people who would like to make us believe through a series of statistics and surveys and research that in some ways we can get people to do something without them being aware of them doing it. I don't believe in that. Its hocus pocus. It is science fiction.”

The Chairman of the Advertising Advisory Committee balances the argument, and says 11.4.13:

“Adverts are designed to leave a message that you remember, whether consciously or subconsciously. If you don't remember any of it, none of it stays there, then it's a waste of time. It's got to have some impact, but impact comes from lots of things other than offence. Impact can come from a particularly attractive bargain offer, or a particularly vivid image of some kind of a particularly strong claim; a particularly unusual or interesting innovation. There are lots of things that can make a really big impact on people. So, having that kind of subliminal effect on somebody is relatively unusual, I would say, and I don't think it's particularly necessary for advertising to do that.”

How can we ban subliminal, when we do not know if we are exposed to it? Is nudge marketing the newer more accepted term for subliminal? Professor of cognitive neuroscience and consciousness provides some illumination 18.4.13:
“It's very simplistic to say, okay, we should ban subliminal stuff because somehow that's uncontrolled, and people are exposed to that kind of information, but with subliminal we don't have a choice of how to respond to it, whether to incorporate it into our decisions or not, implying that if it's subjectively visible it's somehow okay, because then we have a choice about what to do with that information, which I suppose is the underlying premise for having that kind of regulatory framework. I think that clearly this doesn't hold up under closer examination. We can see that there can be plenty of stimuli that we consciously see, so not subliminal. That can definitely affect how we make decisions about these things, how we feel about these things, the psychology of ‘nudge’ is a little bit like that. You frame options in different ways that makes certain decisions more likely. That's the science behind the ‘nudge’. By having anchors, by having framing, these effects are very real; they definitely exist, and your stimuli can affect mood, can affect decisions, so there is no red line between what should be unacceptable and what should be acceptable from a scientific point of view,”

The sensory marketing expert 8.5.13 thinks that subconscious sounds sinister and believes this behavior is just based on decision making we have done in the past. We see that terminology around words such as subliminal and subconscious are highly emotive and even our experts are influenced by personal belief systems within their own perceptions:

“We know that the large part of all purchase is emotionally driven. We say emotions but it is also our learned associations, our learned behaviours, and our learned terms of reference, which then falls into our subconscious. So the term ‘subconscious’ makes it sound sinister; it’s just decision making that we’ve done in the past that we don’t necessarily have to do consciously again. We’ve learnt from association what we do and we don’t like, any marketing whether it’s overt posters on the side of a motorway or a big TV advert; they’re all trying to make those connections between our learnt preferences and trigger awareness and trigger our desire to buy, there has to be that innate predisposition to want to buy something, subconscious and emotional can be used a little bit misleadingly. I believe it is really re-triggering our existing brand preferences. I don’t think anything that we can do is going to necessarily change brand preferences and think it’s going to set up propositions into which we may choose or not choose to buy into, once we’ve bought into that particular product or brand proposition, having that stimulus represented to us may re-stimulate that wish to buy. I don’t think it’s going to change what people do and what they have a predisposition against doing.”

In part, the vice chairman of an international marketing agency agrees that our decisions are highly complicated and subjective:

“People who are insecure about clothing buy fashion brands because the assumption is: ‘Well, Armani aren’t going to produce anything that’s naff.’ Whether or not that’s true is entirely down to your subjective opinion about what’s naff. The way in which we decide is highly complicated; it’s often socially mediated; our enjoyment of wine is massively affected by factors other than the wine, it is ambience, circumstances, room temperature, your own personal feelings, etc., at the time you drink it. There’s no sensible distinction to be made between the value you create by cooking the food in a restaurant and
the value you create by sweeping the floor. One thing produces the primary
good which is the food; the other thing produces a frame of mind, the
atmosphere and the confidence with which you can enjoy that food.”
### 5.4.4 Expert Definition of Subconscious and Subliminal

Dictionary Definition of Subconscious: Concerning the part of the mind of which one is not fully aware but which influences one's actions and feelings

Dictionary Definition of Subliminal: A stimulus or mental process below the threshold of sensation or consciousness; perceived by or affecting someone's mind without their being aware of it.

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<thead>
<tr>
<th>Expert Type</th>
<th>Marketing</th>
<th>Law</th>
<th>Regulators</th>
<th>Psychologist</th>
<th>Neuroscientist</th>
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<tbody>
<tr>
<td>Definition of subconscious</td>
<td>Something you do without necessarily rationalising your thoughts</td>
<td>Control</td>
<td>In the back of the mind</td>
<td>I prefer to use the word below the level of conscious awareness</td>
<td>Subconscious is when you may be presented with an experience in a modality, but you are not conscious of the rules</td>
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<td></td>
<td>Something that kicks in when you feel bad</td>
<td>Unaware</td>
<td>No official definition</td>
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<td></td>
<td>Something deep down</td>
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<td>Perceived in a non-rational way</td>
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<td>I don’t subscribe to that school of thought! I don’t believe in it</td>
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<td>Things you are thinking without being fully aware</td>
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<td>Expert Type</td>
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<tr>
<td>Definition of Subliminal</td>
<td>By influencing you in something ambience around you that you might not realise.</td>
<td>Not myself</td>
<td>A hidden message</td>
<td>Priming</td>
<td>Subliminal is not a synonym for ‘flashing. Flashing is the word we use for flashing things on a screen</td>
</tr>
<tr>
<td>Being sold something I didn’t realise I was being sold</td>
<td>Sub-conscious</td>
<td>No official definition</td>
<td>Subliminal means unconscious perception below the limen</td>
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<td>Something that flickers across the screen</td>
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<td>Something perceived without conscious realisation</td>
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<td>Messages you are not perceiving as messages, which are conditioning you to do something</td>
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<td>Buried messages</td>
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<td>Unaware</td>
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<td>The same as subconscious in that you are aiming to create an action in a</td>
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person by appealing to them sub-consciously

Table 5.9 Definitions of Subconscious and Subliminal

An expanded expert definition offered by the sensory marketing expert 8.5.13, who believes that our non-conscious is built out of previous experiences, and that subconscious infers us being out of control:

“We use the term ‘non-conscious’. Subconscious seems to be something that happens passively that we’re not in control of, for me the definition is slightly different because our non-conscious doesn’t mean to say that we’re not in control of the decision making, but that the decision making is happening at the back of our minds. It’s built up out of our experience, our previous decision-making; you know we don’t need to occupy our minds too much with this kind of decision. You go to a supermarket and typically, you’ve got three seconds consideration time per product in a supermarket, what they call a ‘skew’, so you’ve got three seconds to choose. Ninety per cent of the time you’re going to buy the same one.”

The ASA have no specific definition for the term subconscious or subliminal. In conversation with the CEO on 24.4.13 he explains:

“We don’t have an official definition of 'subconscious' or 'subliminal' as far as I'm aware. For 'subconscious' we just go with the normal meaning of the word. 'Subliminal', I think we would understand 'subliminal' in an advertising context to imply, for example, images being flashed up really briefly, in ads, such that viewers would not consciously see them. I think that's probably the example of subliminal advertising that is known here, at least.”

The UK regulator should have a definition of these terms so that their adjudicators are familiar with the term and its meaning. World renowned professor of neuroscience says:

“The understanding of subliminal is just plain wrong, in a sense 'subliminal' is not a synonym for 'flashing'. Flashing is the word we use for flashing things on the screen.”

5.5 The Average Consumer in Life and Law

Anagnostaras (2010), stated:

“The application of the average consumer test is based on the assumed expectations of a reasonably observant and cautious individual, who demonstrates the necessary duty of care in the protection of his/her interest.”

The man on the Clapham omnibus is a hypothetical reasonable person used by the courts in English law where it is necessary to decide whether a party has acted as a reasonable
person would. The man on the Clapham omnibus is a reasonably educated and intelligent but nondescript person, against whom the defendant's conduct can be measured. The term was introduced into English law during the Victorian era and is still an important concept in British law. The researcher questioned whether the Average Consumer is the best benchmark measurement today. Rt. Hon member of the House of Lords says there is no such thing as the average consumer 28.3.13:

“Everybody is looking for the average person; just like they are looking for the taxpayer. This place (House of Lords) is paid for by the taxpayer well who is he? I don’t believe I’ve even met him. So everybody’s looking for the average consumer but who is he? But I presume he is either male or female early thirties family of 2.4 and all that sort of stuff, but I don’t know there’s such a thing as the average consumer. It is something which is talked about, but doesn’t actually exist, like extremely cold, absolute zero temperature.”

The vice chairman of an international marketing agency insists that there will never be a perfect model of the average consumer. He compares the workings of the human mind to the iPhone 29.4.13:

“My one candour with regulation is that if it’s formulated by economists then it’s psychologically blind and quite often stupid... The one thing is there will never be a perfect all-embracing model of human behaviour. For the simple reason that I don’t think we’re even consistent within our own heads. Robert Kirekegaard, from University of Pennsylvania, says the brain is like an iPhone; you have different apps; you turn one off and you turn another one on. Some of them are running in the background and some of them are running in the foreground, it doesn’t have to be internally connected. What creates the illusion of connectedness is our own rational consciousness, our system two, which is largely a bull-shitting marketing department. It’s there to issue bulletins about ourselves in which we come out well and also to tell those stories to ourselves to make ourselves feel good about ourselves. I don’t think human behaviour needs to be consistent. There will never be a perfect model, but what you can say is, if we have a pretty good toolbox of understanding human behaviour, which embraces a bit of neuroscience, a bit of behavioural economics, and a bit of neoclassical economics. It’s like weather forecasting; they use a multitude of different models. A lot of people think McDonalds have some weird group of neuroscientists working out evil ways to manipulate people into eating more. That may be true, but there are obviously certain human behaviours where you can trigger insane loop behaviours and can trigger addictions, or addiction may be an evolutionary thing that’s evolved.”

The world renowned professor of neuroscience, discloses how most people think they are above average in most things 15.3.13:

“Most people rate themselves as above average; there’s a well-known psychological effect, if you take a room of people and ask them to write down on a piece of paper and give them a scoring system, and you take some attribute, like intelligence or attractiveness and say: ‘Write down where you are, relative to the average in this room’. On average, most people would describe
themselves as above average, which, of course, is impossible. There have to be people above and below an average in order for there to be an average. Most people think they are above average in most things.”

In conversation with neuro psychologist and the ‘Father of Neuromarketing’ on 17.4.13:

“The average consumer is non-existent; there is no such thing as the average consumer, demographically you might be able to take 1000 people and average them out, but I think it's a bit of a misnomer, it's fairly patronizing.”

The professor of philosophy and sensory expert thinks that there are averages in certain populations, but that the sensory perception of taste can vary considerably and we cannot assess consumer responses in the same way. Given that the law assumes we all behave in the same way 1.5.13:

“There are averages in certain groups and certain populations, all of us might live in slightly different taste worlds because we have different numbers of taste buds on our tongues so there are super tasters, tasters and non-tasters. So the super tasters, which really means over sensitive tasters, for them they don’t need much salt in their food and they can find the taste of wine quite sour and find coffee rather bitter and at the other end you got people where there is no dish too salty or too sweet that suggests that you or I make directives about how much sugar is allowed and how much salt. It is quite difficult, because people have very different sensitivities. You see what makes something salty is how many taste buds are touched simultaneously. So if you have got receptors densely packed on your tongue you get salt very fast, but if not you will have to spread a lot around to get the effect, so again I don’t think you should assume that all consumers are responding in the same way and we know there are broad differences in populations.”

Another sensory marketing expert, slightly disagrees with professor in that he believes there is a subtle nature in creating an average sensory experience, however the subtlety of fragrances are to change mood, and thus behaviour and therefore goes under the consumers radar, 8.5.13:

“I’ve put fragrances into stores and banks and airlines and cruise ships over many years and we’ve never had negative comments from customers because what we do is very subtle; it’s just a gentle thing. I want someone to go into a store and not notice the smell. If you were to ask them while they were in there: ‘Do you notice the smell?’ they may say: ‘Oh yes, I like that’ or they may say: ‘No, it’s not for me’, but until it is brought to their attention they shouldn’t notice it. The last thing you want to do is create ‘muzak’ for the nose, if you’re creating fragrance.”

Retired Chairman and Partner of a Law firm disagrees with the neuropsychologist and thinks that differences in perception are unrelated to averages 4.4.13:
“Because people receive messages differently doesn't mean that there isn't an average. I think it's fair to try. The omnibus tends to be single-decker. It’s fair enough for a legal system to look for the average purchaser.”

If an average does not exist, one might question how laws can be created around a non-existent fabricated person? The past Editor of ‘Which?’ magazine shares his personal ethnographic experience from research focus groups and finds it difficult to conceptualise who the average consumer is from their responses to his research 22.4.13:

“When I worked at Which? we had focus groups. Sometimes it was about people’s purchasing decisions and one of the jobs I had at Which? was editing the car magazine. To inform how we presented cars, but more importantly what we included in the magazine and how we presented it, we used to have focus groups and talk to people initially about buying cars and other goods... What I took away from that was it’s very interesting to hear people’s views about what they thought about when they were buying a car or what they did when they went to buy a car, I was genuinely amazed at the way people went about doing that because it was so different to the way I would, and different to the way I imagined most people would. From that experience I find it really difficult to accept the concept of an average buyer, shopper, consumer even, and I find it quite difficult to conceptualise that.”

He goes onto say how editorial freedom might mislead the consumers more than advertisements as consumers often believe editorial to be objective by nature:

“People still have a view that editorial is somehow objective; at least it’s balanced and trying to help people, and editors go to great efforts to make their readers feel part of a group of like-minded people. Where advertising is regulated, people know what an advertisement is, they accept that it’s trying to sell them something and I’m sure that they perceive it differently from editorial.”

The Chairman of AAC, believes that the average consumer should be product specific or average within a particular group of, for example, ‘teenagers’11.4.13:

“You have to have something to judge whether there have been breaches or not. If you don't use the average consumer, I don't see what else you can do. The only gloss I would add, is that I think it should be the average consumer for that type of product. If, for example, it is a product that is mainly bought by teenagers, then it should be the average teenage consumer, not the average consumer across society as a whole. And teenagers generally are less savvy about their rights than adults are.”

Although he cautions about tailoring the law to suit all consumers:

“You can't expect John Lewis to prescribe different electric kettles depending on which customer they're catering for, can you? You have to actually deal with some kind of manageable business concept in order to do trade at all... I do think there is a case for tailoring these things according to who the specific consumers are going to be. Very obviously is the services market. If you're selling home income plans or something similar to people who are elderly and need extra income and are sitting on a wealthy asset, you need to recognise that
people of that age have a certain set of anxieties and a certain knowledge set, which, in some areas, might be gracious to them, but might in other areas be less. And you need to cater to that. It should be average for a particular category of product. I don't think you should equate the average consumer from the rational consumer. That's not the same thing. There are lots of circumstances in which the rational consumer will actually be an extreme that hardly exists at all. And the average consumer is one that is beset by all of life's eccentricities and problems and foibles.”

Proportionality of regulations is required taking into account consumers reasonable knowledge of limitations and assiduousness.

“With the average consumer, it's perfectly reasonable to assume a degree of knowledge, but not an unlimited degree, a degree of caveat emptor. One extreme would be a second-hand car, where you would expect the customer to take quite a lot of precautions, if they don't, it's pretty much their outlook. At the other end, if I buy a packet of Ibuprofen, I shouldn't have to know anything more than Ibuprofen is a recognised painkiller and it is produced according to a certain standard. I do think you need to develop horses for courses, and what wouldn't have to happen in relation to any individual cases is to identify what the average consumer was for that particular product. You know, what the limitations might be to their knowledge and assiduousness.”

The makers of Neurofen did in fact dupe many consumer and made huge profits producing packaging claims that products were effective in reducing pain for different areas of the body, when in fact the product components were the same for each product, thereby misleading the consumer. The legal director of the OFT challenged the definition of the ‘Average Consumer’, and any link to Homo Economicus (HE) in law. He echoes the definition of the ASA and UCPD though he accepts there is flexibility in the law 16.5.13:

“If I just challenge you on the definition slightly, we would not say the average consumer is HE and we would not necessarily be rational, the average consumer according to law is somebody who is reasonably circumspect, cautious and well informed. They are non-the-less a human being and in some of our cases that we have taken to court we have deployed behavioural economics arguments where we rely on the fact that people act in ways that are not necessarily rational as such.”

The professor of academic law, illuminates the criticism levied at the European Commission for using the ‘Average Consumer’ as the benchmark. He disagrees with the ASA CEO, and states that economic man is at the heart of the problem in law and he generally disagrees with comments made earlier by lawyers and regulators. He agrees with the Vice Chairman of the international marketing agency 2.5.13:

“Talking as a contract lawyer and a consumer lawyer, I’m sure you’re aware that there has been a lot of criticism of the way that the commission has relied on the average consumer and the benchmark for the regulation of the consumer
marketplace, the criticism being that the bar is being set too high here, that the commission makes assumptions about the capacity of consumers and don’t pick up the capacities of consumers at the lower end of the range, there are vulnerable consumers out there whose interests are not being properly protected by this approach. The other bit with what you started with about the economic man is what is at the centre of this. There is a restricted view about the place of the consumer within the market, but then the whole of this is driven by economic imperatives isn’t it? The competence of the commission and the whole regulatory game rests on putting in place the conditions for the single market, and many critics would say that alongside that there is a particular kind of neo liberal philosophy that’s driving this enterprise, which encourages the view that people do think in the market, in cost benefit terms. To connect that up to what I was saying about rationality, the dimension of rationality that fits most neatly with this is the kind of instrumental rationality, I would think, where rationality has any sort of substance to it is utilitarian. I mean the commission, in all, not just in the directives that you’ve been talking about, but from the late 1980s onwards, consistently talked about trying to put the consumer in a position where the consumer was able to make informed choices about the market, the emphasis is on getting information out to the consumers so they can make choices which will enable them to satisfy their preferences more adequately. The model here is of individuals in the marketplace who have certain preferences and priorities which they’re trying to satisfy and they’re looking for goods and services that will do the job.”

The professor goes on to discuss average consumer variables and describes one of the leading cases in the European Court of Justices:

“If we tried to draw up a typology of consumers I’m not sure how many variables there’d be. We’d find that some consumers and individuals were much more impulsive in their purchasing and that some were much more price sensitive than others, but there are probably individuals that fit into these descriptions as sort of general descriptions of their characters. This is their default approach to consumption and they might well be inconsistent again in the way that they consume, while for the most part they might be keen on getting the best price; other times they are impulsive. I wouldn’t be at all surprised if we found individual consumers displaying different patterns of consumption. With the developments of online consumption, there were some people who thought that this would be a real opportunity to make sure that consumers understand the small print that was part of the deal, because the common law for traditional off-line contracting, says that suppliers can rely on their terms and conditions provided they’ve taken reasonable steps to bring them to the consumer’s attention, so it doesn’t matter if the other party has actually understood. If you’re a stickler for consumer protection I don’t think that’s quite satisfactory, so when on-line shopping was becoming a reality I went to a number of conferences where I heard people suggesting that this was an opportunity through the design of the technology to really make sure that consumers understood what they were signing up to, or not what they were signing up to, but what they were clicking up to! I mean, everybody you speak to pretty much says well look OK you know you have to click through these various things like: ‘I’ve read, I understood, I agree to’, but basically I just want to do the deal so in the on-line environment, most people I suspect are consuming in a way which leaves them just as unaware of or not cognizant with the terms and conditions on
which they’re consuming, as in the off-line world. There’s only so much time for particular acts of consumption, when you’ve got a lot of consumption to do. The third point again about the average consumer and how they might be taken in. One of the leading cases in the European court of justice, was about a chocolate bar that was marketed in Germany in a way which showed you were getting an extra size; it was bigger, extra value let’s say that is was 25% more than you’d have got in a standard bar, so it was a special incentive to buy this, but the way that the wrapper on the chocolate bar was presented, showed more than a 25% portion. The question for the court was whether this was misleading, and the answer was that the average consumer is savvy enough to know, or to register, that you’re getting 25% more here and visualise what that is, even though the packing is sending a different signal, suggesting that you’re getting more than 25% if you just look at the packaging. That seems to me to be under protective of consumers even though you might say: ‘Oh well it’s only a Mars Bar or something’. I think you could be quite easily misled going round the supermarket, trolley load of stuff and you just grab this off the shelf and it looks at first sight like quite a lot more than you thought you’d get. They thought that the average consumer was smart enough and streetwise enough to see beyond the superficial packaging."

He goes onto describe how neuromarketing could provide insightful evidence along with behavioural psychologists and ‘nudge’ and gives his impression of how stimuli may or may not be misleading to the average consumer and how it is a matter for decent fair trading:

“I’ve learnt quite a bit recently from behavioural psychologists. We were looking at the initiatives in New York public health programme, where they were really reliant on the Dutch in various respects, and for example requiring all fast food, all restaurants, to give information about the calorie content of particular menu items, and trying to ‘Nudge’ customers away from really high calorie choices. One of the stock examples would be that on the menu if you want to have a burger, you’d get it with salad. If you want to have fries with it you’d have to ask, so the default is the healthier option. If you want to go for the unhealthy option you have to opt out, or more specifically into the unhealthy option. In the same way I think in a consumer marketplace I think it’s understood that consumers have a default that we need to be conscious about. There was evidence some years ago that consumers who were using credit cards to make their purchases didn’t have the first idea about the interest rates that they would be paying on the money they were borrowing. There were attempts made to improve the information that was going out to consumers, the APR became something that was always to be shown. Follow-up studies showed that consumers hadn’t got the first idea what APR was, so putting this in big black or red letters didn’t actually help them. Coming to the question about neuroscience could possibly help us understand more about how we function in a supermarket or these sort of shopping situations, it could because if we have a certain view about an average consumer which is driving the regulation, and that view is as far as I can see quite speculative and impressionistic about how consumers do make their choices, how they do consume, the more we can understand about the way we really operate, I think the closer the regulation could bond to the way in which we do consume. An awful lot of our consumption is on autopilot, we’re not really thinking very hard about it, but then it might be that some of the things
we’re worried about as being misleading don’t actually matter too much, but it could be that although we’re on autopilot for much of the time we come out of that when there are prompts or stimuli that take us into some other mode, the question of whether these are then misleading could then be engaged properly and we could at that point ask when consumers go into this other modality what is it that actually explains the decision they make; the choice they make on whether to buy or not. And is it fair? The question could be reduced back to ideas about fair trading, if you say it’s misleading, you’re saying there’s some sort of deception here, some sort of advantage taking, so it’s resting on ideas we have about fair trading isn’t it?”
### 5.5.1 Expert Definitions of the Average Consumer

Dictionary Definition of the Average Consumer:

Average: A number expressing the central or typical value in a set of data, in particular the mode, median, or (most commonly) the mean, which is calculated by dividing the sum of the values in the set by their number.

Consumer: A person who purchases goods and services for personal use.

<table>
<thead>
<tr>
<th>Expert Type</th>
<th>Marketing</th>
<th>Law</th>
<th>Regulator</th>
<th>Psychologist</th>
<th>Neuroscientist</th>
<th>Membe</th>
<th>House of Lords</th>
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<tbody>
<tr>
<td>Definition of The Average Consumer</td>
<td>The person that spends the average money</td>
<td>Average man on the Clapham omnibus</td>
<td>Reasonably well-informed, observant and circumspect</td>
<td>A non-existent set</td>
<td>Most people think they're above average in most things</td>
<td>The taxpayer whoever he is!</td>
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<td>Joe Bloggs with 2.4 children</td>
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<td>Man or woman in the street</td>
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<td>Someone who shops at ASDA and has a 9-5 job</td>
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<td>Economically Average</td>
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<td>We are all average consumers and we all need to be protected</td>
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I don’t believe there is such a thing

Joe Public

Experienced customer of sound mind. Not naïve and credulous but not suspicious and cynical either

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<tr>
<th>Table 5.10 Definitions of the Average Consumer</th>
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<tbody>
<tr>
<td>The CEO of the ASA provides the definition as described in the UCPD as 24.4.13:</td>
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<tr>
<td>“Reasonably well-informed, observant and circumspect. Whether or not people are circumspect as well, that's an interesting question, and you'll probably be exploring that in your research. Even with the help of that definition, it's clearly a matter of judgement.”</td>
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<tr>
<td>Marketing Journalist and Head of CIM Research offers his definition of the average consumer 11.3.13:</td>
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<tr>
<td>“One says a reasonably experienced customer of sound mind who has a reasonable understanding of how companies and sales work and who is not naïve and credulous, but on the other hand is not suspicious and cynical either.”</td>
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5.5.2 Homo Economicus and the Rational Consumer

It is testimony to the fact that the average consumer test reflects the economist’s idealistic paradigm of a rational consumer in an efficient marketplace. As they say: “This notion may be useful for economists’ calculations and projections, but departs from the unpredictable realities of individual human behaviour and is hardly an appropriate standard for legislative or judicial sanctions.” (Incardona and Poncibo, 2007:21). Experts were asked as to whether Homo Economicus under the European directive or average consumer as is enacted in the Consumer Protection from Unfair Trading Regulations (2008), is the correct
measurement today. A leading commercial lawyer believes that Homo Economicus is the right measurement to be used in law and that it is a flexible measurement which evolves over time 19.4.13. Though it seems other experts find it somewhat draconian to base regulations around a constructed rational being:

“Homo Economicus it is the right measure, and it cannot be outdated because the phrase that the UK regulations implementing the UCPD say is reasonably well informed in circumspect, and a reasonably well informed person in 2013 is a flexible concept, and consumers will be different from a reasonably informed person from 2008, so it is capable of changing over time, that's why I think it is the right measure. I suppose the next question is if that's not the right measure then what would people postulate as an alternative?“

In part, the vice chairman of an international marketing agency explains the answer in new heuristic toolboxes and how this can alter behavior 29.4.13:

“People may use their heuristic toolbox differently. There seem to be some heuristics that are universal, for example the one we use to catch a ball, which Gerd Gigerenzer talks about how dogs use the same heuristics to catch a Frisbee, so that may be innate. Certain heuristics are either deployed differently by different people, or in a different order. For example, there’s a Dutch group who are looking at the fact that some people are more affected by scarcity bias and other people are more affected by social proof. So it is perfectly possible that different people, through a mixture of genetics and upbringing and peer group, have acquired different heuristic toolboxes which they use in a slightly different fashion.”

The vice chair disagrees with the commercial lawyer and explains how Homo Economicus differs in disgust and anger and argues that Homo Economicus as a measure in law is theoretically autistic and profoundly dishonest:

“Homo economicus is actually profoundly dishonest, because it is the use of the word rational, defined by neoclassical economists, not by Darwinian psychologists, but by evolutionary theorists, by neuroscientists, by experts in heuristics, it’s defined by economists to suit their own ends. And they’re able then to turn economics, which is basically the study of a theoretical autistic world that doesn’t exist, into a normative science, which is profoundly dishonest and wrong. The assumption of the economic model is that everybody has perfect information, and that trust is a given. Those two things exist in the real world somewhere between very rarely and never. That’s the first point: the idea that you have perfect information. If I were to buy a television, I suppose every time I bought a television I could spend 2-3 years becoming an expert on the workings of plasma screens, by which time all my information and learning would be out of date in any case. So it’s clearly insane from what Herbert Simon says as someone who understands decision making under uncertainty and decision making with limited information. It’s clearly impractical. If you wanted to choose, for example the number of combinations of coffee you can buy in a Starbucks is about 85,000.”
The vice chair goes on to say that rational Homo Economicus in real world economics falls down and goes onto describe the way forward is to consider more detailed heuristics as a social species. He describes economics as: ‘Tarot Reading for Intellectuals’:

“Nassim Taleb puts it rather beautifully, which is to say that we need heuristics. We have no choice but to use heuristics in the real world, because the degree of uncertainty about the future and the imperfect nature of our knowledge makes it impossible to make a perfectly rational decision in a real-world setting if you move it out from that bizarre homo economicus world. The second thing where economics falls down is that we are a social species. My personal view is that economics, rather like psychoanalysis and a lot of these things, they’re tarot card reading for intellectuals. Because intelligent people tend to speak this vocabulary, no one really actually questions it robustly and therefore it’s affected: just a delusion. It is embarrassing to believe in astrology, yet it’s perfectly OK to go around calling yourself an economist. On balance I’m not sure I wouldn’t rather speak to a homoeopathist.”

He describes the example of Ryan Air and how Homo Economicus would respond to ticket auctioning for seats:

“If Ryanair overbooked tickets and said OK we’re going to hold an auction to see who gets on the plane, I don’t think anybody would accept that. I don’t think an economist would say that this would be economically efficient. There’s nothing unreasonable about that to an economist and homo economicus would be perfectly happy with that arrangement. He may say it’s a bit unfair to do that after passengers have made other plans on the basis of assuming they can fly. The beautiful way that the marketing director of IBM, Jon Iwata, a Japanese-American, put it is that the brand reputation is the shadow and the behaviour is the tree. Fundamentally brands have to affect behaviour, not just presentation.”

The professor of cognitive neuroscience, agrees with the assertions of the vice chair and how Homo Economicus can force decision paralysis and is empirically wrong 18.4.13:

“Homo Economicus is a ‘dead duck’ concept... It is the idea of rational deliberation for decision making. We will make the right decision given complete information. We will, given more information, make better decisions. More information can't be worse, under these sets of assumptions. This is just empirically wrong. We do not behave rationally, according to those assumptions. We don't take into sufficient account future gains or losses; we have all these biases, anchor points and so on, more information can make us make worse decisions, or can lead us into a decision paralysis, where we don't make any decision at all.”

The professor goes on to echo this point about how Homo Economicus is not a real world figure and provides an experimental argument, which highlights how HE does not work in a marketing scenario and this provides a crucial argument as to how this would work in marketing and consumer law:
“The idea of homo economicus is that every bit of information can effectively be weighted against every other bit of information, and you put them into a common currency of some sort and you weight them by uncertainty, or whatever. In real life, it's not like that. There's the famous marketing experiment with the jams, where, if people are given a choice between two free samples of jam, and they're given a choice between Jam A and Jam B, and a lot of people will try both and buy one of them. But if they're given a choice between jams 1-8, it's too confusing. There are too many different possibilities, and so hardly anybody buys anything. It's more options, so this other myth of homo economicus is choice is good. If you have more options that combine different features in different ways, that's surely a good thing, because in that range of options, you will find the one that more closely matches your innate set of preferences, this is what rationality tries to do. It tries to match available options to your innate preferences, not recognising that your innate preferences are driven by the available options. Certainly, I experience this, and this is one reason I have Macintoshes now, because the range of possibilities is much smaller. This is still in the economic model, but if I pick option A, and there's A and B, then I'm getting the good things about B, but I'm also giving up some things. There are some things about B that will be better than A. Some people in this post-decision process will focus on the good aspects of what they did, and will always feel that what they did was the right thing. Other people will do the opposite, and will continue to focus on what they had to trade off, and will progressively feel less happy with the decision that they made.”

The vice chair expands on the professor’s expert view on 29.4.13 believes that the fault is the underlying measurement. HE could not survive in the real world. He explains his empirical real world experience and how to survive as a real world consumer species:

“Homo economicus could not survive in the real world. A race of Vulcans would neither live long nor would they prosper. The ‘free rider’ problem would become immense. It would become impossible to establish, I’ll give you a really interesting example, I was mildly cheated by a guy selling me a house, and even though I spent £2000 on surveys, I walked away from the house. So that was economically irrational, it was a £400,000 purchase. The unethical circumstances concerned a £500 fridge and an £800 fridge. Now economically that was irrational, but to survive as a social species it’s probably necessary to have an instinct to punish the bugger for trying to rip us off, even at cost to ourselves. Likewise, what’s the point of going around spreading malicious gossip about a local shopkeeper who’s conned you? It’s just effort, why would I do it? The fact is we’ve actually evolved to do that to do reputational harm to the people who’ve treated us in a way that strikes us as unfair. So brands and reputations are an essential part of the trust mechanism, and to treat them as economists do as if most marketing is waste, it’s a nonsense.”

The neuropsychologist and ‘Father of Neuromarketing’ 17.4.13 states that HE is a nonsense measurement and he reviews some alternatives using the mechanism that we shop in an emotional manner, because HE rationalises rather than being rational:

“Homo Economicus is a nonsense measurement. If you’re a behavioural economist, behavioural economics and neuro economics are two very fast
growing fields and they argue very strongly against homo-economicus, the rational man, the person who uses what we call system R when going shopping. The evidence is that we shop emotionally. In other words, we shop unconsciously and have a whole range of irrational motives and drives and reasons why we buy particular goods; why we buy product A and reject product B, even when we are not aware of why we feel some things are better than others, we just do it... well, I’ve always bought this brand. If nothing else, the past four to five years should have taught people that man is not a rational animal; he rationalizes rather than being rational.”

The vice chair agrees with the neuropsychologiet 29.4.13 regarding post rationalisation theories and believes as a consumer he has no free will and talks about how irrational purchase behaviour empowers our presence amongst strangers along with post rationalisation:

“I don’t really believe I’ve got free will anyway. My explanation would be a hastily cobbled together post-rationalisation. There’s an argument that intelligent people, and people who score well on IQ tests, are actually more irrational because they simply find it easier to justify their own irrationality. You’ll notice that airports are full of luxury goods shops, why? Because you’ve just come back from a meeting; you’re a business person so therefore you’re reasonably prosperous; there are two possibilities: either it’s gone really well, in which case you deserve a treat, or it’s gone really badly and you deserve something to cheer you up. There’s another example, which is when we’re travelling on holiday, we go and spend £120 on a pair of sunglasses. Why is that? Because we’re going to be in the presence of strangers among whom our status is not well established. There’s this wonderful paper saying this is why Neiman Marcus opened in Dallas not in Boston. In Boston everyone knows where you went to school and your social status; it’s a bit like Britain, your social status is a bit determined at birth and there are various markers, whereas everybody pitched up to Dallas for the oil boom and reinvented themselves. So the luxury goods market and bling becomes much more important in that sort of milieu. And then a shortage of females drives males to much “blingier” behaviour as well.”

The vice chair goes onto further explain social rationalisation and reputational mechanisms along with evolutionary loss aversion:

“A good example is about the way in which the Marseille fish market works. Ships come in, sell fish to fishmongers who then sell it to restauranteurs and shopkeepers. Someone suggested that you should turn this into an open auction as it would be more economically efficient. To an economist this is a perfectly rational solution. However, to a game theorist, bear in mind that if I’m buying fish where the seller is anonymised, I don’t have a feedback loop to punish him for disappointing fish or to reward him with repeat custom for particularly good fish. When you strip away brand identity, when you strip away stable identity, the freedom of the capitalist to engage in game-theoretic retaliate and reciprocate is suddenly diminished. eBay in order to make that work created a reputational mechanism, and if you notice, people on eBay will pay a very significant premium to buy something from someone with 100% feedback rating,
versus someone with a 97% feedback rating. Loss aversion is evolutionarily rational. The fact that we have a bias towards avoiding loss rather than hoping for gain is rational in Darwinian terms. There is the interesting thing which is that money, contrary to what homo economicus is supposed to think, is not an end in itself. Let’s say we have part of our brain which is rational and part of it which is emotional. When I buy a car, the greater part of the pleasure I derive from my car is probably generated in system 1 rather than system 2. When I buy a sofa, my wife just cares about sofas more than I do, so I let her have the greater part in the decision, because it matters to her more than it matters to me. When I buy a car, most of the pleasure or pain it generates will be in system 1, then allowing system 1 influence in the decision doesn’t seem to be ridiculous at all. Rationality free will is free will! If consumers were rational they would get terrible products! A degree of rationality and irrationality is necessary in marketing based on the basic fundamentals of human behaviour.

I’m not remotely concerned with the decisions humans make when buying shampoo. Because if the shampoo is bad they won’t buy it again, they’ll tell their friends its crap. It’s a reputational mechanism. It’s rather like you can’t be a rational military general, because your opponent then knows exactly what you’re going to do and then sets a trap. A degree of irrationality and unpredictability is necessary in humans for evolutionary reasons. Otherwise, whatever animal wanted to eat us could simply devise strategies which would kill us. So a degree of randomness in human behaviour is necessary. If everybody chooses a car based on its running costs per mile, or the mileage they do, what would happen is car manufacturers would produce and compete on that one dimension, producing fantastically economical cars which were dangerous, uncomfortable, ugly, and were wholly unsatisfying in every other dimension. Cameras went like that; digital cameras for a brief time went stupid, it was all about how many megapixels they had. So actually the quality of photographs does not correlate perfectly with the number of megapixels; they’re things like the size of the on the sensors and the software and other stuff. What you’ll notice is that consumers are smart, because after a while when it hit 10MP, everybody except professional photographers went: ‘Well, that’s good enough for all practical purposes, I will now decide my camera on ease of use or looks or design or robustness or functionality or having an interchangeable lens system.’ So the metrics by which we choose change.

Habit is rational: herd behaviour is essential.

I’m very uncomfortable with the word irrational, because again, you’re conceding ground to neo-classical economics, in allowing a stupid mathematical theory that doesn’t even understand game theory, doesn’t understand neuroscience, doesn’t understand evolution, doesn’t understand biology; you’re allowing this theory to actually seize ownership of the definition of rationality. So habit is actually very rational. It’s rational in game theoretic terms because by establishing a habit, you can retaliate more effectively. Habit’s actually pretty good because if I ate these pink mushrooms last time and I’m still around to eat them again, I’ll eat them again. Secondly, social influence is not irrational. Do what everyone else is doing, is necessary. If there are two acceptable strategies when you’re attacked by a neighbouring tribe, everybody fights or everybody runs away. If half the people do one thing and half the other, it’s catastrophic, so some degree of herd behaviour is essential. The second thing is that social learning comes from copying. Culture comes from copying.
An organism that’s sought to work everything out from first principles would sit there uselessly before being eaten by something. I don’t know what that funny animal is but everyone else is running away so it probably makes sense to do the same. That way you actually gain a huge amount of collective intelligence, without the effort of actually having to gather full information.”

Rationality frequent and infrequent: the vice chair defines by example what the neuropsychologist states about consumers rationalising rather than being rational. The vice chair believes rationality is found in our social and moral judgment and not in the brain itself:

“Think about what defines whether a decision is rational or not? I think the answer is brain activity. There clearly is brain activity that distinguishes between rational and irrational decisions, because we can say: 'Oh, gosh, I don't understand; that decision you just made seems irrational', and you can explain it and say: 'Well it still is,' or you can say: 'Wow, I don't know what came over me. I made an irrational decision'. The decision there is made by a person analysing an account of behaviour; it's not made by the brain. We would then go to the brain and say: 'Is the brain activity associated with the rational decision different to the irrational?' The idea that we can discover rationality in the brain isn't there. It's in our social and moral judgements and our accounts of our behaviour, which is produced by our brain, but that doesn't mean it's in the brain, any more than I am conscious, I can't go into the brain and find the bit that's conscious. There isn't a little cinema inside of my head where someone's sitting, looking at stuff. Right? It's me that's conscious, and that is my brain, because if you take my brain out, I'll slump on the floor and not respond to your interview questions.”

He goes onto make a close connection between the ethnographic methodology and the close relation to this methodology in what is going on in the consumer brain:

“Trust defines what someone reports in the ethnographic way you're talking about, and that is very closely related to what's going on in their brain, because it's not related to their knees, or their ankles, unless it's about knee and ankle supports. That's my starting point. I think a lot of misunderstanding comes about because of the belief that either neuroscientists are trying to explain everything. I commonly get critiqued incorrectly as an idiot. They think once we explain how the brain works, we have explained consciousness, but no one will ever be able to explain the feeling I had the first time I fell in love. I'm trying to explain what goes on in the brain when that happens, but that's not the complete explanation. And that doesn't mean that there's something missing or people have a soul; it just means that the brain is an intimate part of it. I want to understand the processes that goes on, but that doesn't mean I've found it. Is pain in the brain? No. pain is in the person who has pain. Does that mean that if we understood what happened when somebody has a pain in their brain, then we could help them cure their chronic pain syndrome? That's really interesting. But we haven't found pain. We've just explained it.”
Neuroscience has degrees of fallibility during interpretation of data from differing experts. Discussing ethnographic strategy in relation to brand communications and the essence of human brand experience Ryder (2004:346) wrote in the Journal of Brand Management:

“Anthropology may seem like a strange word to be included in a journal that seeks to push the leading edge of brand thinking, yet the only strange thing is the extent to which it has previously been ignored.”

5.6 Impulse and persuasion: the conscious and unconscious consumer

Martin and Morich (2011) expose the idea that consumers are rational agents making conscious decisions who have formed the foundations of multiple studies of consumer behaviour (Bargh, 2002). The neuropsychologist imparts his expert comment on 17.4.13:

“The word impulse comes from ‘impuleria’ which means to move; something which causes us to move, to take action, although in psychology there are dozens of definitions of impulse. In neuroscience we know what an impulse is: a movement along an axon.”

Professor of philosophy and sensory experiences explains 1.5.13 that impulse and dopamine predict something good is going to happen and how desire changes the emotional landscape.

“Impulse starts way outside of consciousness. It starts quite low down when you are getting clues and to fire up your system of motivation and desire and it is only at the last moment that you kind of know you want. People sometimes find themselves reaching for a biscuit and find themselves thinking: ‘Do I want this biscuit?’ It is already happening. There’s the interesting thing about impulse is that it is about the dopamine system. They used to think dopamine was the pleasure chemical: if you got something you liked it was because you had high levels of dopamine, but it's not. Dopamine attaches and your dopamine levels go up when there is attached something that is a predictor of getting something you want, so the sound of the cheery pub will get the alcoholic more excited than the drink itself, because predicting something good is coming, looking at the cream cake in the window will get the dopamine level fired up and when you attach high levels of dopamine to predictors of your desires, you change your motivational landscape. What is out there is suddenly speaking to you; it’s kind of shouting out at you: look cream cake - wow! Or for cigarette smokers just seeing the packet will be kind of half way there. It is all about expectation when your expectations are heightened that you are going to get something good soon that is dangerous because all classes of drugs work on that system.”

The Rt. Hon. Member of the House of Lords discusses how consumers act on impulse:

“We know consumers act on impulse and can bamboozled and conned. They don’t have time to evaluate all decisions carefully, so there needs to be a decent element of protection for consumers. We see all the time of stories of people who did not read all the small print and found out they were cheated and there are
some unscrupulous companies trying to get trying to win over and so one needs a decent element of consumer protection, not at the point of stifling business, but so that it works so that there is fair balance of business selling things and interest of consumers getting a fair deal for what they want to buy."

The professor of cognitive neuroscience provides his expert opinion 18.4.13 on impulse and talks about Dijksterhuis’s work and how impulse cannot easily be measured or replicated in the lab so an ethnographic methodology may be justified to research this area and might be more appropriate, He believes impulse decisions happen over a degree of time:

“As a neuroscientist, with some engagement of these areas, in most cases, most of the time, both sorts of processes are involved, and they operate, both consciously and unconsciously to varying degrees. So I don't think there's a clean separation; one says rational weighing up is conscious and emotional inputs are unconscious. Dijksterhuis shows that by introducing some period of time then with rational trade-offs of cars against other kinds of cars, people make objectively better decisions according to some criteria. One interpretation of that is that these unconscious, rational decision making processes are happening under the radar of consciousness. Dijksterhuis himself admits that it has not been the easiest experiment to replicate. Another talks about a lot of decisions like what job to take or whereabouts to live. These unfold over weeks and months. These are not typically studied to the lab at all, because they take such a long time. But if you think introspectively about the kinds of decisions that most people actively think about or sleep on, or try to, or struggle with, they don't take place in a day, or an afternoon, or an hour. They take place, over long periods of time, and it's very hard to know quite what's going on in those time scales, it seems very likely again that there would be both conscious and unconscious elements."

The neuroscientist went on to describe a personal experience of his own impulse, regarding the purchase of a house. Being a neuroscientist does not help him know how his own mind works:

“There was a massive struggle going on yesterday. I only saw the place for the first time on Saturday, and I saw it again yesterday, and it's not perfect, but I was feeling very anxious about it, to the point where I knew I wasn't going to sleep very well. And now, I have this feeling that it's a little bit out of my hands, and there's a relief associated with that. I should say that as somebody studying consciousness for nearly twenty years now, it does not help me understand how my own mind works at all!”

Discussing the question as to whether impulse is a speeded up version of our conscious or something that's subconscious, the neuropsychologist and ‘Father of Neuromarketing’ mentions how impulse is a subconscious act:

“Impulse is subconscious. A mainstream neuro psychologist like myself believe there are two systems operating within the brain, system 1 and system 2, I called
them system ‘I’ and system ‘R’, ‘R’ is reasoned thought, where we stress our minds, for example, if we're given a complex mathematical problem you would have to really think about it at a conscious level, so with ‘R’ it's things we're consciously aware of. ‘I’ for impulsivity, is the system which basically runs the brain, and the body and runs our thoughts, most of the time. It's like the autopilot of an aircraft: it flies us, so it takes command over visceral functions such as digestion, respiration, ventilation, the heart pumps blood around the body, and all of this is operated fairly low down in the brain in the brain stem, and in the more primitive part of the brain, the part of the brain that originated or evolved when all that the dangers mankind faced, and bear in mind that civilization is only a very thin layer of a very old evolutionary system. All our enemies on those occasions were things we had to fight or run away from, or freeze; hence the fight, flight or freeze response. These are things which are designed to keep us alive, and everything is automated, there are three benefits from automating these systems, first of all life would be impossible for us if we had to think 17 times a minute to breathe, 60 times a minute to pump our blood; you'd get distracted and you'd die, so it allows the conscious part of the brain to devote itself to other matters which mankind have evolved to distinguish itself from the beast; it's called the frontal brain, the neocortex, the part of the brain which has evolved most recently, the things we use for dealing with a conversation like this, The second thing is that it is very much more energy efficient; the brain is an immensely energy efficient organ, operates on around 25w of power which is less than the average lightbulb, and it does everything on that, it not only controls 642 muscles in the body, it controls everything else, and it enables us to go round. Things we do are impulsive in the sense that they're mindless; we do them without knowing why we're doing them. We just do them, that's just the habit we've got into. For example, commuting to work by car you're quite able to safely think about things that are going on at home, or university, what you'll be doing there, so your conscious mind can distract itself and think about the future, or go back into the past, whereas you are driving because it is a learned skill, habitual and perfectly safe. If something happened untoward, somebody stops in front of you; your conscious mind will immediately step in. OK, well it won't immediately, but your unconscious mind will stop the car, because you can't think of gosh that car stopped in front of me I therefore ought to brake, by that time you'll be in the back of it, so subconsciously the system 1 and system 2, which was first identified in 1975 has got quite a long history."

The Neuropsychologist goes onto explain how technology can help identify consumer responses. Impulse happens below conscious awareness:

“It's more interesting to us recently. Since the 1990's FMRI's has come into being which means we can look at the blood flow to different areas of the brain and see which parts are lighting up when various tasks are undertaken. If you're a hunter on the plains of Africa and you hear a rustle in the bush you don't want to engage in intellectual debate about whether or not it's a tiger, you want to run, so the fight/flight response is very fast and what we tend to do in the modern world because we don't have these dangers is that we tend to intellectualize or rationalize what are basically impulsive decisions. If you're mindful, then it's not an impulse; an impulse is something that happens below the level of conscious awareness, and you then have to try and explain it. The philosopher Daniel
Dennett has likened the frontal lobe of the brain and the neo cortex to a public relations company whose job it is to try and explain the behavior of the actions of its company, often on the basis of misinformation and downright lies. Essentially what the cortex does, or we do in terms of executive function, is try and explain to ourselves and other people why we did certain things, and we are actually quite good at this post behavioural justification, or explanation, rationalization, although at the time we don't really know why we do it and all we can say is it seemed like a good idea at the time.”

The Chairman of the AAC discusses how The German impulse model works and its origins along with encouraged impulse 11.4.13. It’s a fine art and replicated as American models:

“Lidl has a very interesting German model, based on impulse purchasing. You wouldn't think the Germans are particularly into impulse purchasing, but they are. They're based on the idea that people will go into Lidl for their canned fish or whatever, salami, or olive oil, all sorts of things that are quite good value, but in addition to that, they'll browse, because people do in a supermarket, and what Lidl do is that they give you a new set of special offers every week, of things that aren't normally on sale at all. It's very cleverly done. So, there are things in there which would be fantastic bargains. Even if you don't want them, they're quite cheap, and sometimes you think, 'I'd better have one of those, because it'll come in handy.' Lidl and TK Maxx do this because they're both aimed at what you might call the serendipity market. TK Maxx is the sort of place where if you go in there looking for something, without being too constrained, you'll almost certainly come out with something absolutely excellent. TK Maxx fuel that market by having automatic discount mechanisms, something that was first invented in America: when something's in the shop for more than a week, it gets another 10% off, or whatever the ratio might be, so it gets gradually cheaper the longer it stays there. A lot of the impulse models were invented in America. American retailers have always been very up with this kind of thing. When I was a student at Harvard, 1975-76, I came across Bargain Basement, which is the basement of a department store in Boston, though it's now, a national chain where they have this automatic discounter. Once things go in the bargain basement, the longer they stay there, the cheaper they get. And it's a temptation for people to go in there and impulse buy pretty much by definition.”

The neuropsychologist 17.4.13 explains the persuasion industry and post behavior validation and how impulse purchase behavior is indeed the result of advertising and marketing intent:

“Why did you buy that expensive item you don't really need? Oh well, I actually do need it, and you'll come up with some reason why you bought it, when in fact you bought it because your zombie brain, your non conscious brain was attracted to it for various reasons, and these reasons are probably as a result of advertising and marketing, the result of culturalisation could be a result of generally what I term the persuasion industry, which is not just advertising, marketing and retailing; it's the mass media, social media, it's the culture in which we swim.”
In conversation with the chair of the AAC on 11.4.13 he provides his Regulatory opinion:

“Persuasion is a process where those who have a motive to do so, seek to get someone to behave in a particular way that will promote the interests of the persuader. It’s neither good nor bad; there will be plenty of circumstances where it will be good for people to be persuaded because it will help them with actions in their own interests. It may help them identify what those interests are, so there’s nothing wrong with persuasion in advertising any more than there is in persuasion in health messages.”

The neuropsychologist agrees:

I think there needs to be a general milieu, a general environment in which your persuasive messages are playing to an audience who are either already converted or prepared to be converted. Most of what we accept to be right is the result of persuasion. We don’t think we’ve been persuaded and people would say I believe this, not because I’ve been persuaded by anybody, but because I believe it and it is obviously right. I believe that Margaret Thatcher was the greatest living politician of any age, and I don’t believe that because I’ve been persuaded to believe that; I believe that because it is obviously true. They believe it, or they don’t believe it because they’ve been persuaded. We buy newspapers because they chime with our particular world view.”

The retired advertising lawyer, echoes the neuropsychologists views and talks about persuasion 4.4.13:

“The point of advertising is to want to make us want something, believe in something.”

One marketing expert makes the distinction between persuasive charity marketing and Government propaganda 13.3.13:

“You can persuade people to do good things as well as to buy things. Look at charity marketing. I’m sure that the amount of money raised by the charity sector would be significantly harmed if they couldn’t market, and couldn’t tell the world what they do and why they want to do it. So I think there’s definitely an argument there. I think with Government, or some of the areas it can get close to propaganda, and it can get close to being I think, discriminatory against certain groups of people, and people in society, and I think that’s a dangerous way to go.”

Another direct marketing expert thinks that the advertising industry is based on the premise that people are not rational 4.3.13:

“People aren’t rational all the time, and that’s what the whole advertising industry is based on, isn’t it, these sort of impulse buys? Otherwise they probably wouldn’t advertise, so people are going to buy.”
The OFT legal director says that the law protects against impulse and persuasion and gives an example of a Time Share case and impulse purchasing and how they protected the consumer under the Distance Selling Regulations 16.5.13:

“We investigated a company in the incentive leisure group selling a time share type product in UK as holiday club and in that case they picked on people who had time shares and wanted to get rid of them. Maybe they did not use the time share anymore and they were still receiving bills for maintenance for time, etc. What the company did was tell you that they would find you a buyer for your time share invited you to event where they would get you to part with your time share, but when you were there they would pressure sell you a holiday club membership for £12,000 and they would try to encourage you to take that holiday club membership by frightening you about the cost of your time share increasing and so increase your willingness to part with your time share and tell you that in the future you would be able to get cash back on your purchase of up to 96%. There were a lot of people willing to spend £12,000 on a holiday club product on the basis that they can get rid of their time share and they would be able to get a refund of some of the money later on and that was an impulse purchase as they hadn't gone there planning to spend £12,000. They had gone there to get rid of their time share and in that case and what we argued and what we got an order reflecting the fact that a lot of the claims made were misleading to get you to the venue and not giving consumers cancellation rights which they were required to under consumer door step selling regulations. The consumer cancellation contracts made in home place of work etc. Regs. 2008 piece of law protects people against impulse purchases. Part of which you make at door step of own home or where you are invited to another venue and you are encouraged to enter into contract at that venue you have cancellation period of 7 days.”

The OFT lawyer goes onto say:

“Legislation protects consumers because law says distance selling regulations, both doorstep and distant selling regulations are being consolidated and updated later this year through a new consumer rights directive. In essence the idea is that if you are buying online or another distance means, soon as goods arrive you have a cancellation period, you have the right to send them back and get your money back.”

Professor of cognitive neuroscience and consciousness links unconscious and conscious with impulsive decision making, and he says 18.4.13:

“This issue of whether we have multiple different kinds of processes involved in decision making that might interact with consciousness in different ways. There's the idea that rational decision making is explicit, is conscious, is slow, is deliberative, and one makes endless lists of pros and cons. On the other hand, there's the idea that impulsive decisions may be more driven by a rapid emotional gut-feeling, a response to something, and may not involve too much deliberative rational thought. There are two different ways of making these kinds of decisions. One is that the conscious deliberative, trying to put everything into a common currency, trying to figure out what is objectively, by some criteria, 'Does it feel right?' which often you don't know until after the fact. You could
say, would be largely unconscious, but it's more complicated than that. There's nothing unconscious about a gut feeling. People would use 'intuition' and emotional involvement in that. Any decision really involves contributions from both emotional interpretations of the options and often rational thought. If it's a more complex, open-ended choice, and there are all these cases of people who have damage to the particular part of the brain that is involved in emotional processing who show lots of deficits in decision. The whole idea of cold rationality and warm, hot, rushing to judgement is a bit of a myth. One needs both.”

On ITVBe Television channel, before programmes commence, there is an advertisement from Diet Coke that says: “Diet Coke Sponsors Impulsive Moments”. In the light of promoting impulse, should this advertisement be banned? The professor of philosophy talks about interference with our natural impulse process, and how fizzy drinks can control purchase behaviour 1.5.13:

“If you mess about with the systems that provide our natural impulses, if you start manipulating them, and sugar manipulates them, then you will start to create cravings and desires that are going to be very dangerous. You think: ‘wow that was good give me some more of that!’ So that is messing with our natural system. One of the most pernicious mechanisms for sugar is the fizzy drink; it has carbonation. If carbonation reduces your perception of sweetness and accentuates your awareness of sourness, so a fizzy coke especially if it is cold tastes ok; let it go flat it is almost undrinkable. If it is sweet what is happening is that the carbonation put in by companies is so they can deliver huge amounts of sugar and make it palatable. Of course, then kids are absolutely hooked in the sugar, but if they had it flat they would not be so attracted to it so that is something quite pernicious.”

The neuropsychologist explains how impulse can become compulsive and agrees with Professor that addiction can occur. He supports effective use of ‘Nudge’ techniques and introduces Captology as a persuasion tool 17.4.13:

“At what point does impulsivity give way to compulsivity. Sometimes it can. I’ve certainly interviewed shoppers whom I thought were compulsive. There's one woman I interviewed and she only buys shoes, and she's vastly in debt. I think she's got something like £18,000 worth of debt purely through buying shoes; she just can't stop it; she won't even wear them, so it's a form of addiction in that sense. Impulse eating, and the way in which the food industry manipulates us into eating more, particularly now with the use of digital marketing, the whole digital social media way of marketing products particularly to young people, high sugar, high fat, so called young food, which actually affects those same parts of the brain which are effected by heroin and cocaine, so it is an addiction, so people become addicted to what we call palatable foods, which give a very quick energy burst, and there are evolutionary reasons for why this should be so. We need these energy bursts and to be more effective, but now of course we don't fight, and we don't flee, we sit in front of computers and we drive cars, and so it just goes on our hips. 68 per cent of Americans now are overweight. I think Governments which try and impose 'don't' rules on people are going to fail;
Governments which impose ‘do’ rules on people are more likely to succeed. It’s like a family with children, the more ‘don’t’ rules you have the more likely the child is to rebel. I think nudging can be very effective.

Captology is the creation of a man called Fogg (1996) a psychologist, and it involves using computers as instruments of persuasion, he uses them in a highly beneficial way, helping people to stop smoking for example, to go on a diet, he believes that computers are the ultimate persuasion tools if their programs are set up right.”

Verplanken and Sato (2011) discuss the psychology of impulse buying along with the regulatory issues surrounding such a vague and complex area of behaviour and conclude that consumer self-regulation is difficult. Often consumers are will full whilst operating in this mode and become both vulnerable and will participants to the duping and dubious practices used by marketers.
5.6.1 Expert Definitions of Conscious and Unconscious

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<tr>
<th>Expert Type</th>
<th>Marketing</th>
<th>Law</th>
<th>Neuroscientist</th>
<th>Member House of Lords</th>
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</thead>
<tbody>
<tr>
<td>Definition of conscious</td>
<td>Awake</td>
<td>Knowing</td>
<td>This can have two meanings</td>
<td>Animals are conscious, Humans are conscious that they are conscious</td>
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<td></td>
<td>Awake</td>
<td></td>
<td>The existence of the experiential, phenomenal world</td>
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<td></td>
<td>Like conscientious - aware of what you are doing</td>
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<td></td>
<td>Aware enough to make a decision</td>
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<tr>
<td>Expert Type</td>
<td>Marketing</td>
<td>Law</td>
<td>Neuroscientist</td>
<td>Member House of Lords</td>
</tr>
<tr>
<td>Definition of unconscious</td>
<td>Not awake, not alert</td>
<td>Unknowing</td>
<td>Making informed decisions when you are awake</td>
<td>That part of your brain which is operating to influence your decision making, without you being fully aware of it,</td>
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Table 5.11 Definitions of Conscious and unconscious
Expanded expert definition provided by world renowned neuroscientist on 15.3.13:

“Conscious and unconscious are complicated concepts, I often talk about that in my work, and of course conscious in English language can be used in two different senses, and they've only got the intransitive sense of the word. 'He is conscious; she is unconscious', which generally refers to the waking state. But, of course, you can also use the English language to say: 'She is conscious of her nose; he is conscious of the banana in front of him', and other silly phrases. So that implies that consciousness has a distinct content, at least when we're awake.”

In conversation with The Rt. Hon. Member of the House of Lords on 28.3.13 provided an expanded definition: “Conscious is something that you know you’re taking into your mind. Animals are conscious but we’re conscious we’re conscious.”

In conversation with a professor of cognitive neuroscience and consciousness on 18.4.13:

“Consciousness is the existence of an experiential, phenomenal world. There is something that it is like to be, when you have a conscious experience. All the stuff that the brain does, that doesn't result in having any particular experience. Unconscious is cleaner. I think it's more of a historical thing; 'subconscious' tends by some people to have psychoanalytical, Freudian connotations, and to some people, if I use 'subconscious', they think it implies that I'm saying something more specific than I am, whereas unconscious is just stuff that the brain does that does not have conscious accompaniments.”
5.6.2 Expert Definitions of Persuasion

Dictionary Definition: To move by argument, reasoning or pleading to a belief, position or course of actions

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<tr>
<th>Expert Type</th>
<th>Marketing</th>
<th>Law</th>
<th>Regulators</th>
<th>Psychologist</th>
<th>Neuroscientist</th>
<th>Member House of Lords</th>
</tr>
</thead>
<tbody>
<tr>
<td>Definition of Persuasion</td>
<td>An attempt to convince you some way or another</td>
<td>Convince</td>
<td>How you can be told to believe something</td>
<td>A psychological process where people are influenced</td>
<td>Implies someone else is trying to take over their control</td>
<td>To get someone to do what you want them to do</td>
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<td></td>
<td>That can be a negative thin or a positive thing</td>
<td></td>
<td>Where those who have a motive seek to get someone to behave in a particular way to promote the interests of the persuader</td>
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<td>Intentional act of communication to modify someone’s belief about something</td>
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<td></td>
<td>Over romanticised messages</td>
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<td></td>
<td>Influencing in a fairly strong way</td>
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<td>Captive influence</td>
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Table 5.12 Definitions of Persuasion

The Rt.Hon. Member of the House of Lords offers an expanded definition of the term persuasion:

“Persuasion is the human ability to use reason emotion to get to get somebody to develop an opinion which you have. Take an opinion that you have or to do something that you want them to do.”

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Expert Neuropsychologist, provides a definition as he describes persuasion it so persuades people that they have not been persuaded!

“I think persuasion is different to coercion; coercion is where you've got no choice. I often talk about the persuasion industry. I think persuasion operates in two ways. First of all, persuasion sets up a cultural and social expectation about what is right and what is wrong, and within that framework of what people believe to be right and wrong more specific messages about right and wrong can be delivered. Certainly, persuasion is a psychological process whereby people are influenced to see your point of view or to buy your particular product and foremost, and this is what they're extremely good at, and by them I mean the persuasion industry is to persuade people that they haven't been persuaded”

We may question how we can have a decent multidisciplinary debate about definitions if we don’t understand the ‘true scientific’ meaning of the terms. However, in an ethnographic setting the aim is to understand the deeper meaning. In conversation with a world renowned neuroscientist 15.3.13:

“It's always interesting to understand how consumers, members of the public, members of a particular demographic, understand scientific terms. I was hearing last night about how the Wellcome Trust had a survey about 'genome', which is very interesting to many people, but, unfortunately, only 5% of the sampled public have any understanding whatsoever of what that word means. And we were debating or talking about whether that's relevant or not, and one of the points made by the soon-to-be chief scientific officer was a Parliamentary debate about to start on genetically modified food, and if you don't even know the first word, what the first word in that sentence means, then it's going to be very hard to have a legitimate public debate. So, it's very interesting.”

5.7 Summary of Findings

Having distilled and examined the evidence from expert respondents into main themes and emerging sub themes and transcending topical patterns, this chapter illuminates connections between the narrative and links to historic literature and theory presented in Chapter 2. It can be seen that ethnography is a useful methodology to tackle consumer behavioural issues that cannot be replicated in the laboratory due to the long-term immersion and thick descriptive nature of the process required.

Topical patterns were developed through repetitive pathways of discussion from experts across disciplines. Such vocabulary of topics included catalyst words such as: ‘Nudge’; ‘Priming’; ‘Food Labelling’; ‘Pricing’; ‘Non Existent Averages’; ‘Post Rationalisation’ and ‘Unconscious’ which were characteristic across disciplines.
Definitions of words presented to discipline experts and meanings varied with expert groups and this may be as a result of anchored associations from experiences. Generally, lesser understanding and knowledge was noted about definitions from the general marketers, than other expert disciplines.

It was evidenced that all experts agreed that we perceive marketing messages differently. In fact, some believe we perceive messages differently in time zones from moment to moment and from one mood to another. Even with this behavioural assertion, most support the current adjudication process that the likely effect on the consumer as opposed to the intent of the marketer was in fact the correct way to adjudicate matters.

Concern was uncovered that the average consumer, and indeed the fellow companion, Homo Economicus, was a questionable measurement in the reality of individual consumer behaviour. Sensible alternatives were offered by some experts as to regulation based on product groups and consumer typology to provide greater protection in a more specific way with the potential to enact a form of protection to groups in a more meaningful way. Neuroscientists attested the discovery that a teenager’s neocortex is not formed until some 20 years old. The tendency for teenage impulse behaviour could continue long after it was thought possible which may lead to a re-think on regulatory reform. Averages should be average for a particular product group or typology.

Misleading marketing communications and regulations is a balancing act of unfair influence with legitimate consumer communications. Transparency transcends marketing practice. Supermarkets manipulating price and taking advantage of consumer lifestyle and the urge need to expedite ‘doing the shopping’ as a weekly task as opposed to ‘going shopping’, which is perceived as a more fun based relaxed pastime.

Many experts in marketing thought fines should be proportionate. However, the ASA asserts it is a matter of priority not proportionality. To some companies, fines are just a cost of doing business. Restitution and redress could be developed and expedited using new synergistic technologies such as those that the Oyster card does on the London travel network. Some believe that regulators need to get tougher, with tougher legal powers to enforce fines, rather than simply name and shame those who may not have any connection to shame and may indeed be reputable companies.

Balancing behaviour decision-making with population groups means that people perceive messages differently. This poses a challenge as to what might be the intent of the
marketing message. Skilled marketers need to know their audience and second guess the response. The adjudication process needs to be a level playing field for marketers globally. Restricting on emotional engagements differ across Europe, such as in France with restriction on emotional advertising with Loi Evan. Maybe the ASA will engage with a wider use of consumer psychology procedures as future benefits to assess regulatory measures. Simple heuristics in human decision making seemed to be at the core of experts’ opinions.

Experts’ opinions of the projection of the word ‘subconscious’ upon the consumer has Freudian undertones, that implies perception as being out of control. A word preferred by experts to describe subconscious is ‘unconscious’. Subliminal is not about flashing messages alone. Expert psychologists refer to it as ‘priming’. ‘Nudge’ is in effect priming, so might nudge be the new subliminal? Some marketing expert respondents did not believe in the existence of subconcious or subliminal marketing methods and described it as ‘science fiction’, whereas other experts in the field of psychology and neuroscience confirmed various forms of susceptibility of certain people to a multitude of sensory messages. Rationalisation does not occur in the moment; it is moreso a comforting self-cuddle of post rationalisation and justification.

If nudge could be thought of as the new ‘priming’ subliminal in social marketing, it can be a force for good, but it can be quickly outdated or viewed as propaganda with unethical undertones as attested by some experts and in 2009 ‘priming’ of the people was considered a key policy by the UK Government. Evidenced through deep conversation was that certain levels of subconscious creativity can go under the radar of regulations and would therefore be unenforceable.

Preconditioned perception occurs through examples like wine bottles, colour and fizzy drinks. Consumers are blinded by science, such as shampoo and toothpaste ads with white coats and atoms presented to the consumer as a higher order of knowledge. Our most powerful sense is smell, our most fallible is memory.

Expert opinions gravitated with examples of restrictive advertising regulations making marketing messages in advertising in recent decades more creative and possibly smarter at messaging the consumer under the radar of regulations. Yet, honest, legal and decent brands don’t want a reputation reflux from their consumers.
The discovery that neuroscientists, psychologists, behavioural economists and the latter are favoured by large corporations nowadays to take advice on marketing over the general marketing profession is an interesting revelation of a multidisciplinary power-house over the average consumer and potentially nudging consumers under the radar of regulations.

Chapter 5 has delivered answers to the research questions and objectives outlined in chapter 1. In the forthcoming chapter 6 the researcher discusses these findings in the context of new conceptual thoughts, ideas, models and theories.
Chapter 6 Review and Extensions of the Conceptual Findings

6.1 Introduction

Putting the final building blocks in place, this chapter cements and brings the final chapter structures together. Galvanising concepts into new frameworks and theories, this chapter offers some solutions for progress, and aims to solidify the key findings of research questions and issues posed in chapter 1 summarised below:

1. Do subconscious marketing communications techniques circumvent misleading marketing communications regulations thereby distorting the economic behaviour of the consumer and invalidating these regulations? To what extent may consumers be unwittingly led or misled by brands? Is there an opportunity for marketers to create new regulatory and marketing models to address these problems and opportunities?

2. How can subconscious marketing techniques penetrate below the threshold of consciousness, can subconscious marketing techniques used by brands penetrate under the radar of Government Regulations and if so, to what extent? Therefore, are the level of fines and criminalisation justified? Can Governments legislate against subconscious marketing techniques and what effect would legislation have upon subconscious marketing techniques? What can a multidisciplinary literature review reveal?

3. What can neuromarketing techniques combined with an ethnographic methodological strategy of expert narrative reveal about how consumers buy at a rational and subconscious level within the legal framework of the CPR’s? Do findings from neuromarketing studies and ethnographic research invalidate the CPR’s?

This chapter articulates answers to research questions and objectives iterated in chapter 1. Further insights are proffered to research questions 1 and 2 and research objectives 2 and 3. The key objectives detailed in chapter 1 are summarised below:

1. To develop previous inductive conversations with experts, to move forward and explore initial research ideas. To identify the relevant disciplines and those experts deemed sufficiently knowledgable with a multidiisicplinary bias and to identify the appropriate structure of the interview questions for each discipline. To carry out this excersise in tandem parallel with objective 2.
2. To identify key relationships between rational and subconscious marketing communications, CPR’s, traditional marketing techniques, the average consumer buying behaviour and Homo economicus, by carrying out a depth review of the multidisciplinary literature culminating in the design of a conceptual framework.

3. To establish what neuromarketing evidence from the literature review along with a reservoir of stories from expert interviews when combined with an ethnographic strategy, can reveal about new approaches to understanding the effect of rational and subconscious consumer behaviour and marketing techniques on the legal framework of the CPR’s.

The conceptual framework developed in Chapter 2 is weaved throughout all chapters as is the methodology framework in Chapter 3 culminating in traditional and new models of theory outlined in Chapter 4 cascading from the literature review with the expert findings in Chapter 5 filling in gaps in the literature.

6.2 Leading and Misleading: Meeting consumer expectations; is what you see, what you get?

The research began by introducing the concept of misleading marketing messages and the behaviour of recipients of marketing communications messages. This developed the concept of the fine line between the threshold of leading and misleading marketing communications. Russo et al, (1981) found that often researchers cannot agree on a definition of misleadingness and therefore it is difficult to identify misleadingness and therefore can be somewhat controversial and challenging to agree on whether an ad is misleading.

It is seen in Chapter 5 how marketing can be multi-faceted and subtly influence consumer buying behaviour, and how there are elements of marketing communications that can be deemed to be leading and misleading, and how definitions of misleading may differ from expert to expert. Leading and misleading is ‘wanted’ and ‘unwanted’ marketing. The consumer may be led in a semiotic fashion to identify everyday items on the shelf such as ‘colour coded’ bottled drinking water preferences in order to expedite the shopping experience, but may wish to be guided to their preferences. The terms ‘tipping off’ and ‘ripping off’ spring to mind.

In conversation with a leading professor of philosophy, director of the Institute of Philosophy and founder of the Centre for the Study of the Senses on 1.5.13. Discussing
leading mechanisms for expectations using colour to denote product categories across Europe the professor says:

“You want to be led; you want the colour to give you a clue and green for chocolate seems to be mint - but not everywhere, you have got to know which countries use which colours.”

He goes onto say:

“Of course there are unconscious factors that affect our decisions, the question is whether they are misleading or whether they are not, so if you want to understand someone by giving them a sensory clue about the colour of the package or by the aroma around it or by the weight of a bottle to tell you whether contents are substantial, that can have an effect and people don’t notice is that misleading. Sometimes is quite good to give people expectations that are then confirmed so it’s just sort of tipping them off so if you think of, water, mineral waters, you are buying fizzy or still: fizzy you will always notice is in the green bottle - why? Because green is associated with sourness and sharpness and carbonation gives you a slightly sour feeling in the mouth because of the acid in it, so that is quite a good clue. The still water is always in clear blue bottles and fizzy water is always in green; people know what to expect in the difference in taste and that could be deemed helpful. If someone was to trying to do that to pretend that you were getting an effect that wasn’t there, I would worry about it, so you need to distinguish that it is not automatic that being unconscious means influencing your choice means that you are being misled. The professor discusses nudging to mislead and clever trickery in sensory marketing. “When you have plastic boxes that have sachets of washing machine powder or washing machine liquid in them that are in plastic sachets, when you rip open the box there is a lovely fresh smell; the consumer thinks ‘Ah this washing powder will get my clothes clean’; they only smell the washing liquid sealed in plastic containers so where is the smell coming from? The answer is that it is coming from the strip that glues the box down and when you break that the aroma is on the box. You think you smell the liquid; you’re not. Are you being misled? It is probably the same odour you get when clothes are clean so what they are trying to do is give you a sort of nudge towards freshness, but they are definitely misleading you, because in fact the box will stay fresher and the smell will stay longer on the box than it will on your clothes. This is a clever trick; sensory marketing does lots of this. Is it misleading? I bet there are certain aromas in shampoos that make your hair feel softer. We know this because the brain has this wiring; strange wiring that some smells have an effect on touch so you know you think: ‘Oh my hair feels so soft.’ It can be that it is the odour that is making it seem this way. Now if it is not actually softer on the hair that looks a little bit misleading; right? It looks like they are doing something slightly to con you.”

The CEO of the Advertising Standard Authority comments on the matter:

“If there was a promotional activity giving out samples of a washing powder, and making play of the fact that the washing powder smelt like a summer field, like a spring field, whatever, and the smell was different to the smell of the actual powder, I’d say that was misleading. We’d get it as misleading under the code. The existing codes would cover it. It’s incredibly elegant that there’s a
difference between ‘misleading’ and ‘leading’; I think that’s a beautiful way of putting it. Difference in smell on an on sample pack is misleading... I’d agree with the professor of philosophy; I’d say that it was misleading. Assuming that it’s a medium that fell within our remit, and if it’s on-pack it might not, actually, but if it’s a sample that was handed out as a kind of promotional item, it would. The fact that its smell is neither here nor there can be covered. I get that people can be misled by something sensory, whether it’s smell, feel or whatever, my view is that the CAP codes could protect against that. There’s nothing that stops us from using the general misleadingness provision in the code to say: that’s misleading, you implied that the thing was smoother than it actually is, you implied that it’s visually more beautiful, you implied that it smelt like this and it actually smelt like that. If the consumer is misled, or likely to be misled, based on an Average Consumer Transactional Test; if those tests are satisfied then yes, messing around with the smell could get you into trouble, if you’re an advertiser.”

Another example of ‘leading’ the consumer and arguably borderline misleading is provided by an expert sensory marketing consultant in conversation on 8.5.13, whereby he argues that perhaps all forms of marketing are immoral.

“There is a statutory obligation visually and through words and pictures not to mislead or miss-sell, or to misrepresent. I think the same is true of the senses. So if you’re using a fragrance that isn’t true to the fragrance in the product for example, that would be misrepresentation. That would be absolutely the wrong thing to do. There’s some argument that says that some fragrance used in retail is about telling a story. We’ve got involved in promoting whisky through the smell and the story, so we’ll create scratch cards that have the smell of peat or the smell of spring water, we’re not trying to say that you smell this peat and that’s what the whisky tastes like, we’re saying that these are some of the aroma notes that you will discover. So it’s using senses in that way to tell the story and I don’t think that’s misleading in any way whatsoever, or misrepresentation, as long as it’s clear it’s part of the story. If I was pumping out a shampoo smell and saying this is how the shampoo smells. Certainly that should be fully representative of the fragrance that’s contained in the product. I think it’s important that we start to set a code of practice around this. The code of practice should be around misrepresentation, but it should also be a code of practice around some of the claims that are made; around how you put in smell into a retail store and you’ll increase your sales by 200%: utter nonsense. You put in a smell in a retail store then if that’s combined with all the design elements and it’s congruent with the products that are on sale and if you’ve done your research correctly, then you may improve perception of the quality of the store; you may improve the propensity to linger a bit longer but you’re not going to force people to buy what they hadn’t intended to buy. Marketing, you could argue is perhaps immoral, trying to persuade people to buy stuff, but the world goes around that way. We’re always selling things or ourselves to other people; people always have a choice. Some people make claims about sensory marketing that you’re going to put a smell in a building and you’re going to compel people to buy, and they try and sell on this spurious claim. I think sensory marketing is just another toolkit; it’s quite an interesting one because it does bypass a sort of visual world of clutter and helps to cut through and create attention. I think that’s the point; it’s about creating attention and disrupting our normal patterns
of behaviour with interesting sensory cues; creating awareness and cutting through, but it’s not compelling people to behave in ways that they don’t want to do.”

In conversation with a vice chairman of a leading international marketing agency on 29.4.13 he believes that it is quite easy to mislead without actually lying. You can even emphasise your weaknesses to your customers to display honesty. He says:

“You might argue that consumers expect advertising to present only the good stuff, and therefore they mentally add bad stuff of their own. A good sales strategy is often to admit your weak point, for example Stella Artois, reassuringly expensive, or fresh cream cakes, naughty but nice? Interestingly in fresh cream cakes, naughty but nice, it admits that there’s a downside, but maybe a more effective form of selling than trying to pretend that everything about the product is perfect. The frame is sometimes provided by marketing and sometimes it’s just provided by the unconscious. McDonalds exploits a very interesting human thing, which is we love food that’s exactly like we’ve eaten before. Ray Crocker McDonald is on record as saying that people don’t want the best burger in the world, they want the burger that’s just like one they had last time. So there are particularly obvious evolutionary reasons for that which is if I’ve eaten it before and I’m still alive it didn’t kill me. Take the example of the works of De Beers, like how else can a month’s salary last a lifetime, for a diamond engagement ring. It’s framing in behavioural economics terms. ‘Clink Clink’ fizz was designed to create a social norm around using two Alka-Seltzer’s not one. The point about that slogan is not just that it sounds good, it’s the second clink. An Austrian psychologist said: “If most people who are only using one and you just create the impression that it’s normal to use two, then your sales will double.”

He goes onto discuss the human ability to create convenient forms of self-deception.

“We’ve evolved a very strong capacity for self-deception. In Darwinian terms, we learn to deceive ourselves the better to deceive others. So it’s easier to convince other people of your bullshit if you genuinely believe it yourself. There may also be an aspect to which we need illusory narratives to keep us sane. For example, analgesics, painkillers, are more effective if they’re branded, they actually reduce your pain more effectively. It’s not just reported pain; actual measured pain is reduced. Similarly, wine is almost entirely bullshit. So wine tastes much better if you tell people it’s expensive, it’s much more enjoyable if it comes in a heavy bottle, the other vital problem here is one of psychophysics which is we don’t perceive the world as it actually is. So our senses haven’t evolved to be more and more like light meters and sound meters. They’re very leaky, so we will confuse taste of wine with weight of bottle. So if you put slightly worse wine in a heavier bottle, are you deceiving the consumer? You could have exactly the same ‘thunk’ sound of the door closing in your car, but if you knew your car was a BMW it would sound reassuring solid and wonderful, if you knew your car was an 11-year-old Nissan it would frighten you. So the fact is that all our perceptions are affected by an unconscious frame. They discovered that if not a majority then a significant minority of their store card customers thought ‘the higher the APR the better the deal’. Now if you know that is your customer base and you just put a huge great sash saying 29% APR on your windows, there’ll be a number of people going: ‘that’s a brilliant deal, because I can only
get 16% at John Lewis’. Now, ethically I think it’s unacceptable. One of the dodgy things about free market economics is because it made all these assumptions and froze ethics out of business.”

A member of the House of Lords communications committee concurs in conversation on 13.6.13:

“They’re not there to tell you about what the motor car is about. The ad is intended to build up and atmosphere of success or stylishness or glamour. A lot of advertising tries to do this when there isn’t much to say about the product they try and say it elsewhere so if you are selling a vacuum cleaner the best thing to say is what the vacuum cleaner does and what is good about it that it is not too heavy and it picks up all the cat hairs, and so on. That is appealing to the rational part of you, but then something like cosmetics advertising, is entirely intended to give an impression of glamour and sexual success. If they make claims that are misleading or that are dishonest they can get adjudicated. There are a lot of claims where they build up and emotion atmosphere and that is hardly misleading or dishonest; it just builds up an emotional atmosphere which is a bit bogus. For example, ‘After Eight’, they were a pretty mediocre mint with thin chocolate; they made it very thin and they marketed it as if there was something special about it being thin, but they made it seem special in the advertising they invested in said that it was something much more special; they invested After Eight mints with bogus glamour of something you give your guests at after dinner party.”

Consumer regulatory specialist and chairman of the Advertising Advisory Committee provide examples of imposters and impressionists in the juice drink marketing. On 11.4.13 he said:

“Cranberry juice. It’s a very interesting product, because no cranberry juice in a carton is ever cranberry juice as such, because if you drank cranberry juice pure and simple, it would be awful. You would pucker! So, what they do is mix it with water and sugar, but they mix it in varying amounts, and some of the stuff which is described as ‘cranberry juice drink’ is only 10% and some is 25%. Some cranberry juice is not much better than coloured water. Equally, anything described as orange juice, or orange juice drink, you need to be a bit careful of, because a lot of things are not actually juice but lots of other things besides. There are a lot of things that give slightly the wrong impression. Whilst there may be rules for these things, they’re not necessarily understood by the average consumer, and the normal, ordinary purchaser, a lot of the time, will assume that the contents are very much related to the appearance and the apparent description. There was a particularly awful example some time ago of something called Sunny-D, which was a kind of orange drink. It wasn't orange juice at all, hardly any oranges in it at all. But I think a lot of mums bought it, thinking their kids would get something out of it. This was often sold in the refrigerated bit of the supermarket to give the impression that it is fresh. You could leave it in brilliant sunlight for about six months and it would still be fine. But the fact is that it is marketed in a way that leads people up the garden path. It isn’t breaking any law. The reason Sunny-D has diminished quite a bit is due to bad press publicity. Word has got around that it isn’t real orange juice, and actually if you want the real stuff then you need to look further.”
Introducing the fine line between leading and misleading, Table 6.1 provides the researcher’s examples of how a brand might lead a consumer to buy their product by using legitimate marketing communications, which are acceptable to regulators to infer an outcome, content or sensory experience and how when written literally this can change the regulatory status of the communication. ‘Tipping off’ can result in being perceived as ‘Ripping Off’ if the fine line of leading and misleading is crossed over. The philosophy of leading and misleading developed in this research answers research question 1: Do subconscious marketing techniques (or marketing communication techniques) invalidate the misleading marketing communications regulations? To what extent may consumers be unwittingly misled or their behaviour distorted by brands and what is their perception and understanding of this? Is there an opportunity for marketers to create a new subconscious marketing paradigm? And, in part, research question 2: If subconscious marketing techniques can penetrate below the threshold of consciousness, can subconscious marketing techniques used by brands penetrate under the radar of Government Regulations and if so, to what extent? Therefore, are the level of fines and criminalisation justified? Can Governments legislate against subconscious marketing techniques and what effect would legislation have upon subconscious marketing techniques?

**Leading and Misleading Examples: ‘Creative Leading Marketing’**

<table>
<thead>
<tr>
<th>Leading Example (Tipping Off)</th>
<th>Misleading Example (Ripping Off)</th>
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<tbody>
<tr>
<td>On Pack Washing Powder Sample that</td>
<td>An On Pack Sample That Does Not Match the Aroma of the Washing Powder Box Contents</td>
</tr>
<tr>
<td>Matches the Aroma of the Washing Powder Box Contents</td>
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</tr>
<tr>
<td>Green for Fizzy Water, Blue for Still Water</td>
<td>Misleading Statements About Source and Purity</td>
</tr>
<tr>
<td>Cream Cakes “Naughty But Nice.”</td>
<td>“Cream Cakes Will help you loose weight as part of a calorie controlled diet”</td>
</tr>
<tr>
<td>Cranberry Juice Drink</td>
<td>Pure Cranberry Juice</td>
</tr>
<tr>
<td>Clink Clink Fizz Alka-Seltzer</td>
<td>Using 2 Alka-Seltzer’s will make you feel better than using 1</td>
</tr>
</tbody>
</table>

**Table 6.1 Leading and Misleading Examples**
6.3 Consumer Protection: The future of intertwined disciplines

In Chapter 4, Figure 4.6, Rotfield, and Taylor (2009:5) discuss multidisciplinary research in relation to marketing messages, law, consumers, economy, self-regulation and business. The researcher’s adaptation of Rotfield and Stafford’s model (2007) consolidates new knowledge: the original knowledge represents three areas of research that the authors say can address key impacts of regulatory actions: advertising strategy, consumer behaviour and economics. They go on to say: “Because of its long history and its status as the “Mother Discipline” of business education, economic analysis of marketing topics has long been considered important by lawyers and regulators. Actually, it is only in recent decades that studies conducted by marketing academics have gained some influence in the regulatory realm.” The adaptation created by the researcher in Figure 6.1 allows for the presentation and consolidation of the additional elements, which extend this model, including the EC directives that affect both business and consumers within the United Kingdom and commences to describe the preliminary linkage of the marketing mix to the advertising messages. The model embraces a wider number of disciplines thought necessary to develop solutions to problems faced in light of new evidence surrounding consumer behaviour, such as behavioural economics, subconsciology and neuroscience as integral parts of the process as dominant to standard economics which consumer regulatory models have previously been built around. It also moves into the realms of the new subconscious behaviour paradigm of the 12 P’s presented in Chapter 6.5, Table 6.6. The adapted model (6.2) below meets in part with objective 1 as defined in Chapter 1. To develop previous inductive research conversations with a purpose, Crowther and Lancaster (2009, p.146), in support of this multidisciplinary study
Policy Process: Encompassing EC and UK Legislative Models and Marketing Communications Effect.

Figure 6.2: Adapted Model of Advertising and Public Policy Research. (Rotfield and Stafford, 2007)
On 24.4.13 the CEO of the Advertising Standards Authority discussed the challenges ahead in terms of multidisciplinary research and the self-regulatory model.

“Of the nineteen thousand cases we resolved last year that were a result of thirty-one thousand complaints, 70% of them, roughly, were about misleadingness. We didn’t ban all of those ads; most of them we closed down the case because we didn’t think there was a breach of the codes. But we did a significant amount of work on all of them. We carefully assessed the case that had resulted from one or more complaints, and we came to a judgement about whether or not the ads had been breached. Very rarely do we have a piece of research that backed our judgement. The regulation of advertising would grind to an absolute halt if we had to get consumer research to back up our decision if an ad had misled people. You couldn’t do it. I think it would be very interesting. Neuromarketing and research about how and what happens in people’s brains when they are seeing ads, responding to ads, would be interesting. I doubt it will ever be necessary for a good regulator of advertising to do a good job. In a specific way, that sort of evidence couldn’t be brought to bear on specific cases for reasons I’ve given, although it might enrich the general picture. It’s more a knowledge-sharing challenge, within the business, to make sure that we are using the language of consumer psychology and behavioural economics. We are more familiar with the technical terms, with the biases that good research has shown and we are quicker to use that language. We’re not always making life as easy for ourselves, because we’re not using these resources that are around us in the way that we might. But, importantly, we are normally doing it. We could probably do it more. We’re on a journey.”

In conversation with a world renowned neuroscientist on 15.3.13, he provides some illumination on the broader abilities of neuroscientific measurement for consumer behaviour.

“Let’s imagine we can measure the brain activity in every single consumer as they went about their purchasing. We could make an average of that brain activity; it has all been recorded in different locations, and we could see which consumer most resembles that average brain activity. It may be that the person with the average brain activity also has the average shopping basket, but it might not.”

Expert on Consumer Policy and Regulation and Chairman of the Advertising Advisory committee discusses the impending need to embrace new scientific knowledge relating to definitions of consumer groups in light of the discovery that the neocortex is not fully developed until the early 20’s and, therefore, rational decisions and impulsive childlike behaviour may continue beyond the definition of a child, which currently is defined as someone below the age of 16. On 11.4.13, making a case for personalised regulations, he said:
“There are lots of circumstances where 16/17/18 year olds are quite capable of making their own decisions, and they’re not going to be told by anyone else, but recognizing that neuroscience dimension in law is perhaps something that needs to be factored in, and Government is doing quite a lot of work on the protection of children, I sense that the world is getting a lot more protective and controlling, but in other areas it’s going the other way. The average consumer should be the average consumer for that specific type of product. If, for example, it is a product that is mainly bought by teenagers, then it should be the average teenage consumer, not the average consumer across society as a whole. And teenagers generally are less savvy about their rights than adults are. Things like following the herd and doing what your mates do and wanting the same stuff as everyone else has at school or college, or that sort of thing. It’s much more powerful for younger people I think, although, you can’t expect John Lewis to prescribe different electric kettles depending on which customers they are catering for. You have to actually deal with some kind of manageable business concept in order to do trade at all. There is a case for tailoring these things according to who the specific consumers are going to be. Very obvious is the services market. If you’re selling home income plans or something similar to people who are elderly and need extra income and are sitting on a wealthy asset, you need to recognise that people of that age have a certain set of anxieties and a certain knowledge set, which in some areas, might be gracious to them, but might in other areas be less. And you need to cater to that, to some extent...I think it should be average for a particular category of product. The average consumer and the rational consumer are not the same thing. There are lots of circumstances in which the rational consumer will actually be an extreme that hardly exists at all. And the average consumer is one that is beset by all of life’s eccentricities and problems and foibles.”

The chairman goes onto say how proportionality of regulations is required taking into account consumer’s reasonable knowledge of limitations and assiduousness:

“The average consumer, it’s perfectly reasonable to assume a degree of knowledge, but not an unlimited degree and that’s also going to be proportionate to the product, in the nature of what you’re buying. One extreme would be a second-hand car, where you would expect the customer to make quite a lot of precautions, and then, if they don’t, it’s pretty much their outlook. And, at the other end, if I buy a packet of Ibuprofen, I shouldn’t have to know anything more than Ibuprofen is a recognised painkiller and it is produced according to a certain standard. You need to develop horses for courses, and what wouldn’t have to happen in relation to any individual case which is to identify what the average consumer was for that particular product. What the limitations might be to their knowledge and assiduousness.”

Often even purchasing a simple pain killer such as Ibuprofen can prove to be a complex and misleading purchase to those who are vulnerable through sickness and pain. On 14.12.15 Nurofen manufacturer Reckitt Benckiser was under investigation by UK watchdog for selling ‘misleading’ painkillers. The Advertising Standards Authority (ASA) examined complaints that drug firm Reckitt Benckiser, makers of Nurofen, is misleading consumers with unfounded claims for its pain-relief products Connett (2015).
“The British investigation came after a court in Australia ordered the firm to pull several of its Nurofen pain-relief products from the shelves, saying the British firm had misled consumers by marketing identical products for different types of pain. The Federal Court in Sydney ruled that the Nurofen Back Pain, Period Pain, Migraine Pain and Tension Headache products were in fact identical and that Reckitt Benckiser had “engaged in misleading conduct” by labelling them for different ailments. Nurofen specific pain-relief products were also sold at almost double the price of Nurofen’s standard painkiller. The products, which appear tailor-made for specific conditions, are also sold in the UK.” Connett (The Independent 2015)

Figure 6.3 presents the researcher’s new model for personalised consumer behavioural regulatory types. The model acknowledges expert opinions relating to product and service types and the level of emotional anxiety often related to the financial value of the outlay. In addition, it takes into account that there are groups, who, during a life time may be impeded by vulnerabilities at various stages in life, which should be taken into account, such as depression associated with need driven impulse purchasing, where people are not operating at their normal capacity. The model also takes into account new research knowledge regarding the late development of the neocortex and vulnerability factor of the potential impulsive nature of behaviour of the teenager up to 20 years of age. This new model shows the diversity of the possible future range of a more relevant depth adjudication process between the realistic effect on the level of emotional arousal during a purchase and the type of regulatory application, including relative financial values, which might trigger higher state of emotional responses such as the need to keep up with their peer groups and favourite celebrity. The model then offers up a solution to define a potential average consumer for a product or a service and questions as to whether businesses should disclose their sales and marketing techniques, in a similar way as websites are now required to disclose cookie content, so that a consumer is more psychologically disposed to understand the ‘game’. This new model meets objective 3: To establish how neuromarketing evidence, combined with an ethnographic strategy, can reveal new approaches to understanding the effect and perception of rational and subconscious behaviour within the legal framework of the CPR’s.
<table>
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<tr>
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<th>Example of Purchase</th>
<th>Type of Regulatory Application</th>
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<tr>
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<td>High Relative Value</td>
<td>EG. House; Used Car; Holiday; Investments</td>
<td>High Priority Regulations</td>
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<tr>
<td>Medium Anxiety / Emotional purchase</td>
<td>Medium Relative Value</td>
<td>Large household items; Electronics; Garden Equipment; Building works</td>
<td>Medium Priority Regulations</td>
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<td>Low Anxiety / Emotional Purchase</td>
<td>Low Relative Value</td>
<td>Everyday household items</td>
<td>Low Priority Regulations</td>
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<td>Emotionally Vulnerable Types – Highly Impulsive People up to the age of 20 years old Sick physically and emotionally Elderly Pregnant Low consumer knowledge or intellect</td>
<td>Any</td>
<td>Any</td>
<td>High Priority Regulations</td>
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ASA – Effect on the Average Consumer  Marketing Intent
What is the Average Consumer for a Product or Service?
Businesses to Disclose to Consumers the Sales and Marketing Techniques they are Deploying?

Table 6.3 Personalised Behavioural Regulations

In conversation with a Professor of academic law at Kings College London on 2.5.13, he provides his prediction for the way forward in categorising potential regulatory regimes:

“The law and regulation generally operates means that it has to make some fairly crude assumptions about different classes of person. Historically, in contracts, there’s been a real reluctance to draw any kind of distinction between the people who are party to the contracts, but the way the modern law has developed first of all, we’ve drawn a distinction between deals between people who are in business, and those deals between businesses and consumers. My prediction would be that before too long we’ll have three distinct regulatory regimes. Four, there’ll be regulatory regime for big commercial dealings, where the ground rules will be largely self-regulatory there, whatever those sectors treat as their ground rules will just be reflected in the law. Then there’ll be deals between any kind of business, big or small, and the consumer, because of the interventions from Brussels, the consumer marketplace is heavily regulated. Then I think the third category will be where small businesses are dealing first of all with consumers but more interestingly where they’re dealing with big businesses, I think there’ll be a degree of protection for small businesses against
big businesses. The fourth category, which doesn’t appear very much in the law reports, is where you and I, neither of us as consumers or as businesses, make some sort of agreement, you know around families,.....but if we’re already differentiating in this way, then isn’t it conceivable in principle that we might want to distinguish between different types of consumers? You could have some sort of distinction here, where if you’re a consumer who’s not really judged to be able to make your own decisions or take care of yourself in the market, then you do get protection. But it may be that in the future there would be a possibility of a consumer who was usually in the ‘not to be specially protected’ category, being able to appeal to neuroscience to show how on a particular occasion, they were actually quite vulnerable or suggestible or something. So I don’t know, it could become much more personalised in this way, but obviously it would depend on the regulator; the lawyers and the politicians being convinced that neuroscience could reach down to this level of detail.”

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<th>2. Number of Consumers Affected</th>
<th>3. Injury to the Consumer</th>
<th>4. Redress and Restitution</th>
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<td>High Numbers</td>
<td>High Impact</td>
<td>High Fines and Custodial Sentences</td>
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<td>Medium Numbers</td>
<td>Medium Impact</td>
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1. This demonstrates the level of relative monetary gain a company may gain by using unfair practices by selling an idea, product or service. (The CPR’s do not catch an ‘idea’ within the regulations though the ASA does via the CAP Codes)

2. Takes into account lesser priced daily purchases with higher critical mass consumer purchase such as shampoo, pain relief tablets and ready meals. Where by a mass markets low price product (or service) might yield high profits yet few consumers might take the time to complain due to the low value of the item. However there can be a case where a lower number of consumers are effected by high profits such as in the financial services sector and no 3 considers this scenario.

3. This is the impact on the consumer (one or many) from a company misleading and making profitable gains through unfair practices, this may relate to one consumer or many. High might related to life changing injury or death, medium might related to life changing injury, low might relate to recoverable injury. These level of injuries might also be monetary in that a consumer might have lost money through purchasing investments such as financial services.

4. Proportionate restitution and redress is presented relative to the crime committed and the effect on the consumer, where a monetary, physical, mental impairment or death has occurred (no 3) due to unfair practices described in no 1.

Table 6.4 Company Profits and Restitution

In chapter 5 some experts discussed the necessity for restitution for higher value purchases which tend to have higher emotive consequences which is shown in Table 6.3. Some experts also commented, however, there can be occasions as with the case of Nurofen and the issue of ready meals that the companies were making huge profits on multiple low value product purchases, which can, in some cases be in excess of larger value one off consumer purchases as presented in Table 6.4, which is provided as a relative guidance
framework of impact. Some experts did comment that they would like to see regulators such as the ASA having the powers to fine those companies who persistently offend. The current approach by the ASA of simply naming and shaming might lack consequences for those who seek opportunities to flout the law.

Figure 6.5, the researcher’s new General Regulatory Protection Model, displays the current model of regulations categorising business to business and business to consumer model. The diagram presents more specific distilled groups identified within these current regulations to meet the real day to day challenges experienced by dealing with large and small businesses and individuals. So for example we might envisage regulations which differentiate based on the contractual obligation and is specific to the business dealings from large business to small businesses and from large or small businesses to the consumer. This could have an impact on how elements such as fines are made proportionate.

Figure 6.5 Group Regulations - General Regulatory Protection Model

The leading academic lawyer from Kings College London, goes onto discuss the distinctions of progress in consumer law:

“...I’ve got quite an open mind about using knowledge from neuroscience in law. I think that neuroscience could well have value in relation to law. Law has for
centuries tried to become progressively more rational in its procedures, but also in the assumptions it makes about the nature of the agents it’s dealing with, and it might well be that neuroscience can inform law in ways that engage with law’s attempts to be an improving rational enterprise. I think that the impingement of science and neuroscience is something that could reshape our views in the law. When you look the trajectory over the law over the last 50 years or so, then it has been increasingly to recognise consumer rights, so on paper consumers do seem to have much stronger protection in the consumer marketplace than they did in say the 1950s or the 1960s, when at least in England there was a whole series of cases that were absolutely scandalous, where these were mainly in the second-hand car market, where consumers had entered into contracts to buy cars or second-hand cars which were just a heap of rubbish really, on hire purchase terms, on credit, and when they found the car was no good they were left without any kind of remedy. Consumers have acquired rights progressively and this is true nationally but also in Europe more generally. What’s happening now is the systems of consumption, the modes of consumption, are changing the way the consumers don’t have any control.”

In conversation with a Neuropsychologist and the ‘father of neuromarketing’ on 17.4.13.

He discusses the challenges for regulating certain areas of marketing communications:

“The problem is that subconscious marketing would be almost impossible to legislate against, because you’re legislating one territory and it’s going to crop up in another territory and people are going to move to territories where legislation is less stringent, and I do think that legislation obviously has a role to play but education has a much more important role. This is something I address in my book: ‘Brain Sell’. I think if people are actually informed, they have informed consent. Let’s take an example, kids go on Facebook, they put their life story, their history on Facebook, and they do it all for nothing, well do they? Of course they don’t, and it has been said rightly that if you’re not a customer on the internet then you’re a commodity, what you’re paying for by getting it for nothing, is with your life, because this data is being mined, and you know kids will go on and pretty much spill their guts, and they’ll put images up and they will do things on an impulse and the internet is a wild west frontier and there literally are dragons out there, and not only dragons there are companies that are data mining. The amount of data mining that goes on, the size of the data mining industry is absolutely barmy...and they’ll say we’re not mining the data, we’re stripping out anything so we couldn’t track it back to you, so I couldn’t look at a mass of data and say: ‘That’s yours’, but there are software packages coming out that will enable people to know exactly who you are and what you...there’s one being made by Rayerson the defence contractor, which tracks people using their mobile phones: mobile phones have got a GPS unit in them so you can tell where people are at any particular time, so if they have a routine you could say at 9 o'clock on a Monday they will be at this store in Washington, so I think people need to be aware, and they need to be...it’s not caveat emptor and let the buyer beware but of course that’s in a sense a truncation of a...let the buyer be aware, and I think the buyer should be aware, and maybe there should be legislation that says you should tell people what you’re doing.”
6.4 Consumer Empowerment: Nudging the Regulators

In conversation with an expert sensory marketing consultant on 8.5.13 who believes that neuromarketing can have a specific role to play in categorising neurotypes and emotion variants he says:

“There’s a very specific role that neuromarketing can play. It can observe, in real time, our emotional response to a marketing piece of communication, that’s all it’s good for. Some claim that they’ve done two studies and they can now predict what they call neurotypes. They are classifying individuals according to emotional types, which is absolute nonsense. Our human emotions are far too complex and too individual; it comes back to that question, what’s Mr. Average? And they’re coming up with classifications like socioeconomic and ethnic grouping, and saying you know if you’re in this particular neurotype, if we present you with a message in this way you will automatically respond in this way. This whole argument about neurotypes is completely spurious, I think all it’s good for is observing in real time our emotional response to a particular piece of communication, in the case of a particular individual, in the situation in which they are in an fMRI scanner, which let’s be honest is not indicative of real life. Though one good example of where I’ve seen young neuromarketers working well is you can track emotional connection to a TV advert in real time, so let’s say you’ve got a 60 second commercial, you can have someone watching it, track their emotional connection through those 60 seconds and say well look, there’s 20 seconds there that had no emotional impact on them whatsoever, let’s re-edit it and turn it into instead of a 60 second commercial a 40 second commercial, you’ve got exactly the same emotional delivery and we’re saved ourselves 20 seconds, £10 million, but you can’t extrapolate that and say well ah! OK we’ve changed the story; now we know that by making the story this, we’re going to double our sales.”

Phillip Collins the Chairman of the OFT was quoted as saying in 2013 that the OFT’s aim is about “empowering consumers and influencing behaviour in markets.” Legal Director Goods and Consumer Group Office of Fair Trading explains on 16.5.13 how they intend to achieve this:

“The way we go about influencing markets is if you think about a virtual circle you have businesses for consumers trade and they will compete on price and on quality of the offering those are the 2 fundamentals they compete on and in order to drive that competition consumers need to have the right information and they need to be sufficiently empowered and educated to make the right choices and then that drives better competition, and so that is what we envisage a market that works well for consumers. Now sometimes a market might develop some kind of practises that the virtual circle does not work very well so it could mean that businesses start competing perhaps on an untruthful of irrelevant area.”

An expert digital marketer and agency owner believes that the customer is in the driving seat. On 1.3.13 he explains:
“The companies that will win are the ones who will do things that benefit their customer, and it’s taking that mentality so they better they understand their customer they’re going to provide better products for that customer. There is a realization that we are tribes, and different humans have different needs and wants, and different brands are accepting that so and so is the cool brand and we’re the straight and narrow which means we’ll pick up all the straight and narrow customers and they’ll pick up all the cool customers. When Coke launched new Coke, even though the testing proved it tasted better, the market went crazy. Consumers said ‘how dare you mess with Coke? Give us our coke back’. And I think that’s probably the first example a brand realised they were no longer in control. It’s the people who were dictating. So rather than a demand economy, we’re actually in a supply economy. In the old days, you bought Coke: Coke would just ship more Coke, and you bought more Coke. Whereas now, people make choices, they talk online. I think it’s definitely the consumer that’s now in charge. Quick Books, an accounting software company, realized that their customers were using the product in a different way. It took them a few years before they realized and leveraged that and that drove a lot of success, but again it becomes that customer voice, you have to allow people to be creative with your product, companies don’t own their products anymore and people can do what they want with them. If you look at the fast growing companies they’re all really young, because they tap into giving people what they want rather than telling people what they want, and that’s the fundamental. The legislators just don’t give consumers enough credit; it’s the strong protecting the weak mentality but they don’t seem to put a lot of thought into it. A great example is if you look into the cookie legislation for the digital age, where you have to accept cookies etc., you know it was European parliament driving things through with no consumer research or conversation. It’s fear mongering and that’s what was driving legislation, not science or behaviours. In the digital world unfortunately legislation is a waste of time unless it’s global, which is impossible because all that happens is as a brand is you get punished for behaving within legislation. It’s probably more important that you treat your customers well and that will legislate the success of your business. Consumers have choice; they’re not zombies, and I can’t think of any product category where there’s not only one supplier. Legislation is always out of date by the time they come out, because they start writing them 2 years before, technology moves on, behaviour changes.”

“There are limitations to human information processing and working memory” (Simon 1955:99). The regulators encourage consumers to seek more information, particularly the CPR’s seem to stress that providing more information brings about a more rational choice process by the consumer, however, “by giving consumers more information, the quality of consumer decision making does not necessarily improve. Furthermore, the ability to shape preferences is both limited and subject to comparison and may therefore be influenced adversely when choice increases beyond the point of saturation. It seems that when the cognitive load increases (e.g. because of complex pricing structure) individuals tend to use less of the available information.” (Bettman et al. 1998:187; Henry 2005:345).
Discussing how neuromarketing can empower consumers by providing accurate research as to what goods and services would enhance their lives the most. In conversation with an owner of a leading international neuromarketing company on 10.5.13:

“Neuromarketing is about understanding behaviour; about trying to understand why we behave the way we do; not trying to change the way we think, or what we do. Change the products that we make. Neuromarketing does not try to make the consumer do something they don’t want to do; it’s about understanding what they want and then making things for them. So there’s a shift of emphasis; we’re trying to make the consumer the manufacturers of their behaviour.”

6.5 The Subconscious Marketing Paradigm of new black box behavioural marketing: The regulatory challenge ahead

In conversation with an expert consumer Neuropsychologist, the father of neuromarketing on 17.4.13, he discussed how legislation has forced advertising to become more covert:

“Look at tobacco advertising, think of silk cut, think of camel, these are subliminal primes, silk cut worked because the slash in the piece of silk primed people to think cigarettes; the most valuable thing about Cadburys is that they own the colour purple, by owning certain thing you can prime people to buy your product without mentioning your product at all. An example of a priming technique in use taught to sales people in the 30’s and 40’s, is called: feel, felt, found. A consumer will come into the apple store and say: “Oh I quite like the iPad, but I like to use a mouse, I don’t know if I could get on with a computer that didn’t have a mouse”, so the salesperson won’t say: “Oh don’t be ridiculous of course you can, they’ll say: “I know how you feel; I felt that way myself, but I found that after only a few hours, I managed perfectly well. It is a way of empathizing with the consumer. It’s very very difficult to legislate against these subtleties. It is trying to legislate against drugs, you can legislate against things which are in the market place, but chemists will always find a way of changing the formula so that the drug becomes legal, and then legislation catches up and they change the formula again. The average consumer realizes how much money and how much intellectual firepower is thrown at the business of selling them things. I was at a meeting a few years ago for a fast moving consumer goods company, we were talking about ways of developing a marketing campaign to sell a male grooming product, there were 5 of us at that meeting, we all had PhDs from major universities, there was a quantum physicist from Cambridge, a mathematician from Imperial, a bio-informatician from Brunel, and we’re talking about selling a product that will sell for less than £10. Companies such as Procter and Gamble have 5000 full time researchers. The power of companies like Google, Apple, Amazon, is overwhelming; people have no hope, and nor do legislators unless they become aware of what is done, and they could well argue that they’re not doing anything wrong. We’re simply trying to present our product to the consumer in the most effective way; we don’t want to waste their time. We’d sooner send advertisements to people we know are interested, like Amazon do when they give their recommendations rather than take up the time of people who have no interest, and we want to make shopping as easy and comfortable as possible. The road to hell is paved with
good intentions, and it’s the same in the marketing and advertising world; everybody wants to make a buck and the question you’ve got to ask yourself is who is paying for it, especially when you’re offered something for nothing, because there is nothing for nothing.”

The neuropsychologist went on to discuss how the marketing industry is in denial regarding subliminal advertising and how he has been involved in such studies.

“The advertising industry will strenuously deny that they have ever used subliminal advertising; in fact, that’s not true. The man who in a sense put the whole study back by considerable decades was a man called James Vickery. He invented that in order to try and promote his market research company, and in fact unleashed an almighty storm of hysteria amongst the American media; they were saying he was more dangerous than the atom bomb! But we now know that you can subliminally prime people, and there was a recent study in which people were primed to want to drink Lipton’s ice tea. Stephen Fry was the celebrity sponsor, but that would not be subliminal, but it might be priming in the sense that people would like to emulate his great intellect. So what they find was that they could only prime people for what they already had an appetite for. If somebody wasn’t thirsty the priming didn’t work. If they were thirsty then they could persuade them to drink the tea.”

Karremans et al (2006) discussed how the subliminal priming of Lipton’s Ice tea positively affected choice and intention to drink the brand, however this only occurred when participants were thirsty.

The expert neuropsychologist goes onto explain how to create a sense of calm, relaxation and happiness:

“Retail premises are designed to create an atmosphere in which people feel comfortable, relaxed and ready to browse, to graze really, like cattle, so they will try and create the environment. Atmospherics makes life as easy as possible for the shopper, so when you go into a supermarket the first part of the supermarket is what they call the ‘decompression zone’, so that’s the first several meters, they don’t try and sell you anything; they have maybe 2 doorways, one into the alleyway and one into the store itself; there might be a photo machine, or a charitable collecting box, or some toys for children to play on, but they’re not selling you anything. Retail premises are a machine designed to sell, so why don’t they do that, because the decompression zone isn’t about selling it’s about creating a mindset in the consumer, so first of all they want to slow you down, so if you’ve come off the pavement or the carpark your walking pace is faster than they want you to go through the store. If you walk at that pace you won’t see the shop windows, so the decompression zone is to slow people down from a fast pace to a sort of amble; the second thing is to help them acclimatize to the lower light levels or indeed brighter light levels depending on the weather. There’s a difference in light levels always, and a difference in temperature, and humidity, which are very carefully maintained in the store and will be different to outside, so they want your senses to have time to acclimatize themselves between the internal and external world, so when you enter the store you’re more or less in the right state of mind. It is called the Gruen Transfer,
from an American who designed and built the first malls, to transfer your mind from an outside state to an inside state, which is basically comfortable and relaxed, at ease and therefore consumers are more likely to spend money.”

An editor of Which magazine believes that legislation can make marketing both more creative and more covert. In conversation on 22.4.13:

“An example in India, where they’re quite strict on alcohol and you’re not allowed to advertise alcohol. We saw these billboards that said Johnny Walker on them but what they were advertising was a CD of music that just said Johnny Walker and had the logo which is very wrong as it had the black and gold, black label Johnny Walker. They weren’t allowed to say it was whisky or show a whisky bottle, or show anyone drinking it or anything like that, so it was ostensibly advertising a CD. What they were doing was just promoting the brand. Johnny Walker doesn’t make anything else; it’s just whisky, so the direct link is to the whisky. There was the Johnny Walker logo, the marching man in the top hat and all of that and it said Johnny Walker. If you were in a western country or a country that advertises alcohol, you would look at it and you would expect to see a whisky bottle or in your mind you would see a whisky bottle but of course there wasn’t a whisky bottle there. I suppose it was creative, they didn’t divorce that from your attitude to what they’re advertising.”

The contrast between the rational models still in existence puts into question how new models may be developed to take account of a subconscious marketing paradigm. In conversation with expert neuropsychologist 17.4.13:

“Emotions are something which we find it very hard to measure in a laboratory.” He goes onto explain: “That means potentiality we can connect our neurons; we can go from pain to pleasure in an instant. These emotions can be confused and very closely linked.” He described an interesting experiment which involved an attractive woman stopping passers-by on a rather narrow rope footbridge across a canyon in America. It was quite a scary thing to cross and they had her in the middle of the suspension bridge and she would stop men and ask them some questions as if she was conducting a survey, and then she would say to them here’s my mobile phone number so if you've got any questions about the survey give me a call and that’s what the men did. They repeated the experiment and this time she stood on a very solid road bridge which was easy to walk across, and then did the same thing and found out that the men were much more likely to call her when they had been frightened by the experience of crossing the rope bridge. Under the radar of consciousness, the men had confused their heart racing and dry mouth of fear with attraction. Therefore, they interpreted this as attraction, when actually the dry mouth and the heart rate were due to the fact they were nervous about crossing the rope bridge. Similar research has been done with white knuckle rides and roller coasters, and another study on horror movies. People misinterpret you feeling these physiological changes and you have to explain to yourself why you feel these changes.”

Martin and Morich (2011) found that theories of consumer behaviour often posit that consumers are rational agents making conscious decisions about branded products and
services they purchase and use. It is assumed that consumer decisions are preceded by an explicit formation of attitudes and needs that determine the brand of choice.

Fugate (2007:385) states:

“The potential for neuromarketing to reduce marketing failures and increase marketing successes seems quite promising; although not without controversy.”

The relevance of the “black box” began with the philosopher Plato who compared the human soul to a chariot pulled by the two horses of reason and emotion. Building on Nobel Prize winner in economics, Daniel Kahnemans, work who proved that emotions are important determinants of economic behaviour, more so than rationality. The researcher’s new Black Box Behavioural Marketing Regulatory False Premise Model in Figure 6.6 melds the methodology in chapter 3 using inductive ethnography and this being the theoretical presentation from combined findings of the literature review, theory and empirical findings. Answering research question 1 and 2 and meeting objectives 2 and 3, this model presents the process of perceived controllable factors and actual uncontrollable factors in the consumer behaviour during the buying process along with the dichotomy between the reality of true human behaviour and the false premise of synthetic human behaviour as created within consumer regulatory models, which converge on the middle ground equilibrium of a traditional marketing model, which neither fits in one diverging route on the other. The model illuminates the false premise of synthetic Human behaviour on which the CPR’s are based.
Figure 6.6 Black Box Behavioural Marketing Regulatory False Premise Model
Regulators should be aware of how perception works and try to tailor information requirements (i.e. packaging, pricing) to the needs of specific target consumer (Incardona, et al, 2007). Enforcing the theory that the average consumer model is therefore inadequate to describe consumers’ rationality (Woods, 2004).

Chamberlain and Broderick (2007:199) believe that “research will generate a deeper understanding of the construct of emotion itself and also the effects of manipulating emotions using marketing tools”. They go onto suggest that “there is a significant need to investigate the validation of current measures of emotions used in a marketing context” and have identified that emotions are a central component of consumer responses and acknowledge the impact that theoretical and methodological advances in this area can have for marketing. Such advances, they say, can be used to research the effects of advertising stimuli in on-line, television, print and radio advertisements; the consumers shopping experience and reactions to store atmospherics or layout; both online and offline service interactions; product satisfaction; consumer’s reactions and opinions of brands and packaging. Marketers often place emotional cues in advertisements, package design and brands designed to trigger an emotional response, therefore, some consumers have an element of awareness inherent in their response or appraisal of a stimulus that they are being encouraged to experience emotion.

Cramphorn (2005) concurs with the findings of neuroscientists that feelings, not reason, are the dominant determinant of human behaviour. Historically researchers have asked consumers their opinions on advertising, this assumed that the respondents were rational and fully aware of the introspective impact. Given that the influence of ads is generally unconscious, this meant that research was based on a false premise (Heath, 2001). Application of these findings will lead to the abandonment of hierarchical modelling and all the research methods that stem from it. Old theoretical traditional models of behaviour are presented in chapter 4 most of which are based on the false premise that consumers behave in a state of conscious rationalism when making purchase decision. Table 6.6 presents the new subconscious marketing paradigm of the 12 P’s of integrated emotional based mechanisms of marketing communications Cramphorn (2005:255). “New understanding leaves older (hierarchical and rational) behavioural models looking rather tired and inadequate.”

Answering research questions 1, 2 and 3 and meeting objectives 1 and 2 as outlined in Chapter 1 and refreshed in 6.1, the new conceptual framework 6.6 begins to define the
researcher’s new ‘Subconscious Neuro-Marketing Paradigm’ as a theoretical consumer based model. Specifically answering research question 1: ‘Is there an opportunity for marketers to create a new subconscious marketing paradigm?’ and objective 2: ‘To create a new subconscious neuro-marketing paradigm by means of a revised theoretical consumer based model.’ Encapsulated in tabulation form presented are 12 of the key subconscious emotional buying trigger points. This brings forth a fresh new approach to fine tuning the reality of consumer marketing and the need to match and meet consumer expectations of their desired elements of emotional experiences during the buying process. Each element of behaviour has an explanatory commentary from either the theoretical literature review or inductive led expert ethnographic interview findings as reflected in chapter 5.

**Definitions:** to clarify the word neuromarketing is used as a common term in this thesis to describe consumer research insights using electronic and brain scanning technology. The new subconscious neuro-marketing mix model below is a creation of this research.

<table>
<thead>
<tr>
<th>Subconscious Behavioural Neuro-Marketing Mix Paradigm: Marketing Subconsciology, A New Conceptual Process</th>
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<tr>
<td><strong>12 P’s of Subconscious Marketing</strong></td>
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<td>Perception</td>
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| Pleasure | The emotional experience of pleasure associated with the brand  
| --- | --- |
| | “We can get the same physiological responses, in any heightened emotions, in anger, in happiness, in joy, in fear, you're getting the same physiological responses, so it's the label you put on them. For example, if you jump out of an aircraft as a skydiver, the first time you do it, you have a huge increase in heart rate, your sweating palms, your churning stomach, your dry mouth, your trembling limbs—you associate this with terrifying, after a few jumps you think this isn't terrifying this is exhilarating.” (In conversation with Dr David Lewis, 2013)  
| | “Some marketing experts believe brain imaging, eventually, might even indicate how to ignite pleasurable feelings in consumers at the prospect of rewards.” (Huang, 2005:74). |
| Pain | The emotional experience of pain associated with a brand. Pain can elicit pleasure see above and can often be confused. This can also be associated with fear and scarcity driven purchasing.  
| | Chamberlain and Broderick (2007:199), assert that; “Responses to marketing stimuli have not been adequately considered by marketers. The objective |
The measurement of physiological arousal in consumer emotion research is a valuable insight, which can be used to investigate correlations between the conscious reported emotional experience, such as pain and pleasure, and the subconscious physiological arousal experienced by individuals."

The memory and heritage associated with brand experience. Advertising exposure after using a product can be effective as shown in an experiment by Olson and Dover (1979) found that advertising received prior to a bitter coffee experience made consumers tolerate and appreciate the taste more than those who did not receive the advertising. (Olson and Dover, 1979). Therefore, advertising received after an experience can exert an impact by influencing how that experience is remembered (Braun, 1999:319). "Once a message or image is placed in our long-term memory, it seems virtually never to be forgotten."

Braun-La Tour et al (2004:8) “Recent "paradigm shifting" research in consumer behaviour dealing with reconstructive memory processes suggests that advertising can exert a powerful retroactive effect on how consumers remember their past experiences with a product. We know that the past influences the future when consumers consider purchases and patterns emerge.”
(Incardona, et al, 2007:21) go on to discuss that “memory also plays a very important role in the behaviour of consumers, who perceive, comprehend, and make decisions based on their memories.”

Wilder Penfield proved how memory was dormant in the subconscious during brain surgery when he used electric shock to bring forth memories from the subconscious mind that the conscious mind could not recall (Wilder Penfield, 1951).

| Participants/Populations/Players | The cultural relationship between consumer groups, brand association and that emulated by sponsorship and perceived leadership of sheep-like followers of brand ‘social sheeple’. The need to belong and mimic. Berger and Fitzsimons (2008:187) “Notably, though, a given cue may have different conceptual links for different sub-populations (e.g., men and women may have different associations with shopping), and thus the same cue may have different effects on different groups. Consequently, marketers should be aware of the specific links among the group they are trying to reach.” We can see from this how subconscious marketing develops associations to create relevant attachments to certain product types in the minds of the consumer. Anderson (2007:50) “Choices are not |
isolated events that affect only the individual. Decision-making occurs within “a social context, in which we are confronted with the opinions, the actions, and the presence of other active decision makers.” Individual biases and beliefs further complicate decision-making (Robbins, 2006), “as habitual patterns of thinking interfere with inventive decision-making that attempts to address real-life issues influenced by changing world conditions.” (Foster, 2003:30).

“Evidence for automatic mimicry of the observable behaviours of others is abundant (Dijksterhuis & Bargh, 2001:40). Mimicry is easy to demonstrate; as recent research shows that spontaneous mimicry is a consequence of humans’ neural makeup. The tendency to mimic is, in other words, a capacity people are born with.”

The semiotic symbols used in brand association i.e. the cross associated with Christian groups. Inspiring leaders such as celebrity sponsors and product placement in films, emulating heroic behaviour. ‘The brand prophets’ and semiotics (Martin and Morich, 2011:483). “Consumer behaviour models that posit only conscious information processing and the deliberate formation of attitudes, beliefs and intentions lead to purchase decisions do not accommodate this reality.
The majority, if not all, of human behaviour either begins as an unconscious process or occurs completely outside of conscious awareness. These automatic processes, including behavioural mimicry” such as celebrity endorsement, trait and stereotype activation, such as religious beliefs, and “non-conscious goal pursuit, also impact attitudes, beliefs and goals without engaging consumers’ conscious minds.” (Barthol and Goldstien, 1970:30), “The visual symbols are not just a support for word claims. They can contribute meanings and association entirely apart and of much greater significance” (Dijksterhuis et al, 2005). “Symbols can have powerful associations to culture, beliefs and belonging, as can the product itself emulate the symbol and vice versa, which are highly susceptible to subconscious patterns of behaviour. Such attitudes can be based more on cognitive beliefs, such as when one finds a product very useful, or more on affect, such as when a product has important symbolic meanings.” (Venkatraman & Mac Innes, 1985:102).

“Consumers may use simple decision rules such as buying a brand name; buying the brand advertised by an expert, attractive or trustworthy spokesperson; or buying the brand that most people use.” (Chaiken, 1980:752).
<table>
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<tr>
<th>Palette and ‘pong’</th>
<th>The phycology of colour used to associate with various emotions and environmental cues. Our dominant subconscious senses of sight and smell which often vary by culture and geographical location as discussed through expert commentary in chapter 5. Braun-La Tour et al, (2004: *). “The concept of mirror neuron networks has two potential important contributions to marketing. It illustrates the importance of developing creative strategies, such as use of colour that get the consumers' attention so the information will be processed at a level that evokes learning.” The extensive use of subtle scents in the likes of department stores and spa’s gently coaxes and engulfs the consumer with experiences such as joy, relaxation and a deep unconscious relationship with the brand. A popular choice is lemongrass which is close to the pheromone of the Queen bee, which is used to control her colony.</th>
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<tr>
<td>Price/positioning</td>
<td>The feeling associated with price perception, such as high price equates to high quality. How supermarkets instil the idea of buy one get one free (BOGOF) and other complex pricing structures to baffle consumers. (Plassmann et al, 2008). “Activity in reward related regions in the subjects’ brains also increased when they believed they were drinking more expensive wine, suggesting a cognitive</td>
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factor unrelated to the actual taste sensation, the marketing action of pricing could actually affect subjects' perception of pleasantness. Even though this study replicates a well-established psychological phenomenon, it is unique in showing that not only psychological responses, but also physiological responses, are influenced by consumers' perceptions of a product based on a manipulation of a basic element of the marketing mix.” (Perrachione, and Perrachione, 2008:303)

Expert commentary in chapter 5 discusses the wine industry and how consumers have come to associate heavier weight bottles to higher quality wine and how weight and price can be raised incrementally without any reflection on the quality of the wine. “When the cognitive load increases (e.g., because of complex pricing structure), individuals tend to use less of the available information.” (Bettman et al. 1998:187; Henry 2005).

| Place/parameters/preconditioning | Utilisation of environmental cues and associations. How our buying location can be preconditioned by seasonal events or local cultural events within the social calendar. Upselling and cross-selling within the parameters of control around creating an urgency of need. Such as Valentine’s day and Halloween. (Berger and Fitzsimons, 2008:2). “Results from their research into environmental |
cues suggest that marketers will be more effective to the extent that they link their product to prevalent environmental cues. In addition to relying on existing conceptual relationships, their data indicate that marketers can also create novel links between their product and a commonly encountered feature in the consumer environment. This finding could lead to innovative marketing strategies, in which marketers customize slogans, brand names, and advertising messages on the basis of the specific features common to various environments, whether those be specific geographic regions or specific demographic groups”

Johan Berger and Grainne Fitzsimons (2008) studied the effects of perceptually related environmental cues had on brand choice. Testing consumers outside a supermarket during Halloween when there were a significant number of orange coloured pumpkins on display. They found was that orange coloured chocolate bars and soft drinks were mentioned by the shoppers over 50% more often before Halloween, when the orange pumpkin cues were prolific their many experiments showed how easy it is for advertisers to influence us by targeting our subconscious.

| Persuasion/priming and prompting | Triggers to affect a final sale to cause impulsive behavioural patterns. Many |
forms of persuasion are used to entice consumers into making a purchase and legally prompting offers such as those used on Amazon to provide similar offers and to tell consumers what others in your similar ‘tribe’ have purchased are common place to prompt and prime the consumer to purchase.

Rangel (2011:1133), acknowledge, that, “we make hundreds of decisions every day, many of them extremely quickly and without much explicit deliberation.”

Barthol and Goldstien (1970:32), note that, “Successful persuasion through advertising consists of far more than doing clever tricks with words. The consumer has developed a protective husk against mere word claims.”

“Persuasion is an intentional but non-coercive form of social influence” (Cialdini, 2001). “To persuade people is a process of guiding them toward adoption of a belief, position, or course of action (O'Keefe, 1990:40). One defining characteristic of persuasion is that an influence agent intends to change a target by means of appeal rather than force.”

| Post rationalisation | New evidence now enhances our understanding of the rational decision making process, in that we now understand that the main part of the rational consumer decision making function actually happens after the |
purchase as opposed to before the purchase decision.
(Cramphorn, 2005:258). It seems that “long-trusted tools will become redundant…What people say is often made up on the spur of the moment, with the need to appear rational.”
(Cramphorn, 2005:260). “Consciously, we find out what is about to happen only as an ‘afterthought’. But because we have neither direct nor indirect insight into the unconscious, we have the illusion that we made a conscious and rational decision (Wegner, 2002). Our intentions are constantly being reshaped and modified by unconscious feelings that are post-rationalised by our conscious mind….Causing us to provide rational, apparently sensible justifications for our actions and intentions (rational lies?), to ourselves and to others…Now it seems more appropriate to characterise us as very adept rationalising beings.”

“Post experience information can influence memories for prior experiences, ranging from the alteration of details to the creation of entirely false experiences.” (Loftus, 1982)

| Punishment; Protection and Praise | This is the Subconsiology of the consumer empowerment neuro-marketing mix. It allows the consumer to become a tribe leader and punish the seller without the need of legal redress, but to use platforms |

250
such as feedback mechanisms on eBay, affording the consumer protection and allowing it to build a brand through praise in feedback comments, such as 5 star ratings.

Table 6.7 Subconscious Behavioural Neuro-Marketing Mix
Cramphorn (2005) also notes that there is new understanding about how the brain functions. Descartes made a distinction between the mind (rational) and the body (emotional). For advertising, it is necessary to rethink, and to address the many important implications for communication, such as perception, emotion, memory and persuasion in new marketing models. Martin and Morich (2011:483) believe that marketers need to understand their consumers and align their brands to what is going on in the world to resonate with consumers conscious awareness. Martin and Morich states that: “the need for a new model of consumer behaviour has been evident for some time”, and discusses that, the challenge has been the mechanisms in academia and practice and the narrow focus of academic publications, forcing academics to narrow their vision, which have restricted substantive contribution and advancement in this area,

.. “making it difficult to feel sufficiently well versed across marketing disciplines to propose anything as wide reaching as a new, integrated model of marketing, and practitioners are similarly narrow in their focus.” Martin and Morich (2011:483)

This research aims to fill this gap for both academics and practitioners alike, providing new advanced models developed through the literature review and observational research of parties that influence this process.

According to Serle (1995:141), there is a paradox within two views, with one described as rational ‘according to rules and principles’ and the other as ‘non-intentionalistic and not rational’. Differing in meaning as well as in experience, notions of rationality challenge and confuse both individuals and societies. Research opportunities exist to extol the benefits of both the rational and non-rational behaviours of natural human behaviours to revise and develop new models, concepts and frameworks for both marketers and legislators alike to adopt. A paradigm shift needs to occur to take account of the realities of human behavioural nuances. The conceptual process (Table 6.6) begins to define a new ‘Subconscious Neuro-Marketing Paradigm’ as a theoretical consumer based model.

6.6 Summary

Chapter 6 is primarily built and based on the expert findings in chapter 5. These findings provide new insights to the challenges ahead, represented by new models and paradigms presented within this chapter providing contribution to knowledge, practice and methodology. Chapter 7 consolidates these contributions and illuminates the path ahead for future research directions.
Figure 6.8 (from 6.7) The Subconsciology of the 12 Neuro-marketing P's
Chapter 7 Conclusion and Recommendations

7.1 Introduction

Highlighted and evidenced throughout this research are explanations of how iterations answer the research questions and meet the objectives as specified in Chapter 1. Corralling the evidence, close examination was given to literary historic antecedents of the regulations and origins of consumer protection and variants of human emotions and marketing models built on historic literature. Moving beyond anthropology towards ethnographic power to provide qualitative reasoning through a tested and qualified research design and sample using expert multi specific insightful research questions. A phenomenologically led research process and procedure with the sample population and data driven inductive ethnography at the core of the framework to develop solution led blue skies theories. Development of new theories were assisted by evaluating traditional theories, where neuromarketing meets ethnography and delves into the dichotomous relationship with marketing and law, melding multidiscipline with an excursion into subconscious marketing. Under the magnifying glass of interrogative conversations, bringing knowledge to the surface of the literary escarpment, to reveal the research landscape and through deep encounters with reality emerged expert definitions, misleading marketing communications under the radar of transparency and manipulation. Behavioural intent and emotional decision making with impulse and persuasion, is part of the average consumer’s life. The strategy of data driven inductive ethnography in the narrative was a key element that unearthed the deep root of rich findings by deploying expert interviews to grow new shoots of knowledge to fill the gap in the literature. This glued together the methodological landscape.

7.2 Contribution to Original Knowledge and Methodology: Theoretical contributions

New scaffolding on existing structures adapts contemporary models, and new structures are developed from the foundations of existing knowledge and new empirical research findings detail in chapter 5. Expert findings are the key to advancement of academic knowledge using data driven inductive ethnography and are central to the methodology framework developed in Figure 3.1 which shows the rise of the data driven inductive ethnography developing into patterns and themes contributing to new theories. Developing multidisciplinary methodological meshes in chapter 4, such as the Neuromesh and Multidisciplinary Marketing Mesh, amongst many other new models. Contemporary
marketing communications theories have been dominated by structures based on belief of concepts that have been proven to be unrealistic and therefore extrapolated evidence and decisions have been based on a model of false premise. Table 7.1 details the contribution to advancement of knowledge delivered throughout the research chapters.

<table>
<thead>
<tr>
<th>Model or Commentary</th>
<th>Title and Contribution</th>
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</thead>
<tbody>
<tr>
<td>Figure/Model 1.1 (Chapter 1)</td>
<td>Regulatory and Marketing Lag Model shows how current processes lag behind modern knowledge.</td>
</tr>
<tr>
<td>Figure/Model 1.2</td>
<td>Connectivity of the Research Space. Describing the transition from existing knowledge to new knowledge.</td>
</tr>
<tr>
<td>Figure/Model 1.3</td>
<td>Hierarchy of research domains.</td>
</tr>
<tr>
<td>Figure/Model 1.4</td>
<td>Marketing subconsciology: a new conceptual paradigm integrates modern day study and knowledge of subconscious and conscious thought process mapping into multiple disciplines.</td>
</tr>
<tr>
<td>Figure/Model 1.5</td>
<td>The Funnel of Disciplinary Connection showing the placement of subconsciology and consciology.</td>
</tr>
<tr>
<td>Figure/Model 1.6</td>
<td>New Interdisciplinary Interaction: a qualitative method which can be replicated in other disciplines</td>
</tr>
<tr>
<td>Figure/Model 1.7</td>
<td>New Disciplinary Interactive Ethnographical Mapping</td>
</tr>
<tr>
<td>Figure/Model 1.8</td>
<td>The Discourse Mismatch: connecting the research question to multiple disciplines</td>
</tr>
<tr>
<td>Figure/Models 1.9 – 1.12</td>
<td>Inductive Data Gathering Process: in parallel and synthesised, identifies the stages of the research gathering process.</td>
</tr>
<tr>
<td>Figure/Model 1.13</td>
<td>Postmodern Ethnographic Mesh: a cohesive structure of interconnectivity</td>
</tr>
<tr>
<td>Figure/Model 2.1 (Chapter 2)</td>
<td>The Regulatory Process Model shows the flow of European, and UK regulations and self-regulatory bodies.</td>
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<tr>
<td>Figure/Model 2.2</td>
<td>The Conceptual Framework consolidates the research issue, gaps, methodological insights and new theories</td>
</tr>
<tr>
<td>Figure/Model 3.1 (Chapter 3)</td>
<td>The Methodology Framework provides the inductive map and journey plan for the research to meet the destination of new theories.</td>
</tr>
<tr>
<td>Figure/Model 4.1 (Chapter 4)</td>
<td>The new researchers creation of the Neuromesh presents new linkages to integrating methodologies with core disciplines, linking inductive ethnography with neuroscience.</td>
</tr>
<tr>
<td>Figure/Model 4.2 and 4.3</td>
<td>Theoretical framework table of the dichotomous relationships between the 7 P’s marketing mix and the 7 P’s of the CPR’s: A tabular comparison and 4.3. The researchers new Theoretical Diagrammatical Network Presentation of Opposing Aims of Marketing Communications and Consumer Protection from Unfair Trading Regulations (2008). Newly modelled illuminations in the dichotomous relationship, which exists in that methods and models used by marketing communications are in fact also used and within the CPR’s to counteract marketing activity.</td>
</tr>
<tr>
<td>Figure/Model 4.4</td>
<td>The Internal Consumer Subconscious Marketing Process Model. The researchers new subconscious behavioural model of human decision making and post</td>
</tr>
<tr>
<td>Figure/Model 4.7</td>
<td>The Multidisciplinary Marketing Mesh – the researcher’s new model to form a coherent team of consumer experts to conquer the challenges of multidisciplinary consumer behavioural research. In adaptation from the Neuromesh created by the researcher and introduced in chapter 4.2 the multidisciplinary marketing mesh shows marketing as the central core as the mother discipline gathering within the nest of the mesh are behavioural economists, psychologists, regulators and neuromarketers to form a coherent team of consumer experts to conquer the challenges of multidisciplinary research.</td>
</tr>
<tr>
<td>Commentary in 5.7 Summary of Findings (Chapter 5)</td>
<td>The summary of expert findings fills a large gap in the literature between marketing and consumer regulations and brings consumer behaviour knowledge up to date.</td>
</tr>
<tr>
<td>Figure/Model 6.1 (Chapter 6)</td>
<td>Introducing the concept of the fine line between leading and misleading. ‘Tipping Off’ and ‘Ripping Off’. The researchers new model of leading and misleading.</td>
</tr>
<tr>
<td>Figure/Model 6.2</td>
<td>Policy Process: Encompassing EC and UK Legislative Models and Marketing Communications Effect. Adapted from Rotfield and Stafford (2007). The researcher’s new model allows for the presentation and consolidation of additional regulatory elements, which extend this model to be more EU and UK</td>
</tr>
</tbody>
</table>
specific. The model embraces a wider number of disciplines thought necessary to develop solutions to the problems faced in light of new evidence surrounding consumer behaviour.

**Figure/Model 6.3**  
The researchers new Personalised Behavioural Regulations – Consumer Protection Model. This model extends expert opinion by integrating levels of consumer emotional arousal coupled with levels of the financial value of the purchase relative to the regulatory application which should be applied. The model questions the level of disclosure of marketing tactics by companies.

**Table 6.4**  
The researchers new Company Profits and Restitution Model

**Figure/Model 6.5**  
The researchers new Group Regulations General Regulatory Protection Model. The diagram presents more specific distilled groups identified within these current regulations to meet the real day to day challenges experienced by dealing with large and small businesses and individuals.

**Figure/Model 6.6**  
The researchers new Black Box Behavioural Marketing Regulatory False Premise Model, This model presents the process of perceived controllable factors and actual uncontrollable factors in the consumer behaviour during the buying process.

**Figure/Model 6.7**  
The researcher’s new Subconscious Behavioural Neuro-Marketing Paradigm: A New Conceptual Process. Developed
from the research findings and encapsulated in tabulation form, presented are 12 of the key subconscious emotional buying trigger points of consumer behaviour, with referenced explanations and quotations.

Table 7.1 New and adapted theoretical frameworks

7.3 Original contribution to multidisciplinary managerial practice: the future implications for subconscious marketing techniques, consumer regulations and the marketing profession

Many of the contributions to academic knowledge and methodology are inextricably fused to the contribution to marketing and regulatory practice by nature of the connectivity. Generally, all models in Table 7.1 can be translated into marketing and regulatory practice, specifically models shown in Table 7.2 have been chosen as illustrations of this translation. Detailed below in Table 7.2 explains how each new and adapted model can transition into marketing and regulatory practise. Providing new knowledge and understandings for institutional learning, tuition and development along with practical applications in the world of marketing and law, these models develop theory into practice.

Ryder (2004:346) points out:

“The one unmoving, irrefutable fact in this ever-changing world is that people are people first. Successful brand management has always struck at the many often subconscious drivers of Homo sapiens. It further suggests that there is huge gain for those companies that really begin to understand and use this in their business and marketing strategies. As the social science that studies the origins and social relationships of humans, anthropology is the source from which the next great companies will be drawing their inspiration.”

Therefore, there in an opportunity to fill a gap utilising observational research to establish the validity of new marketing models that work on the basis of human behaviour as opposed to management practice. Findings of practitioner experts should light the way for marketing practitioners and teachers of the future.
<table>
<thead>
<tr>
<th>Model or Commentary</th>
<th>Translating New Theories into Practice</th>
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</thead>
<tbody>
<tr>
<td>Figure/Model 4.1 (Chapter 4)</td>
<td>The Neuromesh presents new linkages to integrating methodologies with core disciplines. This model provides the basis for identifying the core or ‘mother’ discipline and linking in the mesh structure other sub or interdisciplinary functions. The can provide the basic premise of a research study or integrated collaborative partnerships.</td>
</tr>
<tr>
<td>Figure/Model 4.2 and 4.3 (Chapter 4)</td>
<td>Theoretical framework table of the dichotomous relationships between the 7 P’s marketing mix and the 7 P’s of the CPR’s: Newly modelled illuminations in the dichotomous relationship, which exists in that methods and models used by marketing communications are also used within the CPR’s to counteract marketing activity. Useful provision to assist with institutional learning associations such as those providing regulatory and marketing tuition.</td>
</tr>
<tr>
<td>Figure/Model 4.4 (Chapter 4)</td>
<td>The Internal Consumer Subconscious Marketing Process Model. The new subconscious behavioural model of human decision making and post rationalisation reasoning. A model to benefit both practitioners and institutional tuition in an advanced model of consumer behaviour.</td>
</tr>
<tr>
<td>Figure/Model 4.7 (Chapter 4)</td>
<td>The Multidisciplinary Marketing Mesh. The new model to form a coherent team of consumer experts to conquer the challenges of multidisciplinary consumer behavioural</td>
</tr>
<tr>
<td>Table 6.4</td>
<td>The researchers new Company Profits and research. This model translates with ease the mesh-like connectivity required in modern day collaborative projects in marketing practise.</td>
</tr>
<tr>
<td>Figure/Model 6.1 (Chapter 6)</td>
<td>Introducing the concept of the fine line between leading and misleading. ‘Tipping Off’ and ‘Ripping Off’. Extending into practice and a note for regulatory reform, this model demonstrates by example the importance of being creatively open and operating within the radar of the law.</td>
</tr>
<tr>
<td>Figure/Model 6.2 (Chapter 6)</td>
<td>Policy Process: Encompassing EC and UK Legislative Models and Marketing Communications Effect. Adapted from Rotfield and Stafford (2007), this model can be used as a map and translated into practice and as a teaching aid to understand how marketing interfaces with consumer regulations and how multi disciplines are a key integral part of gluing this process together.</td>
</tr>
<tr>
<td>Figure/Model 6.3 (Chapter 6)</td>
<td>Personalised Behavioural Regulations – Consumer Protection Model. This model extends expert opinion by integrating levels of consumer emotional arousal coupled with levels of the financial value of the purchase relative to the regulatory application which should be applied. The model contributes to marketing practice and regulatory reform by challenging the current premise of regulatory assumption about consumer behaviour and delivering a new premise to meet current day knowledge in practise.</td>
</tr>
<tr>
<td>Figure/Model 6.5 (Chapter 6)</td>
<td>Restitution model</td>
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<tr>
<td>Group Regulation, The General Regulatory Protection Model. The diagram presents more specific distilled groups identified within these current regulations to meet the real day to day challenges experienced by dealing with large and small businesses and individuals. This model brings a fresh look at how to reform regulations to create a fairer system in dealing with day to day practical realities.</td>
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</table>

| Figure/Model 6.6 (Chapter 6) | Black Box Behavioural Marketing Regulatory False Premise Model. This model presents the process of perceived controllable factors and actual uncontrollable factors in the consumer behaviour during the buying process. Showing how marketing regulatory practice and reform should rethink practical implications of consumer decision making |

| Figure/Model 6.7 (Chapter 6) | Subconscious Behavioural Neuro-Marketing Paradigm: A New Conceptual Process. Developed from the research findings and encapsulated in tabulation form presented are 12 of the key subconscious emotional buying trigger points of consumer behaviour, with referenced explanations. We see the 12 p’s of subconscious marketing having practical implications when applied with creativity and congruence to brand activity and marketing communications campaigns. |

Table 7.2 Evolutionary marketing and regulatory models of the future
Many opportunities were presented along the way to create blue skies research within a myriad of tributaries spilling out and leading from the central source of the data collection interviews and thematic discourse analysis. Many issues were explored during the interview process, which have not been included in this research. Therefore, some of the key opportunities for further research are presented here in tabular form in the hope that these research issues and key interrelationships of the core research in this thesis may be examined in future ethnographic studies.

As discussed in the research issue, questions and objectives were limited to specific content in the Consumer Protection from Unfair Trading Regulations (2008). This research did not undertake to review other regulations relating to subconscious marketing techniques such as the Audiovisual Media Services Regulations 2009, such as 368F (3): (a) that advertising must be readily recognisable as such and (b) must not use techniques which exploit the possibility of conveying a message subliminally or surreptitiously. Therefore, an opportunity exists to extend this research into other regulatory content. Opportunities to build on the research findings are detailed in Table 7.3.

<table>
<thead>
<tr>
<th>Future Research Directions</th>
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<tbody>
<tr>
<td><strong>Research Title</strong></td>
</tr>
<tr>
<td>Marketing communications disclosure regulations</td>
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<tr>
<td>Roller Coaster Marketing</td>
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</tbody>
</table>
McDonalds or something that looked delicious, interesting or attractive?” Dr. David Lewis “I don't know to be honest, that study has never been done, but it would be an interesting study to investigate empirically, certainly aroused states, I think it's timing as much to anything when it comes to marketing, and I think where digital marketing is moving is to use mobile phones, marketing through mobile phones is going to be a big thing, so here I am walking down the street, my mobile phone buzzes, text message comes up saying "if you're feeling peckish there's a McDonalds down the street, and if you come in and give this number we'll give you 20% discount, so there's a GPS function so they know where you are, and they know where your phone is to send these automated messages out to people so they'll catch them.”

<table>
<thead>
<tr>
<th>Perceptions and emotions of impulse in late teens early 20’s</th>
<th>Research by neuroscientist has uncovered how the neocortex, which represents rational decision making, is not fully developed until the early 20’s. Therefore does excessive impulsive behaviour in children and teenagers still persist into their 20’s and should consumer regulations reflect this finding?</th>
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<tbody>
<tr>
<td>How pain and pleasure interact in a marketing context?</td>
<td>How close are these emotions in consumer behavioural decision making? How do these triggers materialise in decision making?</td>
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<tr>
<td>Consumer and expert awareness of unlawful advertising</td>
<td>The researcher in part has conducted this research however due to the extensive nature of this work it was omitted. The</td>
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<td></td>
<td>evidence showed that when presented with a banned advertisement very few of the interviewees of either consumer or expert marketer were able to identify the element or elements deemed to be misleading, so how do we really perceive advertisements? Does the adjudication process go too far? Hirschman (1986) found that pictures in ads made people feel more familiar with products than did verbal information. Part of the data collection method is to utilise the ASA adjudication examples to establish if the sample population can identify the misleading elements of advertisements that have been banned by this industry regulator.</td>
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<tr>
<td>The power of the group: Tribal group actions in decision making the herd mentality and social ‘sheeple’</td>
<td>The researcher in part has conducted this research, which was omitted. An interesting number of consumers are attracted to group like tribes. Why do crowds around a market stall attract more people? What is the psychological appraisal that occurs in the mind of the consumer?</td>
</tr>
<tr>
<td>Brand confusion: Generic own brand identity confusion with main brand identity. Who covert thy neighbour’s property?</td>
<td>In part this research has already been conducted but omitted from this thesis. All of the respondents questioned about if they had ever mistaken a generic own brand for a main brand had done at some time or another during their consumer activity. How easy therefore is it to confuse consumers into buying generic brands?</td>
</tr>
<tr>
<td>Sensory Marketing: What is the real subconscious impact on the consumer</td>
<td>To what extent are our senses making decisions about what we buy? What importance does smell play in our buying decisions? The ‘Pong’ element of the new</td>
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<tr>
<td>Section</td>
<td>Description</td>
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<tr>
<td>Manipulative pricing strategies: The case of BOGOFF bargain for the consumer or profit for the seller?</td>
<td>Are consumers completely clear about pricing strategies in supermarkets or online? Or are these strategies purposefully confusing to allow the supermarkets to gain more profit praying on the consumers time constraints or inability to work out the math to make comparisons?</td>
</tr>
<tr>
<td>Manipulative wine pricing strategies: The subconscious art of the heavy weights</td>
<td>In the expert research findings, it was revealed how bottles of wine can be priced based in the quality and perception of the weight of the bottle in which the contents are placed. Should the subconscious art of this strategy be allowed to continue or is the consumer happy to feel they have bought quality, even though this may not be the case? What is the perception of quality in the bottled drinks industry?</td>
</tr>
<tr>
<td>Environmental cues and associations</td>
<td>In part further research was carried out by the researcher and this was omitted. Associations were made between examples given such as an orange pumpkin for most had the association with Halloween. To what extent can subconscious marketing techniques be used to leverage purchases by using calendar events to carry out parallel marketing?</td>
</tr>
<tr>
<td>Leading and misleading: Where do we draw the line?</td>
<td>In chapter 6.1 (Table 6.2) the research opens the door to the idea of the fine line between leading consumers and misleading consumers. Where is the fine line? Should we reduce the creativity in marketing and stick to the facts? Or do consumers enjoy</td>
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<tr>
<td>Topic</td>
<td>Text</td>
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<tr>
<td>Audiovisual Media Services Regulations</td>
<td>Can subconscious marketing techniques go under the radar of these regulations thereby invalidating these regulations?</td>
</tr>
<tr>
<td>Who is the average consumer?</td>
<td>Controversy around what is an average consumer leads to questions about how this entity can be defined. Coupled with the complexity of emotional notion and association, this research uncovered that people don’t wish to be perceived as ‘average’. How do we define this?</td>
</tr>
<tr>
<td>Food labelling: Does it consume our minds?</td>
<td>During the interactive semi structured interviews, interviewees were asked about how they observed information presented to them and whether they read it. All those interviewed read food labelling, but read very few other content labels. What does this tell us about how we are programmed to receive information?</td>
</tr>
<tr>
<td>Do small business owners buy in the same way as they do as consumers?</td>
<td>The same research question put to businesses particularly the SOHO (Small Office Home Office). Do small business owners apply more rationality to their business purchases than they do when they are in consumer mode?</td>
</tr>
<tr>
<td>The Wardrobe of Waste</td>
<td>Many consumers own graveyards of garments. Impulse purchase questions not published in this research suggest that many consumers impulse purchase clothes on a regular basis and the majority remain unworn, to be sold on eBay or end up in the charity shops, or simply discarded in the waste.</td>
</tr>
<tr>
<td>Subconsciology and Consciology: a new discipline and qualitative methodology</td>
<td>To explore these new disciplines and qualitative methodology. To develop the mapping process of subcongraphy and congraphy into multiple disciplines.</td>
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</tbody>
</table>

Table 7.3 Future Research Directions
7.5 **Key empirical original research findings and summary**

This research commenced with a problem relating to a gap in research connecting subconscious marketing techniques and the rational approach of legislators in producing rational based regulatory models as a dichotomy of what, in reality, is at odds with natural consumer behaviour. Commencing the journey into investigation was to outline specific questions and objectives to probe the problem in Chapter 1. Uncovering the disparity and gaps in the literature review in Chapter 2, clearing away the cobwebs of the past by developing an appropriate define a methodological framework in Chapter 3 around which to develop the tool of data driven inductive ethnography, then evaluating the theory in Chapter 4 to enable a delivery of the coherent inquisition of the expert influencers whose multidisciplinary expertise was able to tackle the research issue and the presentation of the findings in Chapter 5. A number of key expert empirical comments were dispersed throughout the chapters to provide the current day scaffolding of events for future posterity.

<table>
<thead>
<tr>
<th>Key Empirical Research Findings</th>
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<tbody>
<tr>
<td>1. Decisions on regulatory content have been based on a model of false premise of behaviour potentially invalidating the CPR’s. The rational model used by regulators does not take into account emotions.</td>
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<tr>
<td>2. Some consumers are more susceptible to marketing communications and can be easily led. Some consumers prefer to be led to products as this can ease the strain repetitive purchase patterns, however this can anchor in engrained purchase preference behaviour</td>
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<tr>
<td>3. Research consultation conversations revealed that many experts from lawyers to Government marketing experts and corporate marketers, along with psychologists agreed that it was not possible to regulate against subconscious marketing. The lawyers asserted this on the basis that if one cannot describe the phenomenon succinctly, how we can create a legal framework which represents such an intangible phenomena?</td>
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<tr>
<td>4. Advertisements have melded with the legislation and have become more creative and often more covert and vague in their messages, therefore regulations have forced creative quality and more covert activity to by pass legislation</td>
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<tr>
<td>5. Multidisciplinary research engagement provides a better knowledge base to understand the issues relating to consumer behaviour. The lack of integrated processes between regulators, marketers, neuroscientists and psychologists should be reviewed. Many marketers were unaware of what the term ‘puffery’ meant which is a term used by the ASA. Requiring a change in terminology or educating the marketing profession.</td>
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<tr>
<td>6. Differing perceptions of definitions were obvious between the multidisciplinary experts. Words presented to discipline experts and meanings varied with expert groups and this may be as a result of anchored associations from experiences. Generally, lesser understanding and knowledge was noted about definitions from the general marketers, than other expert disciplines. Experts’ opinions of the projection of the word ‘subconscious’ upon the consumer has Freudian undertones,</td>
</tr>
</tbody>
</table>
that implies perception as being out of control. Even the most outspoken experts found discomfort in the term ‘subconscious’. A word preferred by experts to describe subconscious is ‘unconscious’. Subliminal is not about flashing messages alone, but it is a term understood by most to be referring to flashing images. Expert psychologists refer to subliminal as ‘priming’. The newer term of ‘nudge’ is in effect priming, so might nudge be the new more subliminal description of the term ‘subliminal’.

7. Impulse is often a key driver in decision making. In people between 16-20 years old consumer behaviour in those who may not have reached full adult growth in the neocortex. Neuroscientists attested the discovery that teenager’s neocortex is not formed until some 20 years old. The tendency for teenage impulse behaviour could continue long after it was thought possible which should lead to a re-think on regulatory reform in this area.

8. Consumer perceptions of marketing communications can vary vastly as to what the advertisement is communicating and what is in their mind misleading or not as the case may be, therefore it is questionable as to whether the CPR’s should be criminalised with custodial sentences.

9. More information presented to consumers such as that in food labelling can end in limitations to the processing of information thus leading to disabling correct desired decision making. Therefore providing the consumer with overwhelming amounts of information can in fact, make them make a bad decision.

10. The average consumer does not exist in life or law. Concern was uncovered that the average consumer, and indeed the fellow companion, Homo Economicus, was a questionable measurement in the reality of individual consumer behaviour. Sensible alternatives were offered by some experts as to regulation based on product groups and consumer typology to provide greater protection in a more specific way with the potential to enact a form of protection to groups in a more meaningful way. Averages should be average for a particular product group or typology.

11. Given that consumer emotions can be effected to varying degrees by marketing communications, this research questions as to what extent subconscious marketing of this nature can ‘distort the economic behaviour of the average consumer’, as described in the CPRs. People make decisions primarily with their emotions.

12. People are not rational agents. Emotions drive our decisions, rationalisation occurs after the emotional decision. Post rationalisation was a key theme developed from expert interviews. Rationalisation does not occur in the moment; it is more so a comforting self-cuddle of post rationalisation and justification. Memories are embedded and etched on our mind; they can distort and deceive us over time.

13. Marketing communications can go under the radar of our rationality to target our emotions therefore these communications can go under the radar of regulations. Some marketing expert respondents did not believe in the existence of subconscious or subliminal marketing methods and described it as ‘science fiction’, whereas other experts in the field of psychology and neuroscience confirmed various forms of susceptibility of certain people to a multitude of sensory messages. If nudge could be thought of as the new ‘priming’ subliminal in social marketing, it can be a force for good, but it can be quickly outdated or viewed as propaganda with unethical undertones as attested by some experts. Evidenced through deep conversation was that certain levels of subconscious creativity can go under the radar of regulations and would therefore be unenforceable. Preconditioned perception occurs through examples like wine bottles, colour and fizzy drinks. Consumers are blinded by science, such as shampoo and toothpaste ads with white coats and atoms presented to the consumer as a higher order of knowledge. Our most powerful sense is smell, our most fallible is memory. Expert
opinions gravitated with examples of restrictive advertising regulations making marketing messages in advertising in recent decades more creative and possibly smarter at messaging the consumer under the radar of regulations. Yet, honest, legal and decent brands don’t want a reputation reflux from their consumers.

14. It was evidenced that all experts agreed that we perceive marketing messages differently. In fact, some believe we perceive messages differently in time zones from moment to moment and from one mood to another. Even with this behavioural assertion, most support the current adjudication process that the likely effect on the consumer as opposed to the intent of the marketer was in fact the correct way to adjudicate matters. However, many experts in marketing thought fines should be proportionate. However, the ASA asserts it is a matter of priority not proportionality. To some companies, fines are just a cost of doing business. Restitution and redress could be developed and expedited using new synergistic technologies such as those that the Oyster card does on the London travel network. Some believe that regulators need to get tougher, with tougher legal powers to enforce fines, rather than simply name and shame those who may not have any connection to shame and may indeed be reputable companies. The adjudication process needs to be a level playing field for marketers globally. People perceive messages differently. This poses a challenge as to what might be the intent of the marketing message.

15. Misleading marketing communications and regulations is a balancing act of unfair influence with legitimate consumer communications. Transparency should transcend marketing practice. Supermarkets manipulating price and taking advantage of consumer lifestyle and the urge need to expedite ‘doing the shopping’ as a weekly task as opposed to ‘going shopping’, which is perceived as a more fun based relaxed pastime.

16. The discovery that neuroscientists, psychologists, behavioural economists and the latter are favoured by large corporations nowadays to take advice on marketing over the general marketing profession is an interesting revelation of a multidisciplinary power-house over the average consumer and potentially nudging consumers under the radar of regulations.

17. Ethnography combined with neuromarketing can provide deeper answers to the research questions and provide better understanding of this research issue.

18. Awareness about both the existence of the CPR’s along with the fines and custodial sentences amongst the marketing profession who were interviewed were surprisingly limited. Many were visibly shocked to know that they could receive a custodial sentence for misleading consumers and were unaware of the fines that could be imposed. The potential to educate the industry in their legal obligations to the consumer is something of an opportunity for the future. In addition, the consumer would benefit in awareness of their consumer rights.

19. It could be argued that marketing is simply a set of glued disciplinary features from psychology behavioural economics etc. in disparate mesh like structures embracing various disciplines. Should marketing embrace all these disciplines in order to extend and maintain the mesh position? Introducing the youthful infancy of neuromarketing provides another tool in the box for the marketing profession.

Table 7.4 Key Research Findings
This research has contributed to advancement in academic knowledge and methodology assisted by adapting and creating new theoretical frameworks expounded by the researcher in Table 7.1. In addition, galvanising a contribution to marketing, regulatory practice and
reform is clear with new evolutionary models of the future by translating new theories into practice and into an institutional learning setting in Table 7.2. This research has also provided opportunities to build on research findings as described in Table 7.3 and gave a detailed list of research findings in Table 7.4. Using ethnographic data driven observational methods has uncovered new marketing and regulatory paradigms. Many new models have been developed to assist in the development of academic knowledge along with advancing marketing and regulatory practice. There is now some acceptance of the need for change. However, as Penn (2005:13) points out.

“The changes will not be simple. As the dust settles, the new learning will have a flow-on effect, changing the focus of advertising. This will necessitate a consequent adaptive change in advertising research methodology that will challenge many conventional research assumptions and coincidentally add an extra level of complexity.”

A new conceptual paradigm is suggested from this research that proposes a new subconscious neuro-marketing paradigm of 12 P’s to take into account new understanding and knowledge of how the human mind works.

Whilst concluding this research on 23.6.16 a landmark historic event emerged of seismic proportions in modern day history when Great Britain voted to leave the Federal state of the European Union, in favour of an independent and United Kingdom. As Great Britain enters a new chapter enacting the ‘divorce settlement’ of article 50, this could herald a return to home grown consumer regulation. Potentially this will open the floodgates to new common sense, reality based legislation putting the wind in the sails on the horizon of expert led multidisciplinary based consumer regulations. “It (the EU) was a noble idea of its time that is no longer right for this Country.” (Boris Johnson MP BBC News, 23.6.16)
Figure 7.5 The 12 Subconscious P’s (Adapted from the researcher’s model in Table 6.6)
Appendices

A. Semi Structured Research Questions and List of Expert Interviewees

Most of which are prompts to lead to wider tributaries of conversation. (Marketing: Psychologists; Neuroscientists / Neuromarketers: law / regulators / politicians. Not in any particular order). Often answers from one expert where put as a question to another expert. So X expert states Y, what is your opinion on that?

Do you think that marketing communications techniques can make people such as you and I make decisions that we otherwise would not have made?

Do you think people perceive ad messages different from other people – or do we all experience the same message from an ad?

Have you ever made an impulse purchase?

What is the purpose of marketing communication techniques?

Do you think it is right that companies should be fined up to 5k or imprisoned for up to 2 years for misleading consumers, if so, under what circumstances?

Do you think that statutory regulation should be promoted and make people aware and enforced, if so how?

Do you think that you perceive ads differently from others? If so, explain how and give examples?

Have you ever been persuaded to buy goods based on an ad?

Do you believe advertising is totally transparent?

Have you ever been misled by an ad on product, price, people etc.? What were the circumstances?

What are your most memorable ads and why? Did you ever buy the product?

Are price and quality related?

Do you think/want / should the government to legislate against the subconscious influence of brands?

B. Ethics Approval Form
Are you aware of CPR’s?

Are you aware of neuromarketing?

What is your definition of neuromarketing?

Do you think it should be legislated?

Do you think the regulatory system is fair in terms of cap/asa/cprs/oft/ucpd?

Do you think that the CAP codes in terms of self-regulation go further than the CPRs in terms of stator regulation i.e. 3.2 cap code – puffery.

Do you think that it is right that in terms of misleading advertising that the ASA adjudicates on the basis of the likely effect of an ad on consumers, not the marketer’s intention, is this right, if so why?

Should ASA take into account marketing intent as opposed to consumer intent?

As marketers are involved in regulatory decisions / adjudication through asa and cap, do you think that marketers and other professions such as behavioural psychologists should be involved in advising on statutory legal frameworks? If so why?

Do you think that neuromarketing could assist in providing a better standard of legislation through using technology to understand how people really process marketing information? If so how / why?

Do you think that the rational approach used by legislators to create the CPR’s is appropriate given the irrational purchase behaviour of consumers?

Do you think that multidisciplinary research would be useful to aid the update and create consumer legislation to reflect true consumer behaviour?

Do you think marketing techniques can manipulate consumers? If so how?

Do you think that the existence of marketing communications to manipulate consumer’s decision process that this invalidates the aims and essence of CPR’s?

Do you think that European law such as UPCD is appropriate to British law in terms of CPR’s?

Do you think that there is a value in subconscious marketing techniques in promoting/influencing anti-social behaviour?

Do you think that legislation forces brands to use more covert and manipulative techniques to go under the radar of legislation?

How can legislators legislate against subconscious marketing communication techniques if we cannot prove their existence?
If marketing techniques can go under the radar of self and statutory regulations, what value and relevance to these regulations have?

Do you think that the OFT and Trading Standards have sufficient resources to police the CPR’s?

Do you think that consumers should be compensated if proven that marketing communications have intentionally mislead them?

Do you believe advertising is totally transparent?

Are ads only evil when they advertise evil things (in the words of David Ogilvy)?

Does a mars a day help you work rest and play, or does it rot your teeth and make you fat?

What is your definition of misleading (or misleading mean to me..)?

What is your definition of an average customer (or an average customer is...)?

Are you an average consumer?

Definition of subconscious?

Definition of subliminal?

Definition of rational?

Definition of conscious?

Definition of puffery?

Define persuasion?

If (it could be proven that) marketing techniques can go under the radar of self and statutory regulations, what value and relevance to these regulations have? Would this invalidate the CPR’s?

Is there any value in public and private enforcement working together?

Do you think that consumers should have a direct right of redress?

Could neuroscience be used to identify covert / subliminal marketing techniques?

Can memory be changed? Could a bad experience with a brand be replaced by a good experience with a brand? Who changes the memory? The brand or the person?
Could neuromarketing be used to access the areas that other marketing techniques cannot reach – i.e. political persuasion?

Can neuroscience help to design how to regulate human behaviour?

How do humans decide on relevant and irrelevant information (I had people who had goals to purchase but also purchased something that was not on this goal list – impulse)?

Can neuroscience tell us whether size and brightness is important in product design and packaging / presentation?

Through continual reward (such as impulse purchasing and Amazon) could the brain adopt patterns of repeat behaviour such as repeat purchase or brand addiction?

When people are misled and might feel duped (such as horsemeat) does the brain switch from reward and trust to rejection?

Could a happy or sad state cause a perception of a product which could induce a purchase or conversely reject a purchase?

What value could ethnography bring to neuromarketing / neuroscience?

As a neuroscientist, is there any evidence that people receive and perceive communications in different ways, for example, from advertising?

Do you think there is an opportunity whereby neuromarketing could be used as a force for good – such as establishing trigger points in behaviour to addictions such as food and drugs? If so, could this be used effectively in advertising campaigns?

Do you think marketing techniques can manipulate consumers? If so how? What can neuroscience tell us about this.

Do you think that neuromarketing could assist in providing a better standard of legislation through using technology to understand how people really process marketing information? If so how / why

Do you think regulatory processes could benefit from neuroscience input in connection to behaviour, if so how?
What developments have occurred with neuroscience and judiciary if any?

What real value can neuroscience provide to marketing – you mentioned that brain scanners are rubbish and sell them to marketers at £600 per hour

Is there a behaviour such as impulse or is this simply a faster process of rational deliberation?

Can neuroscience tell us if people are seduced by environmental links to colour such as orange for Halloween and orange chocolate bars – do you think colour association can effect behaviour?

Can neuromarketing leave an audit trail of emotion in the decision making process?

Is there evidence of reinforced memory to brands?

In light of human’s variations in behaviour how can regulation such as CPR’s justify the term ‘average consumer’?

Do you think that neuroscience should be used to review some current regulations? If so, how?

Is there evidence that the more aware we are to information the less attention we pay to it?

Is social marketing a good thing – could neuroscience tell us if social ads such as anti-smoking actually work? Is it right to use neuromarketing evidence to manipulate such behaviour?

What does the future hold – what will be the challenges ahead? What are positives and negatives? How will consumer be effected?

How does the OFT empower consumers and influence behaviour in markets?

Is HE the best measurement and why? Do you think an average consumer receives marcoms messages differently? Are you an average consumer? Do you think that the rational approach used by legislators to create the CPR’s is appropriate given the irrational purchase behaviour of consumers? In your opinion what percentage of the time do we make rational decisions?

In your opinion, what is an impulse purchase? Does impulse buying distort the economic behaviour of a consumer causing a transaction that they would not have otherwise made? No informed decisions during impulse buying...People not acting in a sensible, attentive and cautious manner…

How do cap codes interface with CPR’s – in your opinion do they mirror CPR’s? Puffery?!

Why act on just 1 complaint when oft action is based on a number? Do you perceive statutory regs such as CPR’s as subordinate to the CAP codes...? Why does OFT need more complaints to act?

When in your opinion should a criminal conviction occur – 5k and 2 years imprisonment?
Neuroscience tells us that people are making decisions in subconscious several seconds before we are aware of it in our conscious mind... what impact does this have on law?

Words have definitions in the dictionary so why do people have different perceptions of words? Is it our experience that anchors reference points to these words?

How does OFT assess the complainant? How do they know if they are average, vulnerable, have a negative opinion of a brand or of advertising in general or having a bad day? Neuroscience show neocortex not fully developed until 20 years old – would information such as impulsive behaviour change the law?

In your opinion are the senses linked to emotion, perception and memory? Do these senses effect our subconscious?

Does OFT have definitions of subconscious, subliminal, rational, conscious, unconscious, unfair, puffery, perception, emotion, memory, persuasion?

Under what circumstances should a company or individual be fined up to 5k or imprisoned up to 2 years for misleading consumers?

Have you thought of neuromarketing to ascertain if ads are offensive, harmful, misleading etc.?

What is adjudication process? What time to behaviourl phycologists get involved – what is criteria? What about multidisciplinary?

Why Ofcom Auditory and Visual stimuli subliminal included and not CPR’s?

Why only may take into account CPR’s and not will take into account?

Can subconscious marketing be used for good? Red cross ad reference?

How does ASA decide if an ad offends? Is misleading or exaggerates? What is the criteria?

What is your opinion of pre vetting ads?

Why can just one complaint lead to an ad being withdrawn? Is this proportionate?

Do you have any neuroscientists on the ASA Council? Who decided who goes on the Council?

How many ads have you referred to OFT for legal action?

Does asa take account of subconscious marketing techniques? If so how? What percentage of the time do you believe we are acting upon our subconscious when making decisions to buy products?

In your opinion what is an impulse purchase?
Are there codes to take account of sense of smell...? Small reference to sensory branding in that – no other shower gel leaves you feeling fresher...

Neuro law – all brains different so why take an average? Or is neuroscience selling the emperor’s new clothes? Neuroscience used for commercial purposes is banned in France. Obama investing 1 billion dollars in brain science... Should neuromarketing be regulated?

If neuroscience could provide evidence as to whether consumers are misled or offended is it a form of research that ASA would consider?

Sufficient resource to enforce regs?

We know too much information confuses people – so does more information help the consumer when making decisions. Such as APR... values?

Neuroscience law and policy – should other professions be involved in the regulatory process for a multidisciplinary approach – behavioural economics and neuroscientist and psychologists for a more consultative process when drafting legislation?

Does the ASA base its decisions on an Average consumer? If so, what does ASA consider an average consumer to be?

Impulse buying mode of supposed average consumer can vary, happy, sad, fearful and other states can impact on our behaviour when shopping?

Going shopping and doing shopping differ – all doing shopping read food labelling non during impulse read labelling or price.?

Ads shown to interviewees – removed some of the ts and cs to make it easier. Yet most could not identify the elements that were misleading, exaggerated etc…explain why?

Why are business and consumer ads treated the same with ASA but separate with CPR’s?

Do you think OFT is sufficiently resourced?

Does ASA take up the slack for the OFT?

Is online behavioural advertising a precursor to neuromarketing regulations?

7 p’s – marketers / companies aim to sell goods and services using best means – there seems to be a dichotomy in that the law tries to prevent from selling?

Do you think that people act in a sensible, attentive and cautious manner that the regulations assumes that they do?

Can linguistics change our behaviour…? i.e. buy now!
Blind sight – can you explain unconscious seeing?

Which is the most powerful of our senses – are some senses subordinate to others – fresh bread in the supermarket or coffee – my experience of coffee (26 senses – 2 of sight 2 of smell please explain?)

Can these senses make us respond to stimuli without our knowledge – impulsively?

Can various degrees of light change our perceptions – so is a product packaging that is brighter than another be more attractive?

Mirror neurons – can mimicry occur during purchasing or in focus groups? Do we all have different subjective experiences?

How do we know what reality is? Is reality consciousness?

Are perceptions and emotions linked?

How important is collaboration and multidisciplinary work?

At what age does consciousness begin to become apparent?

The hex – can words kill?

3.6 Subjective claims must not mislead the customer…opinions must not be stated as objective claims

4.2 Marketing communications should not cause fear or distress…dog in red cross ad and malnourished children, dogs RSPCA

What in your opinion is the purpose of marketing communications?

You said my thesis subject was interesting – why do you find it interesting?

Subconscious is the new frontier – explain more… Does this scare people, should regulations cover this?

How does ASA assess the complainant? How do they know if they are average, vulnerable, have a negative opinion of a brand or of advertising in general or having a bad day?

Anne diamond – the purpose of advertising is to make us feel inadequate?

In your opinion, what is an impulse purchase?

Rational models used by CIM?

Is HE the best measurement and why?
Do you think marketing comms can manipulate consumers if so how?

Does ASA investigate all complaints?

Impulse buying mode of supposed average consumer can vary, happy, sad, fearful and other states can impact on our behaviour when shopping.

Why act on just 1 complaint when oft action is based on a number? Do you perceive statutory regs such as CPR’s as subordinate to the CAP codes?

Where draw the line between creativity and humour?

Would you consider evidence from neuroscience?

Could they be unaware that they have responded to certain words in an ad and purchased on impulse?

Are we conscious when acting impulsively? i.e. if consciousness exists here does it make it intentional and not impulsive?

How do we know if perception is slow or fast?

How do we know when we are conscious of being conscious?

Where is consciousness? Is it in the neocortex or where the feeling is? What is the physical basis of consciousness?

What are unconscious inferences to explain perception?

At what point to people become aware – so encounter with brief message such as words presented briefly?

If we concentrate on our conscious state does it make our decisions more rational?

Is there any evidence linking fovea vision and peripheral vision to lesser or greater degrees of conscious awareness?

What has been the value if any being involved in multidisciplinary research? Why do you think it is important?

Should we be more collaborative in terms of multidisciplinary research?

Does the brain predict decision making? If so how?

What are difference levels of consciousness? What is subconscious and conscious at different levels of decision making?
Would you buy a better car if you were not allowed to think about it first? Does the rational brain get in the way of our real needs, wants and desires?

Can we access other people’s consciousness?

Can we be confused by what we see in images and read in text? Do we see what we want to see or what they want us to see?

Are we conscious of our will?

Do we have subjective differences? Does consciousness vary in different people such as taste, smell, feelings?

Do you think there should be regulations covering the use of neuroscientific technology for commercial purposes?

What can neuroscience tell us about how we experience emotions?

Do you think neuroscientific techniques have a role to play in law – if so how so?

What technology can be used in marketing – fMRI is un natural. How do you perceive technology can be used in the future?

Do you think that you perceive ads differently from others? If so, explain how and give examples?
Do people process information differently – will some information be retained in the conscious and some in the unconscious?

In your opinion, what is an impulse purchase

An impulse purchase is…?

Have you ever made an impulse purchase?

Do you act in a sensible, attentive and cautious manner?

Why did you make the purchase? What was the trigger? Product, price place promotion people processes physical evidence?

What if any decision process did you go through? Do you believe that you made an informed decision?

Did you do research, read t’s and c’s etc.

What emotion did you experience / how did it make you feel?
Were you excited?

Did you experience either pain or pleasure?

Did you experience an element of reward if you got a bargain?

Did you regret the purchase / have you ever made a purchase that you regretted?

What percentage during this time do you think you were acting rationally?

Have you ever made a purchase you regretting, if so why?

Do you have plans and goals when you shop? How did you get diverted to make an impulse purchase?

Do you connect any emotion to your brand?

Are you drawn to any creativity or personality that the brand may have, if so, explain?

How does product/ brand / goods make you feel when you see/hear/touch/buy it?

How does this brand product portray you?

Do you have an emotional connection to it?

Do you recollect seeing an ad for this, if so describe it?

Have you ever bought anything because a friend did or you saw someone eating or drinking something you liked the look of? Did it make you feel hungry?

If you saw a crowd in a shopping centre or market crowded around a stand that were obviously selling or talking about something that seem to interest a large group of people, would you be

Can impulsive behaviour become compulsive?

Is impulsive behaviour governed by our subconscious or conscious?

Is the action of impulse something that is driven by pain or pleasure or both?

Are people acting rationally or irrationally during an impulse purchase?

What level of control do we have when making an impulse purchase?

Could a happy or sad state change our impulsive behaviour? So might we buy more or less in different states?

Do we have conscious perception of our own impulsive actions? At what point to we become aware of our impulsive nature?
What is impulse – is it simply a speeded up version of conscious well thought out behaviour? Or is it subconscious/unconscious behaviour? What level of conscious behaviour is this?

In light of new information provided by the neuroscience community, do you think that the hypothetical character ‘homo economicus’ used to define the average consumer by European directives and enacted by UK regulations is the correct measurement to use nowadays? What might be the alternative?

List of Expert Interviewees

- **Member of the House of Lords**: Communications Committee (Labour)
- **Legal Director OFT**: Legal Director Goods and Consumer Group Office of Fair Trading
- **International neuromarketing and neuroscientific expert**: Founder and Director of Neurosense. Doctor of Cognitive Neuroscience from the Department of Psychology at the University of Oxford
- **Expert sensory marketing consultant**: Collaborative partner of Martin Lindstrom
- **Leading British professor of academic law**: Professor of Academic Law. Kings College London
- **Leading British professor of philosophy and multidisciplinary sensory collaborator**: Professor of Philosophy and Psychology University of London. Director of the Institute of Philosophy. Founder of the Centre for the Study of the Senses.
- **Vice Chairman of an international marketing agency**: Vice Chairman of Ogilvy: Chairman of the IPA. Visiting Professor Falmouth University. Columnist Spectator.
- **CEO Advertising Standards Authority (ASA)**.
- **Consumer goods editor ‘Which’ magazine**: Editor ‘Which’ magazine. Reseacher.
- **Senior commercial marketing lawyer with a leading British law firm**: Head of Advertising and Marketing law at the leading international law firm Lewis Silkin
- **Neuropsychology expert and ‘The Father of Neuromarketing’**: Doctor of Neuropsychology. Founder and Director of Mindlab International. Best selling author, award winning broadcaster and acclaimed conference speaker.
- **Chair of the Advertising Advisory Committee and consumer regulatory expert**: Consumer regulatory expert. Previously private secretary to Nigel Lawson MP.
- **Professor of Cognitive and Computational Neuroscience and expert in consciousness**: Co-Director Sackler Centre for Consciousness Science. Multidisciplinary collaborator.
- **Retired partner, marketing lawyer and chairman of an international law firm Lewis Silkin**: Non-executive chairman of Walker Books
- **Member of the House of Lords and Public Relations expert**: Crossbencher.
- **Head of Insight at the Institute of Direct Marketing**.
- **World leading professor of cognitive neurology and neuroscience**: Dean of the UCL Faculty of Life Sciences and Professor of Cognitive Neurology. Director of UCL Institute of Cognitive Neuroscience
- **Marketing Journalist and Head of research at the Chartered Institute of Marketing**: Writer and Consultant.
- Expert consumer policy regulator: Chairman of the City of London Policy and Resources Committee
- Direct marketing and data protection expert: Business owner
- Marketing agency owner
- Public sector marketing communications: Head of Marketing Communications Highways Agency
- Marketing agency owner and direct marketing expert
- Marketing consultant data protection
B. Ethics Consent Form

Exemplar Consent Form

Cardiff School of Management
Cardiff Metropolitan University, Llandaff Campus
Cardiff, CF5 2YB
In Association with the London School of Commerce

UWIC PARTICIPANT CONSENT FORM

UWIC Ethics Reference Number: 2012/05/14/01
Participant name or Study ID Number: Expert no:

Title of PhD Project: Misleading Marketing Communications: The Effect Of Marketing Techniques
On The Consumer And The Unfair Trading Regulations 2008

Name of Researcher: Gerry Brierley: Student Number: L0172RORO1011

Participant to complete this section: Please initial each box.

1. I confirm that I have read and understand the information sheet for the above study. I have had the opportunity to consider the information, ask questions and have had these answered satisfactorily.

2. I understand that my participation is voluntary and that I am free to withdraw at any time, without giving any reason.

3. I agree to take part in the above study.

4. I agree to the interview being audio recorded

5. I agree to the use of anonymised quotes in publications

_______________________________________ ___________________
Signature of Participant
Date

_______________________________________ ___________________  _________________________________________
Name of person taking consent Gerry Brierley
Date 17th April 2013

Signature of person taking consent
* When completed, 1 copy for participant & 1 copy for researcher site file
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