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DYING TO BE A SUPERMODEL: CAN REQUIRING A HEALTHY BMI BE FASHIONABLE?

Cassandra A. Soltis

BACKGROUND

Almost every girl grows up wanting to be beautiful. Luisel Ramos was no exception. Luisel was a young Uruguayan fashion model who seemed to have a great career ahead of her. At twenty-two years old, Luisel was told her career could catapult to another level if she lost weight. Although she was already quite thin, Luisel took heed of the “encouraging” words from her modeling agency and followed a diet of lettuce and diet Coke for approximately three months.\(^1\) During Fashion Week 2006 in Montevideo, Uruguay, Luisel wowed the crowd with her unique looks and waif body until she collapsed walking off the catwalk and died of heart failure.\(^2\) Luisel’s body mass index (BMI) was said to be 14.5.\(^3\) The healthy BMI range begins at 18.5.\(^4\)

Just months later, yet another rising model took a fatal fall. In November 2006, Brazilian model Ana Carolina Reston died as a result of complications of anorexia. She reportedly was living on a diet of apples and tomatoes, largely prompted by comments from modeling officials in China who told

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her she was “too fat.” At five feet, eight inches, Ana weighed a mere eighty-eight pounds, giving her a BMI of only 13.4.

As if things could not get worse for the Ramos family, they lost another daughter, Eliana, also a fashion model, six months after Luisel died. Like her sister, Eliana died from heart failure, reportedly as a result of malnutrition.

The deaths of Luisel and Ana led some in the industry to take swift action. Spanish officials began requiring models to have a BMI of at least eighteen to participate in Madrid’s Fashion Week. Italian officials followed suit, requiring models to have a BMI of at least 18.5 and banning models under age sixteen from fashion shows in Milan. Even Unilever, a company that manufactures consumer products, vowed to not use models having a BMI below 18.5 in their advertising campaigns.

Unfortunately, the reaction of others in the fashion world was underwhelming. The Council of Fashion Designers of America issued voluntary guidelines “to promot[e] healthier behavior,” but they did not set a minimum BMI requirement. London, ostensibly the world’s fashion capital, considered requiring medical certificates for models but ultimately abandoned the idea, stating that it was unworkable.

5. Rebecca Johnson, Walking a Thin Line as the Average Runway Sample Dropped From a Size 6 to a Size 2 Over the Past Decade, Models Were Expected to Shrink to Fit. Rebecca Johnson Reports from Behind the Scenes of the Ultraskinny-Model Uproar, VOGUE, Apr. 2007, at 380, 385.


8. Id.; Susan Sachs, French Bill Targets Those Who Glamorize Thinness; Proposed Law Aimed Primarily at the Growing Number of Internet Sites That Defend Anorexia and Bulimia as Lifestyle Choices, GLOBE & MAIL (Canada), Apr. 16, 2008, at A3.


approach was particularly remarkable considering a study by the British Medical Association in 2000, which confirmed a “link between the images of the ‘abnormally thin’ models found in fashion magazines” and the rise in anorexia and bulimia in the general population.12

Recent events indicate that the fashion industry remains in denial and, in fact, continues to perpetuate the problem. In January 2009, designer Wolfgang Joop stated that supermodel Heidi Klum was “too heavy” for the runway,13 and Karolina Kurkova was ridiculed in the media for her “cellulite and love handles” and labeled as “too fat” for the cat walk.14 In October 2009, Filippa Hamilton, a five-foot, ten-inch, model weighing 120 pounds, reported that Polo Ralph Lauren fired her because she “was overweight” and “couldn’t fit in their clothes any more.”15

The author of this paper proposes that the extreme thinness required of female fashion models is an occupational hazard and amounts to a public health threat for the young women who feel compelled to maintain unrealistic and unhealthy weights to emulate the models to which they are repeatedly exposed. Many young women turn to unhealthy behaviors such as vomiting, starving, taking laxatives and diuretics, and over-exercising to attain a look that, because of airbrushing, even the models do not have. Thus, the health concern is not limited to the models; it extends to the consumers of these images as well.

As explained below, the industry can no longer ignore the data linking media exposure to eating disorders (EDs). In addition, although there are few studies on EDs among models, those that exist show that models often report more disordered eating than non-models. Accordingly, to protect the health of models as well as the health of young women, models should be required to have a healthy BMI. Given the U.S. fashion industry’s firm stance against imposing such a requirement, a multi-faceted approach is proposed to address this issue, including: (1) petitioning the National

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Institute for Occupational Safety and Health (NIOSH) to set guidelines for fashion models, (2) lobbying state officials to pass legislation to enforce the guidelines set by NIOSH, (3) petitioning the Federal Trade Commission (FTC) to declare that clothing advertisements featuring women having unhealthy BMIs or wearing modified or altered clothing, by use of airbrushing or other means, amounts to an unfair or deceptive act or practice, (4) requesting editors of magazines to only show advertisements featuring models with a BMI of at least 18.5, and (5) disseminating public service announcements (PSAs) regarding healthy weights and deceptive advertising practices, such as airbrushing.

REVIEW OF PERTINENT LITERATURE

A. Eating Disorders and Changes in the Ideal Female Body

Although disordered eating patterns have been documented throughout history, the anorexia nervosa and bulimia nervosa that clinicians diagnose today are viewed as recent medical phenomena. From 1935 to 1989, there was a "[s]ignificant increase in incidence of anorexia . . . especially among young women 15-24" years old, and from 1988 to 1993, the incidence of bulimia tripled among women aged ten through thirty-nine. Between 0.5 and 3.7% of women will suffer from anorexia in their lifetime, whereas 1.1 to 4.2% will suffer from bulimia. New types of EDs have emerged that are just as common as anorexia nervosa and bulimia nervosa. Binge eating is one such disorder, with prevalence rates of two to three percent of the adult population.


Dying to be a Supermodel

population and eight percent of the obese population.\(^{20}\) It has been postulated that the prevalence of EDs are actually underestimated.\(^{21}\)

Paralleling the increase in EDs has been a change in the way that the ideal woman is depicted in the media. A study that examined the covers of *Cosmopolitan*, *Glamour*, *Mademoiselle*, and *Vogue* magazines from the years 1959 to 1999 found that there has been an increase in the area of the models’ bodies shown as well as a decrease in the models’ overall body size.\(^{22}\) In the 1960s and 1970s, most of these magazine covers displayed only the faces or upper body of the models. In the 1980s and 1990s, not only were the models’ full bodies displayed, but also the models wore more revealing clothing and, except for those featured on the cover of *Glamour*, became significantly thinner as time progressed.\(^{23}\) This correlation between the thin ideal in the media and EDs is supported by a study on the introduction of Western television in a small Fijian community: the young Fijian women, whose society values a hearty appetite and robust bodies, reported preoccupation with weight and body shape, purging behaviors, and body disparagement.\(^{24}\)

Put simply, the modern female body ideal is an unhealthy, distorted fantasy. Fashion models are generally “as much as 20% underweight,”\(^{25}\) which is shocking, given that one of the criteria for diagnosing anorexia

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23. *Id.* at 344.


nervosa is being fifteen percent underweight. Nevertheless, many fashion models claim that they are naturally thin and that they should not be punished for having “good” genes. However, those claims appear to be disingenuous as more models are talking about the ubiquity of the problem in the fashion world and some have even died from the very images they portrayed.

B. The Occupational Hazard – Studies on Fashion Models and EDs

Few studies have been conducted to determine whether fashion models are at a higher risk for EDs. Part of the problem is a lack of cooperation from the modeling agencies. The authors of one study indicated that

Most modeling agencies, being commercially orientated, were uninterested, unmotivated and skeptical. The majority denied the existence of eating disorders among enrolled models and were defensive, possibly due to fear of exposure. A commonly reported reason for refusal of participation was lack of time. Some agencies were actively obstructive and outright hostile. One well established international agency commented ‘the study is a waste of money and intelligence. Models do not have eating disorders. If they did have eating disorders they would not be able to work as models.’

Another problem in studying EDs among fashion models is that denial is generally a component of the disease. Of particular concern in the modeling population, however, are the “[s]ocially and occupationally desirable responses and incongruencies between reported and actual behaviour.”

In order to determine the prevalence of EDs among female fashion models, researchers in London contacted thirty-five modeling agencies, but


29. van Hanswijck de Jooge & van Furth, supra note 28, at 237.

30. Id.
only five agreed to participate, giving a participation rate of 14.3%. The five agencies sent out a total of 311 questionnaires to their models. The questionnaires included the Eating Attitudes Test (EAT), the Eating Disorders Inventory (EDI), and some general history questions. Depending on the EAT and EDI scores, the participants also took the Eating Disorders Examination interview.

The researchers found that “although [the] female models were significantly underweight, no cases of anorexia nervosa or bulimia nervosa were identified.” However, of the 311 questionnaires sent to the models, the researchers received only fifty responses, which clearly “diminish[ed] the value of the results.” Indeed, the researchers stated that “due to the low response rate it is not possible to derive any conclusions from the results.”

Another study investigated the prevalence of EDs among professional fashion models by comparing them to non-models of the same age and social and cultural background. The study, which used “self-compiled inventories and a detailed face-to-face interview,” found that the models were not more likely to suffer from EDs than the control group; however, the models’ “symptom profile” indicated “a higher risk of a partial eating disorder syndrome in the anorexia nervosa spectrum.” Furthermore, the models “admitted an earlier formal diagnosis of anorexia nervosa more often than” the control group, “more often declared a BMI below 18, the cut-off for under-nutrition,” and “reported menstrual difficulties, an oft-reported problem in eating disorders.” In addition, in the face-to-face interviews,

31. Id.
32. Id.
33. Id. at 236.
34. van Hanswijck de Jooge & van Furth, supra note 28, at 236.
35. Id.
36. Id.
38. Id.
39. Id.
the models "were more likely to admit symptoms in the spectrum of eating disorders."40

While this study's results might not seem to overwhelmingly support the view that EDs are more prevalent among models than the regular population, the selection of the control group likely biased the results. Even the study authors acknowledged that "the method of selection of the control group in [the] study might have led to rather conservative results."41 The controls consisted of "female friends" of the models, "a group likely to include a higher proportion of individuals with shape and weight concerns" because "[p]eople . . . tend to become friends with individuals who are similar to them."42 Nevertheless, the authors noted that their results are "comparable to another study that used a control group drawn from the general population."43

More research needs to be done on EDs among models, though determining true rates will likely be difficult, if not impossible, due to denial being a part of the diseases and of the pressure on models to provide "favorable" responses.44 Even so, many women—particularly young women—are adversely impacted by the images of extremely thin women appearing on magazines, billboards, and in other media. In fact, there is evidence that these images in the media have caused, at least in part, an increase in disordered eating in the female population.45

40. Id. at 91-92.

41. Id. at 91.

42. Preti et al., supra note 37, at 91.

43. Id.

44. Marianne Garvey, 10 Things I Learned At Fashion Week, N.Y. POST, Sept. 13, 2007, at 58. A behind-the-scenes look at fashion week seems to belie the denial among models: an "insider" informed a reporter that "the backstage rooms were stocked with Kleenex and water" to "fill up [the models] without calories." Id.

C. The Public Health Threat—Studies on the Impact of the “Thin Ideal” Media Image on Young Women

Numerous studies show that images of extremely thin female bodies in the media (i.e., the “thin ideal”) have an adverse impact on the psyche of many young women. The negative impact that results generally comes in the form of disordered eating and body dissatisfaction. Some studies have found, however, that certain women exposed to the thin ideal in the media actually have increased self-esteem and body satisfaction because they are unresponsive to personal cues and able to identify with the models. Nevertheless, these findings should not be used to downplay the very real and significant public health threat that faces so many young women who are repeatedly exposed to the thin ideal. Just as some people are more susceptible to certain physical health problems as a result of an exposure to a chemical or other hazard, some women are more susceptible to psychological problems as a result of exposure to unrealistic body images. That the effect of the thin-ideal media images is psychological in nature should not prevent public health officials from taking action.

1. Increases in Eating Disorder Symptomatology

Researcher Eric Stice and colleagues were the first to find a “direct relation between media exposure and eating disorder symptomatology.” In their study, the researchers had 238 female psychology and sociology college students fill out various questionnaires and told the participants that the study was on student attitudes and opinions. The questionnaires included, among other things, the EAT test, which “measures cognitions, emotions, and behaviors associated with anorexia and bulimia” as well as body satisfaction. The participants also provided information on their use of various media, from the amount and genre of TV they watched to the

46. See, e.g., Kimberly Bissell, Skinny Like You: Visual Literacy, Digital Manipulation and Young Women’s Drive to Be Thin, 6 SIMILE 4 (2006).


49. Id. at 837.
types of magazines they read, such as health and fitness, beauty and fashion, and entertainment.

The researchers found that "there were significant direct effects of media exposure on eating disorder symptomatology" and, consistent with previous research, "a significant relation between body dissatisfaction and eating pathology." These correlations were statistically significant (p<0.001). The researchers concluded that their findings support "the assertion that exposure to the media-portrayed thin-ideal is related to eating pathology and suggests that women may directly model disordered eating behavior presented in the media (e.g., fasting or purging). They also postulated that "the focus on dieting in the media may promote dietary restraint, which appears to increase the risk for binge eating." This hypothesis is supported by other research.

One of the drawbacks of this study was its cross-sectional design; therefore, "strong causal inferences" cannot be gleaned from the results. Furthermore, using data from questionnaires tempers the reliability of the conclusions. While the researchers could have instead observed the subjects' behaviors, such an endeavor would have been very time-consuming and inconvenient. Finally, the subjects were young college women; data on uneducated and older women were not captured. Nevertheless, regarding the latter concern, another study has shown that older women do not experience body dissatisfaction to the same degree as younger women, primarily because older women are not represented in fashion advertisements and, therefore, they instead compare themselves to their peers, who are usually of average size.

50. Id. at 838.

51. Id.

52. Id. at 839.

53. Id.


55. Stice et al., supra note 48, at 839.

2. Increases in Body-Focused Anxiety

Emma Halliwell and Helga Dittmar conducted a very interesting experimental study which confirms that exposure to thin models produces higher body-focused anxiety in women.\(^{57}\) The 202 participants in the study were non-student women between the ages of nineteen and sixty-seven. The participants were told that the study was about advertising and consumer preferences. The researchers designed the study in such a way that, unbeknownst to the participants, they completed the Sociocultural Attitudes Toward Appearance Questionnaire, which measures a person’s awareness of sociocultural ideals of thinness and attractiveness, as well as whether a person has internalized this ideal.\(^{58}\) At different times in the study, the participants completed the Physical Appearance State and Trait Anxiety Scale, which measures anxiety associated with different body parts.\(^{59}\)

The women partaking in the study were shown three types of deodorant advertisements: one featured only a deodorant bottle with a slogan; another featured a thin model (U.S. size two) and a deodorant bottle; and the third ad featured a deodorant bottle with the same model, except her body was digitally enlarged to be a U.S. size twelve to fourteen, which is deemed to be “average.”\(^{60}\) Two different deodorant brands were used—one was called “Gold,” and the other, “Jewel”—and a different model was used for each brand.\(^{61}\) A pilot study based on the advertisements rated the two models’ attractiveness—in their natural, thin states and as enlarged by digital enhancement.\(^{62}\) Participants in this pilot study saw either the two thin models or the two enlarged models.\(^{63}\) Although the model in the Gold ad was rated as being “significantly more attractive” than the model in the


\(^{58}\) Id. at 112.

\(^{59}\) Id.

\(^{60}\) Id. at 111.

\(^{61}\) Id.

\(^{62}\) Halliwell & Dittmar, *supra* note 57, at 111.

\(^{63}\) Id.
Jewel ad, the study found that the change in the models’ body sizes did not affect their perceived attractiveness.\textsuperscript{64}

The researchers found that for those participants who reported high levels of internalization, their body anxiety was lowest when shown the advertisements that did not use models and, alternatively, increased slightly after viewing the advertisements with average-sized models.\textsuperscript{65} Their body anxiety was highest after viewing the advertisements featuring the thin models (p<0.05).\textsuperscript{66} As the study authors noted, “[t]his finding is particularly important because it is weight-related anxiety that is likely to lead to potentially unhealthy weight loss behaviors.”\textsuperscript{67} Furthermore, the study found that the models’ body sizes did not influence the advertisements’ effectiveness. In fact, the means of the advertising effectiveness index for the average size models and thin models were almost identical (8.15 and 8.30, respectively).\textsuperscript{68}

One possible weakness of this study is that the advertisements were for deodorant. It is possible that the women who reported low levels of internalization would have reported higher body anxiety levels if the advertisements were for clothing instead. Advertisements for clothing could also impact the perceived levels of attractiveness of the models based on their body sizes. Nevertheless, the study confirms earlier findings\textsuperscript{69} that women who internalize the thin ideal experience body anxiety after viewing images of extremely thin models.

\textbf{REGULATORY CONSIDERATIONS}

There likely will be individuals who scoff at the notion of regulating the fashion industry. However, as explained earlier, certain European countries have already taken the lead in this area, with Spain and Italy requiring a minimum BMI for models in fashion shows. Additionally, England and

\textsuperscript{64} \textit{Id.}

\textsuperscript{65} \textit{Id.} at 116.

\textsuperscript{66} \textit{Id.} at 111.

\textsuperscript{67} Halliwell & Dittmar, \textit{supra} note 57, at 119.

\textsuperscript{68} \textit{Id.} at 117.

\textsuperscript{69} See generally Shelly Grabe et al., \textit{The Role of the Media in Body Image Concerns Among Women: A Meta-Analysis of Experimental and Correlational Studies}, 134 \textit{PSYCHOL. BULLETIN} 460 (2008).
France have proposed requiring companies to put disclaimers on advertisements that include digitally manipulated photos.\(^7\) Still, there are some who believe that fashion is nothing more than "fantasy"\(^7\) and art. Fashion has indeed become fantasy in the sense that it projects a body type or look that most women cannot attain—not even the models. Although fashion can be considered art, clothing is ultimately a commodity to be worn by consumers, not hung on a wall.

At its essence, fashion is no different than any other consumer product, such as jewelry, toys, or even a can of soup. If there were an occupational hazard in the manufacturing or marketing of one of these commodities, we would expect the government to take action and regulate the industry, particularly if the industry was not addressing the problem. Likewise, if one of the commodities were advertised in an unfair or deceptive way, we would expect the FTC to intervene. Because the fashion industry's attempt to address the health of fashion models has been inadequate and the industry continues to churn out misleading and deceptive advertisements, it is time to call for regulatory action.

\section*{A. NIOSH Recommendations}

NIOSH and the Occupational Safety and Health Administration (OSHA) were created out of the passage of the Occupational Safety and Health Act of 1970.\(^7\) As part of the Centers for Disease Control and Prevention (CDC) in the Department of Health and Human Services (HHS), NIOSH is authorized to "develop and establish recommended occupational safety and health standards," "conduct ... research and experimental programs as ... are necessary for the development of criteria for new and improved occupational safety and health standards," and "make recommendations concerning new or improved occupational safety and health standards," which are to be

\addcontentsline{toc}{section}{References}

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forwarded to both the Secretaries of Labor and HHS. NIOSH’s recommendations may be adopted by OSHA or by state agencies.

NIOSH has investigated various occupational hazards since its inception, including black lung issues among coal miners, ergonomic interventions in the building, repair, and dismantling of ships, and heat and cold stress among susceptible workers. However, NIOSH’s work goes beyond what one typically views as an occupational or safety hazard. For example, NIOSH investigated whether bicycle saddles cause reproductive health issues among male police bicycle control units, even though bicycling magazines and other media dismissed such an association. NIOSH’s research revealed that the use of a no-nose bicycle saddle “is healthier to the rider than traditional saddles” because “perineal pressure is significantly reduced,” providing “better blood flow to the penis, the improvement in erectile function,” and a “10% improvement in penile sensation.” As a result of NIOSH’s findings, the City of San Antonio now offers its officers the option of a no-nose bicycle saddle.

73. 29 U.S.C. § 671(a)-(e).

74. 29 U.S.C. §§ 651(b)(11), 671(c) & (d).


78. Steven M. Schrader et al., Cutting Off the Nose to Save the Penis, 5 J. SEX. MED. 1932, 1932 (2008).

79. Id.

80. Id. at 1939.

NIOSH also researches job stress—both ergonomic and environmental stressors as well as psychological causes of stress.\(^8\) In the Worker Health Chartbook, NIOSH indicated that "anxiety, stress, and neurotic disorders are associated with acute and chronic post-traumatic anxiety, reaction to stress, panic disorders, and other neurotic disorders" and that "[t]hese disorders are more severe than the average injury or illness," with "affected workers experienc[ing] a much greater work loss than those with all nonfatal injuries or illnesses."\(^8\) In addition, NIOSH’s website features an Occupational Health Psychology homepage, where the Institute promotes this new field, which it defines as "the application of psychology to improving the quality of work life, and to protecting and promoting the safety, health and well-being of workers."\(^8\) NIOSH and the American Psychological Association have held seven international conferences on the topic of work, stress, and health, which led to the establishment of the Journal of Occupational Health Psychology to further advance this area of study.\(^8\)

Given the reports concerning eating disorders among fashion models—including anorexia nervosa, which can cause reproductive issues—as well as the deaths of a number of models in the last few years, NIOSH should investigate the occupational hazards presented by the very low body weights required of these young women. An investigation into this problem would seem to fit squarely within NIOSH’s mission which includes, in pertinent part, investigating reproductive health issues and work-related stress. NIOSH’s recommendations could potentially be adopted by OSHA or by individual states.

**B. FTC Action**

Section Five of the Federal Trade Commission Act (FTC Act) prohibits "unfair or deceptive acts or practices in or affecting commerce."\(^8\) The

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85. Id.

courts have construed this section to proscribe “advertising which is false or deceptive”\(^87\) and “[m]isrepresentations of fact to induce purchase of goods.”\(^88\) Although “[a] false statement may be obviously false to those who are trained and experienced,”\(^89\) the FTC Act was “not made for the protection of experts, but for the public – that vast multitude which includes the ignorant, the unthinking and the credulous.”\(^90\) Nevertheless, FTC proceedings do not require proof of actual public deception;\(^91\) “the likelihood of deception or the capacity to deceive is the criterion by which the advertising is judged.”\(^92\)

1. Unfair or Deceptive Fashion Advertisements—Misrepresentation of Fact

As noted above, fashion models are generally twenty percent underweight, and a criterion for diagnosing anorexia nervosa is being fifteen percent underweight.\(^93\) Less than five percent of women in the United States have BMIs below 18.5.\(^94\) Accordingly, the use of extremely thin models to

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87. Giant Food Inc. v. FTC, 322 F.2d 977, 981 (D.C. Cir. 1963). The false advertising sections of the FTC Act, 15 U.S.C. §§ 52 and 55, apply only to foods, drugs, devices, and cosmetics. However, Section Five of the FTC Act covers the same violations as false or deceptive acts or practices.

88. Nat'l Trade Publ'n Serv., Inc. v. FTC, 300 F.2d 790, 792 (8th Cir. 1962); see also Consol. Book Publishers v. FTC, 53 F.2d 942, 945 (7th Cir. 1931) (finding the “commission’s jurisdiction . . . embraces false and fraudulent advertising, misbranding, and other practices which result in deceiving the public”).


90. Florence Mfg. Co. v. J.C. Dowd & Co., 178 F. 73, 75 (2d Cir. 1910); but see FTC v. Pantron I Corp., 33 F.3d 1088, 1095 (9th Cir. 1994) (stating that an act or practice is deceptive if there is a material representation, omission or practice that “is likely to mislead consumers acting reasonably under the circumstances”) (emphasis added).

91. Charles of the Ritz Dist. Corp. v. FTC, 143 F.2d 676, 680 (2d Cir. 1944).

92. Montgomery Ward & Co. v. FTC, 379 F.2d 666, 670 (7th Cir. 1967).

93. APA, supra note 26, at 589.

94. Dittmar et al., supra note 25, at 45.
Dying to be a Supermodel

demonstrate how the clothing will appear under normal consumer use—that is, for over ninety-five percent of the female U.S. population—is false and misleading. This argument is further supported by the industry’s practice of altering the clothing as it appears on the models and manipulating the models’ bodies to better conform to the clothing. Garments are pinned on the models to accentuate a particular part or to prevent the item from sagging. In addition, the bodies of the models are sometimes taped—for example, breasts are taped to appear smaller or lifted—which creates an illusion that the clothing will drape on the body in a certain manner when it will not. Finally, airbrushing is used not only to make the models appear to have flawless skin, but also to manipulate their bodies, which can include the clothing itself, creating a false and misleading advertisement.

The FTC has taken action against companies that have manipulated products or product performance in advertising. Azrak-Hamway International, Inc., entered into a consent order with the FTC for advertising toy helicopters and race cars as being able to fly and drive without human assistance when, in fact, the toys were guided by a monofilament wire and

95. Id. The authors indicate that “less than 5% [of women] can be as thin as media models.”

96. An FTC Guide addressing jewelry advertising provides that “[i]t is unfair or deceptive to use . . . any visual representation, picture, . . . illustration, . . . or other depiction which, . . . misrepresents the . . . size, weight, . . . [or] character” of the product. 16 C.F.R. § 23.2 (2009). A note to this section clarifies that “[a]n illustration or depiction of a diamond or other gemstone that portrays it in greater than its actual size may mislead consumers, unless a disclosure is made about the item’s true size.” Id. Similarly, clothing should be depicted in advertisements as it will generally appear on consumers, or a disclosure should be made, qualifying the limited applicability of the representation.

97. Diana Middleton, The Grit Behind the Glamour; The Work and Waiting That Goes Into a Catalog Photo Shoot for Jacksonville’s Venus Swimwear Is No Day at the Beach, FLORIDA TIMES – UNION (JACKSONVILLE), Aug. 3, 2008, at D-1. In this article, Middleton describes how the wardrobe coordinator of this swimwear line carries clothespins on photo shoots so that she can “nip in too-baggy suits.”

98. Anne Kelly, Video Examines Fashion Deception, WATERLOO REGION RECORD, June 6, 2008, at D1, available at http://news.therecord.com/article/362344. The article describes how “[s]urgical tape is used to lift the breasts of a model being readied for a photo shoot” while another model “has her waist whittled down by a cincher and duct tape.”
moved by humans off camera. Campbell Soup Company entered into a consent order with the FTC for falsely representing in advertisements that its soup contained more solid ingredients than it actually did: the company placed glass marbles at the bottom of a bowl containing the soup, pushing the solid ingredients to the top, “making visible in the picture that which would not have been visible in a bowl of soup prepared in the home.”

Even the U.S. Supreme Court has weighed in on this issue. In FTC v. Colgate-Palmolive Co., the Court reviewed the FTC’s determination that even if an advertiser has himself conducted a test, experiment or demonstration which he honestly believes will prove a certain product claim, he may not convey to television viewers the false impression that they are seeing the test, experiment or demonstration for themselves, when they are not because of the undisclosed use of mock-ups.

In Colgate-Palmolive, the company attempted to demonstrate the effectiveness of its shaving cream by applying it to plexiglass that was coated with sand and then using a razor to shave the plexiglass clean. During this visual, the announcer touted the product’s “super-moisturizing power” and stated that the shaving cream was being applied to dry sandpaper, when, in fact, it was applied to plexiglass covered with sand. Although the First Circuit agreed with the FTC that the company misrepresented the moisturizing quality of its shaving cream, it did not agree with the FTC’s finding that use of an undisclosed simulation was a misrepresentation. The Supreme Court, however, sided with the FTC, stating “that the undisclosed use of plexiglass in the present commercials was a material deceptive practice, independent and separate from the other


100. In re Campbell Soup Co., 77 F.T.C. 664, 666-67 (1970); see also In re Volvo North America Corp., 115 F.T.C. 87 (1992) (challenging a Volvo advertisement that showed an oversized pickup truck driving over various vehicles, severely crushing all of the cars except the Volvos, which were structurally reinforced).


102. Id. at 376.

103. Id.

104. See Colgate-Palmolive Co. v. FTC, 310 F.2d 89 (1st Cir. 1962).
Dying to be a Supermodel

misrepresentation found.” The Court added that if “it becomes impossible or impractical to show simulated demonstrations on television in a truthful manner, this indicates that television is not a medium that lends itself to this type of commercial, not that the commercial must survive at all costs.”

Just as the pictures and demonstrations in the cases noted above were found to be misleading or deceptive, it is equally misleading and deceptive to advertise clothing on women whose bodies do not represent how the garments will actually appear on most consumers; altered or manipulated clothing, by the use of pins, thread, or airbrushing; and models whose bodies have been taped or contorted to distort the way the clothing appears.

2. Unfair or Deceptive Fashion Advertisements – Vulnerable Consumers

Many women consider fashion advertisements as representing standards of beauty to attain. However, the standards depicted for body size, weight, and appearance are generally unrealistic and dangerous. Further exacerbating this problem is that fashion advertisements are largely directed at the young female population, and almost all of the models in fashion advertisements are extremely young. It is this same population that is most vulnerable to EDs and body image problems.

Although it might seem obvious to those who work in fashion or photography that airbrushing is used as a matter of course, for most consumers, airbrushing generally blurs the line between reality and fiction. From the digitally enhanced derriere of Victoria Beckham in a perfume ad to the freakishly thin waist of Filippa Hamilton donning Ralph Lauren in Japan, false images appear everywhere, with the net effect having an adverse impact, particularly on young women, as illustrated from the studies discussed above.

There is precedent for the FTC taking action against a company for disseminating an ad featuring an unhealthy activity that consumers might copy. Beck’s North America, Inc. (Beck’s) entered into a consent agreement with the FTC for an advertisement in which individuals were drinking Beck’s beer while boating. The FTC asserted that the conduct

105. See Colgate-Palmolive, 380 U.S. at 390.

106. Id. at 390-91.


was “inconsistent with the Beer Institute’s own Advertising and Marketing Code and may also violate federal and state boating safety laws.” The FTC asserted that the ad was an unfair act or practice because Beck’s “depiction of this activity in its advertisements is likely to cause substantial injury to consumers that is not outweighed by countervailing benefits to consumers or competition and is not reasonably avoidable by consumers.”

This same logic can apply to advertisements featuring models having BMIs below 18.5 or whose bodies are manipulated by airbrushing or other means. As noted above, studies show that these images have an adverse impact on young women, causing them to engage in disordered eating and have increased body-focused anxiety. Unlike the injury in the Beck’s case, the injury here is psychological. However, this injury to consumers is equally important for the FTC to address.

CONCLUSIONS AND RECOMMENDATIONS

Although the data linking fashion models to EDs is scarce, it is not necessarily due to a lack of an association. There are simply few studies that consider whether fashion models have EDs. Nevertheless, of the studies that have been completed, at least two have reported more disordered eating among the models. Whether true rates of EDs in this population can ever be determined is doubtful because models have a financial interest in not admitting to a problem that could potentially cause them to lose their job. Furthermore, many persons suffering from EDs deny that they have a problem.

However, studies do support the link between exposures to the thin ideal and disordered eating and body dissatisfaction. Although it appears that women who internalize the thin ideal are those most negatively impacted by the images, this finding should not deter action because studies also show that the more women are exposed to the thin ideal, the more likely they are to internalize it. In any case, when even a segment of the public’s health is at issue, solutions to the problem should be studied.

In light of the woefully inadequate measures taken by the U.S. fashion industry to address the issue of EDs among fashion models and the increase

110. Id. at 380.

111. Id.

112. Preti et al., supra note 37; see also Paolo Santonastaso et al., Are Fashion Models a Group at Risk for Eating Disorders and Substance Abuse?, 71 PSYCHOTHER. PSYCHOSOM. 168 (2002).
in EDs in young women, the author proposes that the following actions be explored.

1) REQUEST THAT NIOSH INVESTIGATE THE WEIGHT REQUIREMENTS OF THE MODELING INDUSTRY AND PROPOSE THAT MODELING AGENCIES ONLY HIRE WOMEN HAVING A BMI OF AT LEAST 18.5. According to the Academy for Eating Disorders, NIOSH has “shown interest” in reviewing the weight requirements set by the fashion industry, but to date, it does not appear that the Institute has taken any action. If NIOSH were to draft recommendations, they could potentially be incorporated into law by OSHA. While this suggestion might seem to be draconian, it may not be entirely out of line considering that Israel reportedly passed a law that requires modeling agencies to hire women having a BMI of at least 19. Furthermore, in response to a congressional inquiry, NIOSH issued a publication titled “An Overview of Safety and Health for Workers in the Horse-Racing Industry,” which addressed, in part, EDs among jockeys. Given that the fashion industry’s thin ideal affects not only the models it employs but also the many young women who regard magazine images as objects they should emulate, it seems even more imperative for NIOSH to address this far-reaching health concern.

2) LOBBY STATE REPRESENTATIVES TO PASS LAWS THAT REQUIRE A HEALTHY BMI FOR FASHION MODELS. In 2007, New York Assemblyman José Rivera proposed a bill that would have created an advisory board to establish guidelines for the employment of models less than eighteen years old. This bill did not pass. However, a new version of this bill should be reintroduced to address the health concerns of all models, not just those under eighteen years of age.


117. The State of New York is progressive with respect to EDs and its constituents. A Public Health Law titled “Comprehensive Care Centers for Eating Disorders” gave the state the power to approve the establishment and operation of such centers so that constituents can seek state-approved treatment centers. N.Y. PUB. HEALTH LAW §
3) **PETITION THE FTC TO REQUIRE THAT MODELS IN CLOTHING ADVERTISEMENTS HAVE HEALTHY BMIS AND THAT MAGAZINES INCLUDE DISCLAIMERS WHEN AIRBRUSHING HAS BEEN USED OR WHEN CLOTHES HAVE BEEN ALTERED.** The FTC Act gives the FTC authority to prohibit “unfair or deceptive acts or practices.”\(^{118}\) Clothing advertisements featuring the thin ideal model arguably constitute false advertising because the clothes will not appear as depicted on over ninety-five percent of the female population.\(^{119}\) Furthermore, airbrushing and altering clothing without a disclaimer to that effect constitutes a deceptive act that misleads the consumer.\(^{120}\)

4) **LOBBY PUBLISHERS AND EDITORS OF MAGAZINES TO HELP ERADICATE THE THIN IDEAL FEMALE BODY BY INCLUDING ONLY ADVERTISEMENTS FEATURING MODELS HAVING A HEALTHY BMI.** The German women’s magazine *Brigitte* recently indicated it will no longer use professional models in the publication but will instead use women who audition online or work for the magazine.\(^{121}\) Perhaps Oprah Winfrey and the editors of *O, the Oprah Winfrey Magazine* can be persuaded to do the same. Oprah might be the best candidate to approach because of her well-known struggles with eating and body issues and because of her nonconformist reputation. If Oprah were to take action, other U.S. publishers and editors might follow.

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\(^{119}\) Dittmar et al., *supra* note 25.

\(^{120}\) Another related avenue to explore is whether requiring women models to be “sickly thin . . . violates the law in that it discriminates against women.” Business Wire, *Shegerian & Associates Founder Urges California Employees to Learn from Ralph Lauren*, **BUSINESS WIRE**, Oct. 22, 2009, http://www.businesswire.com/portal/site/home/permalink/?ndmViewId=news_view&newsId=20091022005875&newsLang=en.

Carney Shegerian, founder of Shegerian & Associates, stated:

> While many in the media are focusing strictly on the physical appearance aspects of this story, this is a scenario that brings up issues of discrimination against women. . . . While male models are typically thin, . . . they are rarely presented with a sickly thin presentation. Female models, like the model fired by Ralph Lauren, are being held to a different i.e., discriminatory, standard.

*Id.*

\(^{121}\) Givhan, *supra* note 15, at E8.
suit. Furthermore, studies have disproven the fashion industry’s long-standing argument that the thin ideal sells because advertisements featuring average size attractive women are equally effective.\textsuperscript{122} Thus, these studies can be used by magazine publishers and editors to pressure the fashion industry to use models with a healthy BMI.

5) \textbf{CREATE PSAS TO REVEAL THE TRUTH BEHIND THE ADVERTISEMENTS OF THE THIN IDEAL.} The PSAs could inform viewers that most fashion models have BMIs in the unhealthy range and that having such a low BMI can cause reproductive problems, among other health concerns. The PSAs could also feature “before” and “after” photos of women in magazines to reveal the deceptive effects of airbrushing. A study by Jane Ogden and Faye Sherwood found that educating women about the use and effects of airbrushing in magazines reduced the women’s body dissatisfaction compared to women who did not receive this information.\textsuperscript{123}

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\textsuperscript{122} Halliwell & Dittmar, \textit{supra} note 57; see also Helga Dittmar & Sarah Howard, \textit{Professional Hazards? The Impact of Models’ Body Size on Advertising Effectiveness and Women’s Body-Focused Anxiety in Professions That Do and Do Not Emphasize the Cultural Ideal of Thinness}, 43 \textit{BRIT. J. SOC. PSYCHOL.} 477, 477 (2004).