

STRIKING A POSE: PROTECTING THE WELFARE OF CHILD MODELS

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INTRODUCTION

Fashion models are a ubiquitous component of the American cultural landscape,¹ with New York City serving as a mecca for young aspiring models not only across the United States, but also worldwide.² In New York City, the fashion industry is a \$1.7 billion industry, employing over 165,000 individuals and annually exceeding \$55 billion in sales annually.³ Most prominent female models currently in the fashion industry are under the age of sixteen,⁴ with the youthful looks and business naïveté to match.⁵ Widely popular social media maven and veritable modern supermodel Coco Rocha⁶ offers a prime example of the very early start most girls get in the industry: She was discovered at the mere age of fourteen in an Irish dance competition and quickly thrown into the whirlwind life of an international fashion model.⁷

¹ Fashion models in the United States, upon reaching a certain level of success, are very well-paid, and experience both mainstream fame, as well as receiving recognition and respect within the fashion and modeling industries. Brian Solomon, *The World's Highest Paid Models*, FORBES (June 14, 2012, 11:02 AM), <http://www.forbes.com/sites/briansolomon/2012/06/14/the-worlds-highest-paid-models>.

² ROGER TALLEY, *THE PROFESSIONAL'S GUIDE TO MODELING: A COMPREHENSIVE LOOK AT THE BUSINESS OF BEING A MODEL* 53 (2007). Fashion models are considered “the surplus labor of the fashion industry” in New York City, a large and disorganized workforce. Ashley Mears, *Opinion, Poor Models. Seriously.*, N.Y. TIMES, Sept. 14, 2011, at A35. The streets of New York City are also rife with talent scouts and modeling agents searching for the next supermodel, which speaks to the volumes of girls that take to New York in search of their big modeling break, waiting to be discovered. Blaire Briody, *The Beauty Hunters*, N.Y. TIMES, June 15, 2008, at CY7.

³ *Child Models vs. Other Child Performers: An Overview*, THE MODEL ALLIANCE, <http://modelalliance.org/comparisons-and-reasons-for-change> (last visited Mar. 19, 2014).

⁴ Sara Ziff, former child model and the founder of the Model Alliance, explains “[m]ost models start their careers between the ages of 13 and 16.” *Which Workers Need Unions, and Which Don't?*, NAT'L PUB. RADIO (June 7, 2012, 1:00 PM), <http://www.npr.org/2012/06/07/154519830/which-workers-need-unions-and-which-don't>; see *infra* note 9 for a discussion of the Model Alliance.

⁵ Christopher Muther, *At Fashion Forum, Kors Unveils New Age Limit: Designer Will Now Hire Models 16 and Older*, BOS. GLOBE, Mar. 23, 2010, at 5 (“Michael Kors announced that he will raise the minimum age of the models he employs . . . in an effort to curb what he calls the ‘army of children’ seen with increasing frequency on catwalks and in fashion photo shoots.”).

⁶ Coco Rocha is a twenty-three-year-old model, and despite her young age, she has already worked in both the high fashion and commercial print industries for countless fashion houses, including Chanel, Louis Vuitton, Nordstrom, and Pepsi. Irina Aleksander, *Expanding Her Efforts to Be a Role Model*, N.Y. TIMES, Sept. 2, 2012, at ST1. Rocha has over 1.6 million followers on Google Plus alone, with several hundred thousand on Instagram and Twitter as well. *Id.*

⁷ *Id.*

Recognizing the stark disparity between the expectations of young fashion models and the rest of the American public,⁸ Rocha has become an unofficial spokesperson of sorts for the unrealistic, and oft shocking, environment that young girls are forced to occupy if they wish to work in the industry.⁹

In an effort to encapsulate the striking dissimilarities that differentiate the typical life of young teenage girls from that which is the modern landscape of the modeling industry, the documentary *Girl Model*¹⁰ follows thirteen-year-old Siberian aspiring model, Nadya, on her journey to become one of the women she spent her early childhood idolizing.¹¹ Nadya's journey into the fashion and modeling world, however, is neither glossy nor glamorous. After traveling to Japan on the promises of a modeling contract written in languages Nadya cannot even read, the young teen returns home to her struggling family in Russia with nary to show for her journey.¹² Nadya was blatantly taken advantage of, left in debt, and alone.¹³ On its face, the documentary merely seems to be the startling tale of a failed young modeling career, but it also serves as a deeper look into the disturbed consciousness of the modeling industry's efforts to recruit younger and younger girls who are unable to defend themselves, desperate for success for both themselves and the families they left behind.¹⁴

⁸ After being criticized years ago in the media for appearing to have gained weight, Rocha pointed out that while she is still "10 sizes smaller than the average American woman," she was being called fat. *Id.* (quoting Coco Rocha).

⁹ Rocha sits on the advisory board for the Model Alliance, a recently formed non-profit organization that generally aims to improve professional standards for models. *See id.*; *Mission, THE MODEL ALLIANCE*, <http://modelalliance.org/mission> (last visited Mar. 19, 2014).

¹⁰ *Girl Model*, directed and produced by David Redmon and Ashley Sabin, premiered in the United States at the South by Southwest festival in Austin, Texas in 2012. *About the Filmmakers*, GIRL MODEL, <http://girlmodelthemovie.com/about-the-film/about-the-filmmakers> (last visited Mar. 19, 2014); *see* Joanna Nikas, *Documentary Is Another Voice in the Underage Model Conversation*, N.Y. TIMES (Apr. 9, 2012, 10:05 AM), <http://runway.blogs.nytimes.com/2012/04/09/documentary-is-another-voice-in-the-underage-model-conversation>. *Girl Model* follows an aspiring thirteen-year-old Siberian model and the American model scout that discovered her, exploring the world behind the glossy camera lenses of the modeling industry. *Synopsis*, GIRL MODEL, <http://girlmodelthemovie.com/about-the-film> (last visited Mar. 19, 2014).

¹¹ Nadya was discovered by Ashley Arbaugh, an American model scout, on the Trans-Siberian Railway. Nikas, *supra* note 10. Nadya's bedroom at her family home is covered in images of fashion models, demonstrating how pervasive the allure of the industry is in even the more isolated parts of the world. *See id.*

¹² *See id.* ("After many unsuccessful castings, Nadya returns to Russia in debt.")

¹³ *Id.*

¹⁴ Commenting on the seedy underbelly of the international model recruiting scene, Ashley Arbaugh wrote that she has "been traveling and documenting in Russia and Ukraine the journey of these young girls that become prostitutes and fashion models, or the foggy lines that exist between both." David Redmon & Ashley Sabin, 'Scouted,' N.Y. TIMES (Sept. 11, 2012), <http://www.nytimes.com/2012/09/12/opinion/teenage-girls-audition-to-be-models-in-siberia.html> (quoting Ashley Arbaugh).

While Nadya never made it to the United States on her short-lived journey into the modeling industry, many other models are brought to, or originate in, the United States after being discovered by individual designers, modeling agencies, or photographers.¹⁵ Further, Nadya's struggles with vague contracts and forays into foreign countries without so much as a chaperone to guide her are but examples of the various legal concerns facing child models that work in the United States.¹⁶ Laws enacted to protect child laborers, child performers, and models in general are either too narrow or too vague to adequately protect the welfare of minors in the industry,¹⁷ or are simply non-existent.¹⁸ The exploitative behavior that child models are routinely subjected to in the industry is akin to abuse that violates child welfare and endangerment laws, and warrants closer inspection and a re-evaluation of current legal protections.

This Note strives to offer an inclusive protective solution for child models in the State of New York by suggesting an interpretation of New York's child endangerment statute, Penal Law section 260.10,¹⁹ that would prohibit child models under the age of seventeen from appearing in high fashion advertisements and photo shoots, editorials, and runway shows.²⁰ Part I explores the history of child modeling in the United States and New York, and describes the various laws currently used to protect children from the abuses they suffer in the modeling industry. Part II explains section 260.10 and its applicability to and usefulness in the protection of child fashion models. Part II also explains how this application is consistent with the text and intent of the statute and more adequately addresses the legal concerns associated with child models. Part III addresses potential counter-arguments arising from the prohibition of child fashion models under section 260.10 and delves into the modern commercial speech doctrine and the applicability of the *Central Hudson*²¹ test to the prohibition in this section.²² Finally, Part IV addresses and defines the limits and broader implications of applying

¹⁵ TALLEY, *supra* note 2, at 8–9.

¹⁶ *See infra* Part I.C.

¹⁷ *See id.*

¹⁸ *See* Child Modeling Exploitation Prevention Act of 2002, H.R. 4667, 107th Cong. (2002).

¹⁹ N.Y. PENAL LAW § 260.10 (McKinney 2014) (“A person is guilty of endangering the welfare of a child when: 1. He or she knowingly acts in a manner likely to be injurious to the physical, mental or moral welfare of a child less than seventeen years old or directs or authorizes such child to engage in an occupation involving a substantial risk of danger to his or her life or health . . .”).

²⁰ The terms “high fashion model” or “fashion model” in this Note refer specifically to models appearing in advertisements, photo shoots, editorials, and runway shows for high-end designers, as well as models appearing in photo shoots, editorials, or advertisements intended for adult fashion magazines.

²¹ *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n*, 447 U.S. 557 (1980).

²² *See infra* Part III.

section 260.10 to the prevention of child models in high fashion advertising campaigns, editorials, and runway shows in the State of New York.

I. BACKGROUND

A. *Behind the Scenes: The Ins and Outs of the Modeling Industry*

Becoming a fashion model is a popular career path in the eyes of the American teenager.²³ It is also one of the most difficult industries in which to become successful.²⁴ The perceived career of modeling includes strutting in runway shows, appearing in advertising campaigns for high-end designers, mass retailers, and everything in between, such as posing for photographers in photo shoots that might become editorials in fashion magazines and appearing in catalogs.²⁵ High fashion models are specifically those models whose careers focus on magazine editorials, high-end advertising campaigns, and runway shows,²⁶ and are the primary focus of this Note. A fashion model must be tall, thin, beautiful, extremely confident,²⁷ and must also have a healthy dose of luck in order to be scouted and selected by one of the nation's top modeling agencies, which only represent perhaps a couple of hundred models at any given time.²⁸ The reality for most aspiring fashion models, however, is vastly different from the widely-publicized careers of the supermodels who have become household names, such as Gisele Bundchen, Kate Moss, and Heidi Klum, to name but a few whose careers took decidedly atypical paths.²⁹

The stark reality is that most high fashion models are scouted when they are still under sixteen years of age and are thrust into apartments overflowing with other young models without their families or

²³ Eric Wilson, *Looking for a (Long) Leg Up*, N.Y. TIMES, Sept. 10, 2009, at E1 (reporting that one of the most commonly asked questions of a beauty director at Vogue Magazine is: "How can I become a fashion model?").

²⁴ Statement by Ashley Mears, *The Life of a Fashion Model: Grueling, Not Glitzy*, NAT'L PUB. RADIO (Sept. 28, 2011, 1:00 PM), <http://www.npr.org/2011/09/28/140882246/the-life-of-a-fashion-model-grueling-not-glitzzy> [hereinafter Statement by Ashley Mears].

²⁵ *Id.*; see TALLEY, *supra* note 2, at 8–10.

²⁶ See TALLEY, *supra* note 2, at 8.

²⁷ *Id.* at 9.

²⁸ See *id.*

²⁹ Kiri Blakeley, *The World's Top-Earning Models*, FORBES (July 16, 2007, 9:20 AM), http://www.forbes.com/2007/07/19/models-media-bundchen-biz-media-cz_kb_0716top_models.html (reporting that in 2007, Gisele Bundchen, Kate Moss, and Heidi Klum earned \$33 million, \$9 million, and \$8 million, respectively); Statement by Ashley Mears, *supra* note 24 (noting that the group of models who are not publicly visible is "enormous" and is "struggling to make ends meet").

supervision, or into casting calls with intimidating crews and predatory directors.³⁰ Models are often even sought after at the startlingly young ages of twelve or thirteen,³¹ with the average model beginning her career between the ages of thirteen and sixteen.³² Such young girls are particularly vulnerable to being taken advantage of by directors, photographers, and the like, unable to care for themselves or make proper business decisions that might be required of a model.³³ An estimated 56% of underage models are “‘rarely’ or ‘never’ accompanied by a guardian on set,” meaning young models are left largely unsupervised.³⁴ They are often pressured into sacrificing an education due to the demands of the industry,³⁵ particularly if the model is hired

³⁰ Sean Evans, *Confessions of a Model Baby-Sitter: It's Tough Keeping an Eye on Underage Lookers Let Loose in the City*, N.Y. DAILY NEWS, Sept 7, 2008, at 15 (reporting that modeling agencies have apartments for their models, often with girls sleeping on the floor or sharing beds, and that the models were sent into the city to party with chaperones that were unable to adequately supervise the underage girls' activities); Helen Kirwan-Taylor, *The Woman Who Went to War with Size Zero; How Did a Straight-Talking Labour Baroness Unite Feminists and Fashionistas Behind a Ban on Underage Models?*, EVENING STANDARD, July 12, 2007, at A18 (“Some of the girls working are as young as 14. They are children.”); Zoe Manzi, *I Was a Child Model*, THE TIMES, Sept. 18, 2007, at 4 (recalling men trying to sneak backstage to see models undressing when the author was still just thirteen-years-old); Tracy McVeigh, *Top Model Exposes Sordid Side of Fashion: American Sara Ziff's New Film Reveals How Predatory Middle-Aged Men Target Girls in an Industry Where Harassment and Sexism Are Rife*, THE OBSERVER, June 7, 2009, at 19 (stating that modeling is a “‘predatory environment’” (quoting Sara Ziff)); Statement by Ashley Mears, *supra* note 24 (reporting that models “‘certainly . . . can start much younger [than sixteen], and they do start much younger’”).

³¹ Manzi, *supra* note 30 (reporting that the author was scouted when she was only thirteen-years-old); Redmon & Sabin, *supra* note 14 (reporting that at an open casting call in Siberia, Russia, scouts expect models as young as twelve- or thirteen-years-old to arrive in hopes of being recruited); Statement by Ashley Mears, *supra* note 24 (recalling a fashion show she walked in that featured a thirteen-year-old girl).

³² *Child Models vs. Other Child Performers: An Overview*, *supra* note 3.

³³ Young models often look to their modeling agencies to protect them legally, make business decisions such as booking and bookkeeping for them, and ensure their general safety; however, agencies often contribute to the very abuses they claim to strive to prevent. Sara Ziff, Opinion, *Regardless of Age, It's About Rights*, N.Y. TIMES (Nov. 12, 2012, 2:17 PM) <http://www.nytimes.com/roomfordebate/2012/09/13/sweet-16-and-a-runway-model/regardless-of-a-fashion-models-age-its-about-rights>; see also Lisa Machoian, Opinion, *Girls Must Finish Developing First*, N.Y. TIMES (Sept. 14, 2012, 9:56 AM), <http://www.nytimes.com/roomfordebate/2012/09/13/sweet-16-and-a-runway-model/girls-must-finish-developing-before-becoming-fashion-models> (“During the teenage years, there are numerous developmental changes The last part of the brain to develop carries out ‘executive functions’ like . . . making judgment calls . . .”).

³⁴ *Child Models vs. Other Child Performers: An Overview*, *supra* note 3.

³⁵ The demographics of a sampling of male and female models in different cities, of different ages, and different years of experience as models demonstrates that most models have very little total years of formal education, most with five years or less. ASHLEY MEARS, *PRICING BEAUTY: THE MAKING OF A FASHION MODEL* 78–80 (2011). Young models experience both external and internal pressures to push aside the importance of an education. See *id.* at 9 & n.11, 11–12. The demands of the job may require models to miss school for castings and shoots, or take extended periods of time off from school to travel. See MICHAEL GROSS, *MODEL: THE UGLY BUSINESS OF BEAUTIFUL WOMEN* 19–20 (2011); MEARS, *supra*, at 201.

to walk during New York Fashion Week, for example, when fittings can go until 4 AM on a weekday, making it difficult to meet the demands of both school and work.³⁶ This is particularly troublesome given the short lifespan of a typical fashion model's career due to industry pressures to look young and fit into sample sizes. Once fashion models are perceived as too old to continue successfully modeling, it is difficult for those leaving the field to pursue careers that require other skills or education.³⁷

This emphasis on looking as young as possible often requires possessing impossibly thin frames that are difficult to obtain even by those models who have yet to mature.³⁸ The typical body specifications expected of a female model are vastly different from those of the average American female. A female model is typically five feet and nine inches tall, with a thirty-four inch bust, a twenty-four inch waist, and thirty-four inch hips.³⁹ The average female in the United States is roughly five feet and four inches tall, has a waist circumference of thirty-seven inches, and weighs approximately 164 pounds.⁴⁰ The average weight of a model today is nearly 23% less than that of the average woman, compared to only 8% lower just twenty-five years ago,⁴¹ and weighing typically "between 105 and 115 pounds."⁴² Unsurprisingly, many young models suffer from a plethora of eating disorders and substance abuse problems, fueled by their desire to maintain slight frames and live up to the pressures of casting directors, designers, and agents, or else not get

³⁶ Sara Ziff, Testimony Before the New York State Department of Labor (Sept. 20, 2012), available at <http://modelalliance.org/2012/testimony-to-the-new-york-state-department-of-labor/testimony-to-the-new-york-state-department-of-labor> [hereinafter Ziff Testimony].

³⁷ See MEARS, *supra* note 35, at 128 n.11 (noting that models "exit the field by aging out" and typically transition into another field with "low education requirements").

³⁸ Celia Hall, *Agencies 'Seek Out Anorexic Models'*, DAILY TELEGRAPH, Aug. 30, 1996, at 5 (reporting that a fifteen-year-old patient at an eating disorder center, who weighed only ninety-one pounds, was repeatedly approached by modeling agencies because "she had the right look"); Julie Salamon, *Starving for Self-Esteem: Yes, You Can Be Too Thin*, N.Y. TIMES, Dec. 12, 2000, at E8 (noting that "models have professional incentives for starving themselves"); Andrea Thompson, *I Thought I Was Just a Young Woman Having a Good Time. But by the Age of 22 I Couldn't Get Through the Day Without a Drink. Then One Morning I Woke Up in a Stranger's Bed*, DAILY MAIL, Nov. 29, 2004, at 30 (recalling that as a young model she was "constantly being told to lose weight and starve [her]self").

³⁹ See MEARS, *supra* note 35, at 6.

⁴⁰ Margaret A. McDowell et al., *Anthropometric Reference Data for Children and Adults: United States, 2003–2006*, NAT'L HEALTH STAT. REP. (U.S. Dep't of Health & Human Servs.), Oct. 22, 2008, at 8, 14, 22, available at <http://www.cdc.gov/nchs/data/nhsr/nhsr010.pdf>. It must be noted that these statistics place the average female squarely in the "overweight" category. *Id.* The average model's weight and height places models distinctly in the "underweight" category and at increased risk for anorexia. *Adult BMI Calculator*, CENTERS FOR DISEASE CONTROL & PREVENTION, http://www.cdc.gov/healthyweight/assessing/bmi/adult_bmi/english_bmi_calculator/bmi_calculator.html (last updated May 4, 2011); see *supra* note 39.

⁴¹ See MEARS, *supra* note 35, at 173.

⁴² Kit Johnson, *Importing the Flawless Girl*, 12 NEV. L.J. 831, 832 (2012).

hired.⁴³ A disturbing 64.1% of models have been asked specifically by their agencies to lose weight and 31.2% of models have had an eating disorder,⁴⁴ compared with 2.8% of adults nationally.⁴⁵ Contributing to the risk of substance abuse, an estimated 77% of models are exposed to drugs or alcohol while on the job.⁴⁶ Models are also particularly susceptible to mental health issues, with an estimated 68.3% of models admitting to suffering from depression or anxiety.⁴⁷ Runway models, specifically, are uniquely vulnerable to the pressure to be thin in order to fit into the pieces sent down the runway.⁴⁸ The glamorous façade of the high fashion modeling industry is swiftly diminished by the constant pressure underage models must deal with.

Once a fashion model satisfies the aesthetic demands of a potential client and books an editorial spread or runway show, the model logically must be compensated for her services. Reliable financial compensation, however, is not the norm in the industry.⁴⁹ Fashion models are sometimes paid a flat rate or by the hour depending on their level of fame, but more commonly they are paid in clothing by the designer for whom they are modeling, or simply in the exposure they are expected to receive from the gig, receiving nothing tangible.⁵⁰ The free “gifts” of clothing and accessories or the prestige from being featured in a widely distributed editorial are not supplementary to monetary payment; they constitute the entire transaction.⁵¹ This system of inconsistent and unregulated economic exchanges is unique to high fashion modeling.⁵²

⁴³ Mark Feeney, *Model Behavior*, BOS. GLOBE, Sept. 24, 2005, at D3 (reporting on popular model Kate Moss’s cocaine abuse and the subsequent fallout she faced from the fashion industry); Kirwan-Taylor, *supra* note 30 (reporting that models would “drink gallons of water” before weight check-ins to mask how underweight they were during medical check-ins (quoting Denise Kingsmill)); Paolo Santonastaso et al., *Are Fashion Models a Group at Risk for Eating Disorders and Substance Abuse?*, 71 PSYCHOTHERAPY & PSYCHOSOMATICS 168 (2002) (finding that “fashion models are more at risk” for eating disorder symptoms and drug abuse “than females in the general population”); Thompson, *supra* note 38 (“Drinking champagne and partying every night suppressed my appetite and kept my weight under control, so I began doing this both to excess.”); Sam Wostear, *Starving to Size Zero Has Given Me Bones Like Cripple Aged 90; Interview*, THE SUN, Jan. 26, 2007, at 22 (reporting that a woman’s anorexia was partly fueled by the pressures she faced as a working model).

⁴⁴ *Industry Analysis*, THE MODEL ALLIANCE, <http://modelalliance.org/industry-analysis> (last visited Mar. 19, 2014).

⁴⁵ *Eating Disorders Among Adults—Binge Eating Disorder*, NAT’L INST. MENTAL HEALTH, http://www.nimh.nih.gov/statistics/1EAT_ADULT_RB.shtml (last visited Mar. 19, 2014).

⁴⁶ *Child Models vs. Other Child Performers: An Overview*, *supra* note 3.

⁴⁷ *Industry Analysis*, *supra* note 44.

⁴⁸ See MEARS, *supra* note 35, at 188.

⁴⁹ Johnson, *supra* note 42, at 837–38.

⁵⁰ See INDEP. DEMOCRATIC CONFERENCE, NEW YORK’S MODELING CRISIS: THE IMPORTANCE OF PROVIDING LEGAL PROTECTIONS FOR CHILD MODELS 6 (June 2013); Johnson, *supra* note 42, at 837–38.

⁵¹ MEARS, *supra* note 35, at 50–51; Ziff Testimony, *supra* note 36.

⁵² See MEARS, *supra* note 35, at 52 (“Such an irregular system of payment would never be permitted from catalog clients.”).

This standard is no exception for minor models.⁵³ Contrary to the public belief that fashion models lead glamorous lifestyles supplemented by excessive income, the average model makes an estimated \$32,000 annually and due to the aforementioned aesthetic demands of the job, their careers last on average only five years, as child models age out of favor with designers.⁵⁴ Thus, the importance of education, health, and fair labor often give way to long hours, unhealthy practices, and shady economics for minors working in the high fashion industry.

B. *Saving Face: The Fashion and Modeling Industries' Collective Efforts*

In response to the unacceptable practices of the fashion industry with respect to young models, the industry has taken active strides in the last several years to combat the legal and societal ills that plague underage models.⁵⁵ In 2007, the Council of Fashion Designers of America (CFDA)⁵⁶ released recommended guidelines to improve and protect the physical and mental health of fashion models.⁵⁷ Among its several recommendations was the goal to promote the welfare of adolescents by only hiring models older than the age of sixteen for runway shows and a call for stricter enforcement of current child labor laws.⁵⁸ The guidelines sent shockwaves throughout the industry and garnered the support, and criticism, of various groups in the immediate aftermath of the CFDA initiative's release.⁵⁹ Five years later, the CFDA

⁵³ Ellie Krupnick, *Marc Jacobs Doesn't Pay His New York Models?*, HUFFINGTON POST (Mar. 5, 2012, 2:50 PM), http://www.huffingtonpost.com/2012/03/05/marc-jacobs-doesnt-pay-models_n_1321517.html; Ellie Krupnick, *Model Alliance Working to Pass the Freelancer Payment Protection Act*, HUFFINGTON POST (Mar. 25, 2012, 11:56 AM), http://www.huffingtonpost.com/2012/03/25/model-alliance-freelancer-payment-protection-act_n_1378111.html.

⁵⁴ INDEP. DEMOCRATIC CONFERENCE, *supra* note 50; 'Girl Model' in Context, PBS, http://www.pbs.org/pov/girlmodel/photo_gallery_background.php#.Uupsr2RdVzn (last visited Mar. 7, 2014).

⁵⁵ Eric Wilson, *Checking Models' IDs at the Door*, N.Y. TIMES, Feb. 9, 2012, at E1 (noting that fashion designers have become serious about protecting their models and "curb[ing] reckless behavior in their industry" in the last five years).

⁵⁶ The CFDA is a not-for-profit association and is comprised of more than 400 of America's most prominent fashion, jewelry, and accessories designers. *Mission Statement*, COUNCIL FASHION DESIGNERS AM., <http://cfda.com/about/mission-statement> (last visited Mar. 19, 2014). The CFDA aims to improve the cultural and professional recognition of fashion designers, among other goals. *Id.*

⁵⁷ Marc Karimzadeh, *CFDA Sets Guidelines for Models*, WOMEN'S WEAR DAILY, Jan. 12, 2007, at 2.

⁵⁸ The guideline specifically read: "Support the well-being of younger individuals by not hiring models under the age of 16 for runway shows; not allowing models under the age of 18 to work past midnight at fittings and shoots, and providing regular breaks and rest." *Id.*

⁵⁹ *Compare* Suzy Menkes, *New York Initiative on 'Size Zero' Fleshes out Skinny Styles*, INT'L HERALD TRIB., Feb. 6, 2007, at 9 (reporting that Russian model Natalia Vodianova applauds the CFDA's minimum age recommendations), and *Renfrew's Vice President and Medical Director*

continued to update and promote its health initiatives, striving to live up to their own recommendations and standing up for the young individuals they hire.⁶⁰ Yet despite the CFDA's best good faith efforts, even its president, Diane von Furstenberg,⁶¹ has failed to abide by the guidelines concerning the minimum age of runway models by hiring a fifteen-year-old to walk in one of her shows in 2011.⁶²

More recently, *Vogue Magazine (Vogue)*⁶³ adopted its own set of unofficial guidelines mimicking the promises made in the CFDA's health initiative, including a vow to not knowingly use underage girls on shoots, shows, and campaigns, and to ask casting directors to check young models' identification at the door.⁶⁴ The promise was skeptically

Lends Expertise to Fashion Industry's Response to the Challenge of Eating Disorders, PR NEWSWIRE (Jan. 31, 2007), <http://www.thefreelibrary.com/Renfrew's+Vice+President+and+Medical+Director+Lends+Expertise+to...-a0158641755> (reporting that the Renfrew Center, the largest eating disorder treatment network in the United States, commends the CFDA for its guidelines), with Samantha Critchell, *Designers Opt for Guidelines on Thin Models; But It's All Voluntary, with No Enforcement and No Mention of Body Mass Index*, TORONTO STAR, Jan. 15, 2007, at B7 (reporting criticisms that the CFDA initiatives lack a mode of enforcement); Susan Langenhennig, *New York Fashion Week Kicks Off with Concern over Models' Age, Health*, TIMES-PICAYUNE, Feb. 9, 2012, at 1 (criticizing the health initiative for not being strict enough in regard to eating disorders).

⁶⁰ Marc Karimzadeh, *CFDA Health Initiative Gets Designer Boost*, WOMEN'S WEAR DAILY, Feb. 12, 2009, at 25 (reporting the involvement of popular fashion designers in awareness and education campaigns related to the CFDA's health initiative); Marc Karimzadeh, *CFDA Health Initiative Push Set for Fashion Week*, WOMEN'S WEAR DAILY, Aug. 28, 2008, at 11 (reporting on the CFDA's efforts to promote its health initiative at the 2008 Mercedes-Benz Fashion Week in New York City, including a signature drive to encourage fashion designers, editors, models, and agents to promise to abide by the guidelines); Marc Karimzadeh, *CFDA Panel Focuses on Sample Size*, WOMEN'S WEAR DAILY, Feb. 11, 2010, at 3 (reporting on a panel sponsored by the CFDA to discuss increasing sample sizes in order to accommodate the fully-developed, of-age models).

⁶¹ Diane von Furstenberg is a popular fashion designer, famous for her iconic wrap dress, "first designed in the early Seventies." Gaby Wood, *The World's First Wrap Star*, THE OBSERVER, June 8, 2002, at 3. Von Furstenberg was appointed president of the CFDA in 2007 and immediately began enacting visionary changes in the CFDA's structure and programming, including plans to lobby for antipiracy laws and creating a network to help designers share their expertise with one another. Marc Karimzadeh, *President Von Furstenberg Sets Agenda*, WOMEN'S WEAR DAILY, Jan. 19, 2007, at 9.

⁶² While von Furstenberg accidentally hired the underage model, the incident demonstrates that despite the CFDA's best efforts to promulgate stricter enforcement, it is a much more complex process than simply promoting an initiative. Wilson, *supra* note 55.

⁶³ *Vogue Magazine*, known as a fashion bible of sorts to fashion-lovers worldwide, as well as an "active participant in the culture of fashion," was founded in 1892 and currently publishes nineteen international editions of the magazine, including a presence in countries such as the United States, France, Italy, and Japan. Caroline Weber, *Books—Fas[h]ion: Review of "IN VOGUE: The Illustrated History of the World's Most Famous Fashion Magazine"*, N.Y. TIMES, Dec. 3, 2006, at section 7, column 3, pg. 70 (citation omitted).

⁶⁴ Eric Wilson, *Vogue Adopts a 16-and-Over Modeling Rule*, N.Y. TIMES (May 3, 2012, 10:26 AM), <http://runway.blogs.nytimes.com/2012/05/03/vogue-adopts-a-16-and-over-modeling-rule>.

received by some, and for good reason.⁶⁵ Less than six months after *Vogue* revealed its health pact, *Vogue Japan* shot an editorial featuring a fourteen-year-old girl named Thairine Garcia for its December issue,⁶⁶ and shortly after, *Vogue China* featured fourteen-year-old Ondria Hardin in its August issue.⁶⁷ Earlier in 2012, both young girls had been selected by Marc Jacobs and walked in his runway show in February in New York, in willful defiance of the CFDA's guidelines, with Jacobs denying that there existed any controversy in his selection of the teens.⁶⁸

Perhaps the most meaningful industry effort to combat the mistreatment of models comes in the form of the Model Alliance, established in 2011 by former model Sara Ziff, who was discovered at the age of fourteen and was subjected to the various pains of being a child model.⁶⁹ Ziff made great strides in increasing awareness of current working conditions for young models in the short time since founding the Model Alliance, including providing testimony to the New York State Department of Labor in defense of including all child models within the definition of "child performers" under the Department's proposed regulations.⁷⁰ But the efforts of the Model Alliance, along with those of the CFDA and *Vogue*, lack the force of law and legal power to fully enforce or modify existing child labor laws to better protect child models, emphasizing the need for more forceful intervention.

C. *An Incomplete Umbrella: New York Law's Current Inability to Resolve the Legal Needs of Child Fashion Models*

1. The Labors of Being Beautiful

The basic tenets of child modeling law in the State of New York begin with Arts & Cultural Affairs Law section 35.05, enforced by the Commissioner of Labor,⁷¹ which required child models under the age of eighteen to acquire work permits prior to being employed, used, or

⁶⁵ Ann Marie Hourihane, *'Vogue' Protocol on Use of Models Seems Pretty Slim*, IRISH TIMES, May 7, 2012, at 14 (reporting on the apparent hypocrisy of implied meaning behind the promise that the magazine had previously exploited underage and ill girls).

⁶⁶ Jenna Sauer, *14-Year-Old Model Is a Major Violation of Vogue's Age Pledge*, JEZEBEL (Sept. 21, 2012, 5:30 PM), <http://jezebel.com/5945377/14+year+old-model-is-a-major-violation-of-vogues-very-public-pledge>.

⁶⁷ Dhani Mau, *Vogue Apologizes for Using Underage Models Post-Health Initiative, Plans to Enforce Stricter Regulations*, FASHIONISTA (Sept. 27, 2012, 10:00 AM), <http://fashionista.com/2012/09/vogue-apologizes-for-using-underage-model-post-health-initiative-plans-to-enforce-stricter-regulations>.

⁶⁸ Eric Wilson, *Jacobs Flouts Age Limit*, N.Y. TIMES, Feb. 15, 2012, at E4.

⁶⁹ Ziff, *supra* note 33; *Mission*, *supra* note 9.

⁷⁰ Ziff Testimony, *supra* note 36.

⁷¹ N.Y. ARTS & CULT. AFF. LAW § 35.05 (McKinney 2004) (repealed 2013).

exhibited as a model, prior to its repeal in 2013.⁷² Acquisition of a child model work permit required the consent of a parent or guardian; a certificate from a physician indicating that the model is physically fit to be employed as such; and confirmation that employment as a model will not harm the minor's health, welfare, or result in the neglect of her education.⁷³ Ideally, this law would have served to prevent many of the potential hazards associated with modeling by ensuring that minors are healthy and remain committed to completing their education. However, during the law's nine-year existence, there was only one opinion citing section 35.05 in New York.⁷⁴ Despite the lack of litigation under this section, the statute was regularly violated because the majority of underage fashion models that are hired are done so in the absence of any work permits,⁷⁵ emphasizing a lack of enforcement of the provision. If every designer, photographer, agent, and parent that neglected to comply with the law was actually charged with its violation, each would be guilty of a misdemeanor.⁷⁶ The fact that a violation of this law resulted in a criminal offense is a reflection of the legislature's perceived emphasis on the protection of young models, despite the relatively weak enforcement policies.

In an effort to enact stricter and more complete protections for child models, the New York State legislature amended New York Labor Law section 150⁷⁷ to include "runway or print model[s]" within its definition of child performers, replacing New York Arts and Cultural Affairs Law section 35.05.⁷⁸ The amendment to section 150 includes child models within the scope of safeguards afforded to child performers under Article 4-A of the New York State Labor Law, protections that prior to the 2013 amendment were not extended to child models.⁷⁹ Labor Law section 151, which additionally applies to child models as a result of the amendment, outlines the conditions under which child models may be employed are strengthened, requiring models to apply for similar, yet more comprehensive employment permits than those required under Arts and Cultural Affairs Law section 35.05, and requiring 15% of the child model's earnings to be placed in a trust in accordance with New York State law.⁸⁰ Additionally, the Department of Labor must issue employers a certificate of eligibility to employ child

⁷² *Id.* § 35.05(1)(a) (repealed 2013).

⁷³ *Id.* § 35.05(1)–(6) (repealed 2013).

⁷⁴ *See Metro. Model Agency USA, Inc. v. Rayder*, 643 N.Y.S.2d 923 (Sup. Ct. 1996).

⁷⁵ Ziff Testimony, *supra* note 36 ("[I]n my 15 years working as a model, I have never seen a child model carrying a work permit, nor has a single agent ever insisted on one.").

⁷⁶ N.Y. ARTS & CULT. AFF. LAW § 35.05(9) (McKinney 2004) (repealed 2013).

⁷⁷ N.Y. LAB. LAW § 150 (McKinney 2014).

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.* § 151(1).

models.⁸¹ Finally, Labor Law section 152, another addition to the gamut of protections afforded child models, requires that employers of child models provide a teacher in order to fulfill state educational requirements and ensure that child performers are not without educational instruction.⁸² Further, child models possessing work permits may not be without educational instruction and unemployed for longer than ten consecutive days.⁸³ Violation of any Article 4-A provision results in a civil penalty of up to \$1000 for the first violation, \$2000 for the second violation, and \$3000 for any additional violations.⁸⁴

Not only must an underage model acquire a work permit, but the Commissioner of Education promulgated regulations detailing the permissible extent to which a minor may work as a model.⁸⁵ Section 1902 of the New York Codes, Rules, and Regulations qualifies that no minor may be exhibited as a model during the hours in which they are required to be in school, minors that are sixteen or seventeen years old may not work more than four hours total on school days or eight hours on days in which school is not in session, and minor female models may not be employed between the hours of 10 PM and 7 AM.⁸⁶ In order to walk in Marc Jacobs's runway show last year, seventeen-year-old Hailey Hasbrook violated each of these restrictions, and yet Hasbrook was permitted to continue working as a model and Jacobs was never charged with any violation.⁸⁷

An issue that arises as a result of the industry's noncompliance with the model work permit and its regulations is that in the absence of a permit, any contracts that minor models enter into will be rendered void and unenforceable.⁸⁸ In *Metropolitan Model Agency USA, Inc. v. Rayder*, seventeen-year-old Francesca Rayder entered into a contract with Metropolitan Model Agency that required her to re-execute the contract when she turned eighteen.⁸⁹ When Francesca turned eighteen, however, she signed with Elite Model Management. But when Metropolitan sued under the prior contract, the New York State Supreme Court of New York County declared the contract null and void because it was in violation of section 35.05.⁹⁰ While Rayder's failure to obtain a model work permit allowed her to escape her contract with

⁸¹ *Id.* § 151(1)(d).

⁸² *Id.* § 152.

⁸³ *Id.* § 152(3).

⁸⁴ *Id.* § 153.

⁸⁵ N.Y. COMP. CODES R. & REGS. tit. 6, § 190.2 (2014).

⁸⁶ *Id.* § 190.2(b)-(c).

⁸⁷ See Ziff, *supra* note 33.

⁸⁸ See *Metro. Model Agency USA, Inc. v. Rayder*, 643 N.Y.S.2d 923, 925-26 (Sup. Ct. 1996).

⁸⁹ *Id.* at 924-25.

⁹⁰ *Id.* at 925.

Metropolitan, if all modeling contracts that underage models are parties to were declared unenforceable due to this precedent, many underage models could lose valuable work opportunities and find themselves unable to enforce agreements that could be critical to their success in the industry.⁹¹

Despite the amendment to include child print and runway models within the definition of child performers under Article 4-A, child models are still without numerous protections afforded to children that fall within the traditional definition of child performers. Under Part 186 of the New York Code, Rules, and Regulations, child performers, including models appearing “in a television broadcast or program,” must be accompanied by a responsible person designated to monitor the safety of each child performer under the age of sixteen.⁹² Employers must also provide a nurse with pediatric experience and safety-based instruction and information to child performers about the worksite and potential performance hazards.⁹³ Child print and runway models, however, are left without these additional workplace protections, once again emphasizing the dearth of reliable and strict regulations ensuring their safety and well-being, and highlighting the necessity of a more complete and comprehensive protective regime.

2. Creating a “Model” Contract

Another facet of child modeling in the State of New York is the ability of underage models to contract with designers, photographers, modeling agencies, and the like. Under common law, the only protection afforded child fashion models is the ability of minors to disaffirm contracts executed during minority in most jurisdictions.⁹⁴ However, the ability of minors to disaffirm contracts is unavailable in New York under New York Arts and Cultural Affairs Law section 35.03,⁹⁵ the purpose of which is expressly to eliminate the power of child

⁹¹ Modeling gigs would be stalled due to the time and effort required to obtain the model work permits and re-execute agreements, which could cost considerable amounts of money to editors and designers that work on tight deadlines and budgets. See MEARS, *supra* note 35, at 140 (“[P]restigious magazine work can be quite costly.”); Nicola Ruiz, *Ten Things You Didn’t Know About Fashion Week*, FORBES (Feb. 1, 2008, 6:00 AM), http://www.forbes.com/2008/01/31/style-fashion-runway-forbeslife-cx_nr_0201style.html (“Many designers dole out as much as \$500,000 . . . to plan and prepare for their 10-minute presentations.”).

⁹² N.Y. COMP. CODES R. & REGS. tit. 12, §§ 186-2.1(a)–(b), 186-3.6 (2014).

⁹³ *Id.* §§ 186-4.7, 186-6.5.

⁹⁴ *Lee v. Silver*, 28 N.Y.S.2d 333 (App. Div. 1941), *aff’d*, 38 N.E.2d 233 (N.Y. 1941); Louis Tertocha, *Fashion Modeling: From Contract Clauses to the Rigors of the Runways*, 17 ENT. & SPORTS L. 19, 21 (1999).

⁹⁵ N.Y. ARTS & CULT. AFF. LAW § 35.03(1) (McKinney 2014).

performers and models to disaffirm contracts.⁹⁶ In order to provide assurance to the child's employer under section 35.03, the parent or guardian of a child fashion model may guarantee performance of the contract, regardless of whether the parent is inexperienced or ignorant about the terms of a modeling contract and the adverse effects the contract may have on the child in the future.⁹⁷

The ability of parents to contract for their children often intersects with New York Civil Rights Law sections 50 and 51.⁹⁸ Under sections 50 and 51, no person, firm, or corporation may use the likeness of a child fashion model without having first obtained consent from the model's parent or guardians.⁹⁹ Violation of a model's right to privacy results in a misdemeanor.¹⁰⁰ Adult fashion models regularly and successfully bring causes of action under right of privacy laws; however, underage fashion models run into difficulty using the law in their favor due to the inability of minors to disaffirm.¹⁰¹

In *Shields v. Gross*, this intersection between contract law and the right of privacy reached an unfavorable result for then ten-year-old fashion model Brooke Shields.¹⁰² Photographer Garry Gross employed Shields to model in order to build her and his own portfolios, and her mother signed two consent forms authorizing Gross to use the photographs as a result of their photo shoot "for any purpose whatsoever."¹⁰³ Gross took shots of Shields posing nude in a bathtub that were subsequently used in the windows of a store on Fifth Avenue in New York City and in a French magazine.¹⁰⁴ Shields filed suit seeking damages and a permanent injunction enjoining Gross from further using the photographs.¹⁰⁵ The New York Court of Appeals held that Civil Rights Law sections 50 and 51 superseded the common law right of minors to disaffirm contracts consented to by their parents, thereby preventing Shields from ceasing public exposure of the nude photographs.¹⁰⁶ While Shields's mother arguably should have taken more care in reading the terms of Gross's contract and overseeing the

⁹⁶ See *Prinze v. Jonas*, 345 N.E.2d 295 (N.Y. 1976) (holding that General Obligations Law section 3-105, which was repealed and later replaced by New York Arts and Cultural Affairs Law section 35.03, was intended to eliminate the power of minors to disaffirm).

⁹⁷ ARTS & CULT. AFF. § 35.03(a); Stephanie Marie Davis, *Employment Contracts: New York Law Is No Shield for Brooke*, 6 LOY. L.A. ENT. L. REV. 177, 179 (1986).

⁹⁸ N.Y. CIV. RIGHTS LAW § 50 (McKinney 2014); *id.* § 51.

⁹⁹ *Id.* §§ 50, 51.

¹⁰⁰ *Id.*

¹⁰¹ See, e.g., *Brinkley v. Casablancas*, 438 N.Y.S.2d 1004 (App. Div. 1981); *Onassis v. Christian Dior-N.Y., Inc.*, 472 N.Y.S.2d 254 (Sup. Ct. 1984), *aff'd*, 488 N.Y.S.2d 943 (App. Div. 1985).

¹⁰² *Shields v. Gross*, 448 N.E.2d 108 (N.Y. 1983).

¹⁰³ *Id.* at 109 & note (citation omitted).

¹⁰⁴ *Id.* at 109.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* at 111.

content of the photo shoot, the court's decision emphasizes the inability of child fashion models in the State of New York to effectively enforce the rights afforded to contracting minors under most other circumstances. The photographs intended to bolster Shields's high fashion modeling resume were inappropriately used, yet Shields was without legal recourse. Shields was not alone in experiencing a work environment that was contractually unfavorable to and inappropriate for minors. More than 86% of fashion models have been asked to pose nude without prior notice, either contractual or informal, and an alarming 27% felt pressured to comply with the request in order to keep their jobs.¹⁰⁷ Without any legally required supervision for child models on shoots, child models are forced to handle these pressures alone.¹⁰⁸

3. Preventing the Sexualization of Minors: The Hailey Clauson Case

The final source of potential protection for child fashion models pertains to the prevention of the sexualization of minors. In New York, aside from the all-inclusive penal laws criminalizing sexual abuse¹⁰⁹ and child pornography,¹¹⁰ the only law that specifically seeks to restrict the scope of employment of child fashion models is New York Arts and Cultural Affairs Law section 35.07.¹¹¹ Section 35.07 makes it a misdemeanor to employ a child under sixteen in any "illegal, indecent, or immoral exhibition or practice."¹¹² New York courts, however, have never interpreted this idealistic provision,¹¹³ and thus the law currently stands as a vague and forgettable standard that offers no guidance for behavior to designers, photographers, and other similar employers of child fashion models.

The boundaries of legal protections available for child fashion models were recently controversially tested¹¹⁴ in a complaint filed in the

¹⁰⁷ INDEP. DEMOCRATIC CONFERENCE, *supra* note 50.

¹⁰⁸ *Id.*

¹⁰⁹ N.Y. PENAL LAW § 130.00-.96 (McKinney 2014).

¹¹⁰ *Id.* § 263.00-.30.

¹¹¹ N.Y. ARTS & CULT. AFF. LAW § 35.07 (McKinney 2014).

¹¹² *Id.* § 35.07(1)(d).

¹¹³ Search of the citing references for the law reveal no case references. ARTS & CULT. AFF. § 35.07.

¹¹⁴ Conor Risch, *Underage Model's \$28 Million Suit Against Photog Likely to Hinge on Model Release*, PDN PULSE (Aug. 24, 2011, 3:54 PM), <http://pdnpulse.com/tag/hailey-clauson> (reporting that while the complaint focuses on the sexual exploitation of the teen model, the outcome of the case will likely legally depend on the existence of a model release); Verena von Pfetten, *WATCH: Hailey Clauson Photog Defends Himself (Poorly) on GMA*, STYLEITE (Aug. 22, 2011, 5:21 PM), <http://www.styleite.com/media/jason-lee-parry-good-morning-america> (reporting that the claims against the photographer about the suggestive content of the photographs at issue were legally tenuous).

Southern District of New York in late 2011.¹¹⁵ Hailey Clauson, a then fifteen-year-old fashion model who already achieved notoriety in the industry for walking in three runway shows during New York Fashion Week despite the CFDA's minimum age guidelines,¹¹⁶ alleged that Jason Parry¹¹⁷ photographed her for a fashion magazine editorial in various offending poses and themes despite knowing that she was underage.¹¹⁸ One particularly salient image describes Clauson as "posed in a blatantly salacious manner with her legs spread, without a bra . . . in order to portray her in a sexual manner, possessing beer, [and] giving the impression of consuming beer."¹¹⁹ Numerous other photographs feature Clauson posed by Parry in varying degrees of sexual suggestiveness and potentially dangerous situations.¹²⁰ When Clauson's parents were given the photographs for review and approval prior to publication in the editorial, they expressed strong concern over the content of one photograph in particular featuring Clauson in an overtly suggestive pose and they forbade Parry from publishing the photograph in any respect.¹²¹

Despite objections by Clauson and her parents, Parry later published the image in question in a fashion magazine, along with publication of additional images Parry created of the teen during the shoot on a number of fashion websites and blogs, in further defiance of his agreement with Clauson and her parents, which contained no such release permitting Parry to do so.¹²² Subsequently, Parry entered into a commercial relationship with the clothing brand Blood is the New Black (BNB) and provided the label with several of the offending photographs of Clauson.¹²³ BNB then reproduced the images onto t-shirts to be sold to and viewed by the general public, as well as to mass retailer Urban

¹¹⁵ Amended Complaint, *Teen Model v. Parry*, No. 11-cv-5766 (GBD) (S.D.N.Y. Nov. 9, 2011), 2011 WL 7274264 [hereinafter Amended Complaint].

¹¹⁶ Clauson walked for Diane von Furstenberg, DKNY, and Oscar de la Renta. Jennifer Madison, *Underage Model, 15, Stars in Three Major Shows at New York Fashion Week—Despite CFDA's Over-16 Rule*, DAILY MAIL (Feb. 23, 2011, 3:13 PM), <http://www.dailymail.co.uk/femail/article-1359879/Underage-model-15stars-major-shows-New-York-Fashion-Week—despite-CFDAs-16-rule.html>. Von Furstenberg claims a failure in checking identification by her casting directors. *Id.*

¹¹⁷ Parry's work is allegedly "'out of the mainstream' and unsuitable for publication in most general circulation magazines, newspapers and/or on broadcast television." Amended Complaint, *supra* note 115, at *6.

¹¹⁸ *See id.* at *7–10.

¹¹⁹ *See id.* at *7.

¹²⁰ Clauson was posed such that the "focal point of such image[s] . . . was intended by [Parry] to be the area between [the teen's] legs." *Id.* at *8. Clauson was also featured in poses that implied she had consumed copious amounts of beer, and was also photographed riding a moving motorcycle while not wearing a helmet. *See id.* at *7–10.

¹²¹ *See id.* at *11.

¹²² *See id.* at *11–12.

¹²³ *See id.* at *15–16.

Outfitters (UO).¹²⁴ The t-shirts essentially transformed Clauson, clearly a minor in the photographs, into a product herself to be bought, sold, and exploited for commercial benefit.¹²⁵

In the Amended Complaint, Clauson asserted that she suffered continuing emotional and economic harm, and filed claims for relief for right of privacy violations under New York Civil Rights Law sections 50¹²⁶ and 51,¹²⁷ and common law libel for portraying a fifteen-year-old performing “sensitive subjects” such as consuming alcoholic beverages and posing in a sexually explicit manner.¹²⁸ Clauson’s Complaint also hinted that Parry violated New York Arts and Cultural Affairs Law section 35.07,¹²⁹ but unexplainably she did not file a claim for relief under the statute.

The bases for relief set forth in Clauson’s Complaint might serve to provide her with economic justice for her mistreatment by Parry and the retailers who used her image; however, the claims have an air of incompleteness because they fail to address the underlying legal issue prevalent in Clauson’s—and other similarly situated child models’—situation: Child models continuingly face legal and personal exploitation and abuse by industry participants that are not adequately deterred by existing laws.¹³⁰ This is true even when the adequate rights and permissions have been granted because the law tends to favor the child fashion model’s employers instead of focusing on protecting the child’s welfare.¹³¹ Clauson’s suit, currently pending in trial court in Manhattan,¹³² would be resolved in a more equitable and all-encompassing manner if an existing New York penal statute, previously unused in cases involving child models, was interpreted to both prevent Clauson from being hired for the photo shoot in the first place, and as a high fashion model in general, and to punish Parry for his exploitative behavior in a stricter manner than mere financial detriment.

¹²⁴ See *id.* at *15–16, *18–19.

¹²⁵ See *id.* at *18, *33.

¹²⁶ N.Y. CIV. RIGHTS LAW § 50 (McKinney 2014).

¹²⁷ *Id.* § 51.

¹²⁸ Amended Complaint, *supra* note 115, at *43–46, *67–68.

¹²⁹ As mentioned in Part I.C, *supra*, there is no record of cases brought under this statute in the history of New York jurisprudence. N.Y. ARTS & CULT. AFF. LAW § 35.07 (McKinney 2014).

¹³⁰ See Statement by Ashley Mears, *supra* note 24; Ziff, *supra* note 33.

¹³¹ See *supra* Part I.C.

¹³² Ellie Krupnick, *Hailey Clauson Urban Outfitters Lawsuit Headed to Court*, HUFFINGTON POST (Mar. 12, 2012, 1:22 PM), http://www.huffingtonpost.com/2012/03/12/hailey-clauson-urban-outfitters_n_1339285.html.

II. UNCHARTED TERRITORY: NEW YORK PENAL LAW SECTION 260.10

A. *Behind the Law: An Overview*

Section 260.10 of the New York Penal Code,¹³³ New York's child endangerment statute, provides that one is guilty of endangering the welfare of a child if one "knowingly acts in a manner likely to be injurious to the physical, mental or moral welfare of a child less than seventeen years old or directs or authorizes such child to engage in an occupation involving a substantial risk of danger to his or her life or health."¹³⁴ The purpose of the statute has a broad scope and is intended "to protect the physical health, morals and well-being of children," covering sexual offenses as well as other dangers.¹³⁵ While the statute was once unsuccessfully questioned for unconstitutional vagueness, it is clear that the statute has a permissibly wide range of applicability.¹³⁶ Violation of the statute is a Class A misdemeanor.¹³⁷ Sentences for Class A misdemeanors in the State of New York may not exceed imprisonment for one year¹³⁸ or a fine of \$1000.¹³⁹

Activities that have succeeded as dangers under the statute include making sexually explicit telephone calls to children,¹⁴⁰ directing obscene remarks at a small child,¹⁴¹ and providing beer to minors,¹⁴² for example. Decisions citing section 260.10 do not tend to clarify whether the specific likely harm to a child was physical, mental, or moral, nor do they define precisely what a moral violation would consist of, reaffirming the statute's wide range of interpretability.¹⁴³ An individual charged with violation of section 260.10 need not have caused actual or distinct harm to a minor and may be found guilty of child endangerment when her conduct presents a mere likelihood of harm.¹⁴⁴ It is unnecessary to prove that the charged individual actually directed the conduct in question at a child.¹⁴⁵ Further, consent of the child is not

¹³³ N.Y. PENAL LAW § 260.10 (McKinney 2014).

¹³⁴ *Id.* § 260.10(1).

¹³⁵ *People v. Alvarez*, 860 N.Y.S.2d 745, 748 (Crim. Ct. 2008) (quoting *People v. Bergerson*, 218 N.E.2d 288, 289 (N.Y. 1966)).

¹³⁶ *See generally Bergerson*, 218 N.E.2d at 290 (discussing section 483, a previous version of the child endangerment statute).

¹³⁷ PENAL § 260.10(3).

¹³⁸ *Id.* § 70.15(1).

¹³⁹ *Id.* § 80.05(1).

¹⁴⁰ *See People v. Poplaski*, 616 N.Y.S.2d 434 (Nassau Cnty. Dist. Ct. 1994).

¹⁴¹ *See People v. Simmons*, 699 N.E.2d 417 (N.Y. 1998).

¹⁴² *See People v. Simpkins*, 728 N.Y.S.2d 432 (App. Div. 2001).

¹⁴³ *People v. Alvarez*, 860 N.Y.S.2d 745, 748–49 (Crim. Ct. 2008).

¹⁴⁴ *See Poplaski*, 616 N.Y.S.2d 434.

¹⁴⁵ *People v. Johnson*, 95 N.Y.2d 368, 371–72 (2000).

a defense to prosecution for child endangerment under the statute.¹⁴⁶ Due to the statute's broad construction and its applicability to a wide variety of categories of conduct, the primary and critical element of the offense present in all cases brought under the statute requires simply that one possess an awareness that one's behavior could potentially harm a child's moral, mental, or physical health.¹⁴⁷

Currently, no suits involving the mistreatment of child fashion models have been brought under this statute. Hailey Clauson's litigation against Parry, BNB, and UO, however, serves to highlight section 260.10's potential applicability to the plight of child fashion models. Expanding the interpretation of the child welfare endangerment statute to encompass the prevention of hiring children as high fashion models requires an analysis of the statute's strict applicability under New York precedent.¹⁴⁸ Using Clauson's factual circumstances as a model, it is possible to apply section 260.10 to prohibit children from being employed as fashion models in print and on the runway. Because Clauson's case is a civil suit, prosecution of Parry under section 260.10, a criminal statute, would necessarily occur in a separate trial. However, prohibiting the use of children as high fashion models under criminal law provides a more desirable route than civil litigation in terms of both deterrence and prevention. As the industry currently stands, individuals that impermissibly exploit underage models are not effectively legally dissuaded from continuing to treat minors in the same manner because they are only being financially punished, encouraging continued abuse and potentially subjecting the same children to the same injuries.¹⁴⁹ Further, while it may initially appear harsh to criminally prosecute parties that use a child as a fashion model, it is not unprecedented punishment under several other New York State laws that aim to protect child models, such as the repealed New York Arts and Cultural Affairs Law section 35.05 and current section 35.07, violations of which result in misdemeanor charges similar to New York Penal Law section 260.10.¹⁵⁰ Civil penalties have thus far been insufficient to fully insulate children from the high fashion industry and are inadequate deterrence for the continued use of children in runway shows, magazine editorials, and the like.¹⁵¹ Criminal prosecution, however, effectively addresses the underlying problem of children working in a dangerous environment

¹⁴⁶ *People v. Benu*, 385 N.Y.S.2d 222 (Crim. Ct. 1976).

¹⁴⁷ *See Feola v. Carroll*, 890 N.E.2d 219 (N.Y. 2008).

¹⁴⁸ *See infra* Part IV.

¹⁴⁹ Lawsuits filed by exploited child fashion models are nearly exclusively brought in civil claims, typically under contract or labor laws, in which recovery is limited to financial settlements. *See supra* Part I.C.

¹⁵⁰ *See* N.Y. ARTS & CULT. AFF. LAW § 35.05 (McKinney 2004) (repealed 2013); *id.* § 35.07 (McKinney 2014).

¹⁵¹ *See supra* Part I.C.

and offers a powerful incentive to change the nature of hiring practices in the fashion and modeling industries.

B. *Applying Section 260.10 to Child Fashion Modeling*

Section 260.10 is a promising solution to the dangers children face in the high fashion modeling industry. The statute is broadly construed, with no particular incidences or behaviors expressly proscribed in the statutory text itself, leaving wide discretion in the law's interpretation and applicability to the courts.¹⁵² The statute may be applied to the employment of children as models in several different manners to be explored at length below, as child fashion modeling may be injurious to the physical, mental, and moral welfare of a child depending on the circumstances,¹⁵³ and the occupation itself may validly be considered a "substantial risk of danger" to the health of a child.¹⁵⁴ The most critical factor in finding a violation under this section is that one need only to have engaged in behavior "likely" to cause injury to a child; the child need not have been in fact injured and the legislature provides no express parameters defining the types of specific behavior meant to be captured by this statute.¹⁵⁵ In the situation between Haley Clauson and Jason Parry, for example, to convict Parry under section 260.10, it must be shown that Parry was aware of the likelihood of harm to Clauson from the manner in which he conducted the shoot and commercialized her photographs.

In general, fashion modeling performed by children qualifies as child endangerment under section 260.10 because of the high risk for child sexualization in the fashion industry.¹⁵⁶ An alarming estimated 30% of print and runway models have experienced inappropriate touching while modeling and another 28% were pressured to engage in sexual activity at the workplace.¹⁵⁷ Strikingly, only 29% of the models that experienced some form of abuse reported it to their representative

¹⁵² See N.Y. PENAL LAW § 260.10(1) (McKinney 2014) (providing for guilt if one "acts in a manner likely to be injurious to the physical, mental or moral welfare of a child less than seventeen years old").

¹⁵³ See *supra* Part I.B–C.

¹⁵⁴ PENAL § 260.10(1).

¹⁵⁵ See *People v. Simmons*, 699 N.E.2d 417 (N.Y. 1998).

¹⁵⁶ See, e.g., Jessica Misener, *American Apparel Ads 'Sexualize' Child Models, Rules Britain's ASA*, HUFFINGTON POST (Dec. 5, 2012, 8:26 AM), http://www.huffingtonpost.com/2012/12/05/american-apparel-sexy-ads-asa-child-models_n_2243360.html; Jenna Sauers, *Fashion Industry Salivates over Creepy Photos of 10-Year-Old French Girl*, JEZEBEL (Aug. 2, 2011, 6:00 PM), <http://jezebel.com/5827092/fashion-industry-salivates-over-creepy-photos-of-10-year-old-french-girl>.

¹⁵⁷ INDEP. DEMOCRATIC CONFERENCE, *supra* note 50, at 7.

agencies.¹⁵⁸ Section 260.10 has been applied to numerous situations in which children were the subjects of inappropriate sexual behavior or found themselves in unsuitably sexual circumstances.¹⁵⁹ In *People v. Simmons*, prosecution under section 260.10 was appropriate where the defendant directed vulgar remarks at a child.¹⁶⁰ Vulgar remarks directed at models are relatively common in the fashion industry, where photographers often encourage young models to act sexier, undress themselves, or even to sleep with them, and the behavior is so rampant that most do not report or second-guess its appropriateness in the workplace.¹⁶¹ While it might be argued that models that have been the subject of inappropriate advances should report them and have the offenders prosecuted individually, it would be more efficient to lay a blanket preventative ban on placing children in such comprising situations in the first place. Industry actors that are the most controversial often are shockingly the most successful at avoiding prosecution and punishment. Terry Richardson, an infamous photographer that routinely works with minors and is well known for his boundary-pushing and overtly sexual shoots, who has been accused of sexual exploitation on more than one occasion, is a prime example.¹⁶² Not every photographer, designer, or individual in a position of power in the industry is an exploitative predator; however, the risk runs rampant in the industry and places children at a significant risk of moral deprivation, mental, emotional, and physical harm palpable enough to trigger application of section 260.10.¹⁶³

Child fashion modeling additionally qualifies under section 260.10(a) as an “occupation involving a substantial risk of danger” to the life or health of children employed as such¹⁶⁴ because of the health risks and educational sacrifices that often accompany a young girl’s modeling career.¹⁶⁵ Models are encouraged to carefully and dangerously monitor their caloric intake and obsessively diet in order to fit into tiny

¹⁵⁸ *Id.*

¹⁵⁹ See, e.g., *Simmons*, 699 N.E.2d 417; *People v. Sanderson*, 891 N.Y.S.2d 571 (App. Div. 2009); *People v. Stasiak*, 808 N.Y.S.2d 819 (App. Div. 2006).

¹⁶⁰ *Simmons*, 699 N.E.2d at 418–19.

¹⁶¹ Sara Ziff, *The Ugly Truth of Fashion’s Model Behaviour*, THE GUARDIAN (Feb. 13, 2012, 11:28 AM), <http://www.guardian.co.uk/commentisfree/cifamerica/2012/feb/13/ugly-truth-fashion-model-behavior>.

¹⁶² Caroline Davies, *Fashion Photographer Terry Richardson Accused of Sexually Exploiting Models*, THE GUARDIAN (Mar. 19, 2010, 6:49 PM), <http://www.guardian.co.uk/artanddesign/2010/mar/19/terry-richardson-fashion-photography-pornography>; *Model Snaps at Fashion Fotog*, N.Y. POST (Mar. 12, 2010, 5:00 AM), http://www.nypost.com/p/pagesix/model_snaps_at_fashion_fotog_P489aSOevwAo35ikoKsRKL.

¹⁶³ See *supra* Part I.A.

¹⁶⁴ N.Y. PENAL LAW § 260.1(1) (McKinney 2014).

¹⁶⁵ See, e.g., MEARS, *supra* note 35; Santonastaso et al., *supra* note 43; Ziff Testimony, *supra* note 36; *Industry Analysis*, *supra* note 44.

designer sample sizes for photo shoots.¹⁶⁶ Outside of fashion advertisements and commercial photo shoots in particular, young girls are increasingly hired to appear in designers' runway shows, which more often than not include sixteen-hour work days, forcing girls to forego critical sleep and accept minimal to sometimes no pay for the arduous hours, contributing to the notion that modeling itself can be a dangerous occupation.¹⁶⁷ Given the dangerous nature and risks involved for children in the modeling industry, a conviction under section 260.10 could be sustained even if the employer—i.e., a designer or photographer—was not expressly aware that the model was not at least seventeen years of age if circumstantial evidence indicates youth,¹⁶⁸ further encouraging stricter identification checking of youthful-appearing models.

In *Stenson v. J.H. Flick Construction Co.*,¹⁶⁹ the prominent case under section 260.10 regarding dangerous employment, a fifteen-year-old sustained serious injuries and subsequently died while working as a train brakeman.¹⁷⁰ The job consisted of signaling an engineer when to stop and move the train in order to position it near a steam shovel.¹⁷¹ The court found that despite lack of evidence that the child's employer was aware that he was a minor, the circumstances were actionable under section 260.10 as a dangerous occupation.¹⁷² Analogously, fashion models often engage in dangerous behavior, particularly during runway shows, such as at Alexander McQueen's spring 2000 collection, in which the models were suspended over the runway that was lined with metal spikes and nails, putting the models at risk for both dangerous falls and impalement.¹⁷³ The New York Senate has recognized that the lack of legal protection extended to child models under state law increases the risks that children will work in an unsafe environment.¹⁷⁴ Further, the high prevalence of eating disorders in the modeling industry alone indicates that there are occupational hazards associated with the job.¹⁷⁵ During Milan Fashion Week in 2006, a young model died of heart

¹⁶⁶ Amy DiLuna, *Sick World Where Size 4 Is Too Fat*, N.Y. DAILY NEWS, Feb. 16, 2010, at 7.

¹⁶⁷ GROSS, *supra* note 35; Carré Otis, Opinion, *Teenage Models Have Teenage Needs*, N.Y. TIMES (Sept. 13, 2012, 4:40 PM), <http://www.nytimes.com/roomfordebate/2012/09/13/sweet-16-and-a-runway-model/teenage-models-have-teenage-needs>; Ziff, *supra* note 33.

¹⁶⁸ *Cf. Stenson v. J.H. Flick Constr. Co.*, 130 N.Y.S. 555 (App. Div. 1911) (expressing doubt as to whether a conviction could be sustained if an employer had no notice or knowledge of the child employee's true age).

¹⁶⁹ 130 N.Y.S. 555.

¹⁷⁰ *Id.* at 555–56.

¹⁷¹ *Id.* at 556.

¹⁷² *Id.* at 556–58.

¹⁷³ Holly Boyle, *Coffins, Spikes, & 100M Tracks: The 10 Craziest Catwalks of All Time*, REFINERY29 (Aug. 16, 2012, 1:40 PM), <http://www.refinery29.com/crazy-runways>.

¹⁷⁴ INDEP. DEMOCRATIC CONFERENCE, *supra* note 50, at 5.

¹⁷⁵ See *supra* Part I.A.; see also Cassandra A. Soltis, *Dying to be a Supermodel: Can Requiring a Healthy BMI be Fashionable?*, 26 J. CONTEMP. HEALTH L. & POL'Y 49, 54–63 (2009).

failure while walking the runway due to complications from a severe and long-lasting eating disorder, emphasizing the dangers associated with being a runway model.¹⁷⁶ Minors are less equipped than adults to deal with the high-pressure environment of high fashion, and thus the occupation is more hazardous and unnecessary for children to partake in.¹⁷⁷ New York's child endangerment statute thus serves as a more potent form of deterrent against the widespread exploitation of child fashion models, and would complement existing child model legislation by encouraging its enforcement.

Hailey Clauson's experience alone evidences several instances in which section 260.10 would apply. Jason Parry engaged in several behaviors that demonstrate his apparent knowledge of the injurious effects his behavior might have on Clauson. First, Parry placed Clauson in poses and situations suggesting that he both provided her with alcohol and encouraged her to consume, or at least pretend to consume, the beverage.¹⁷⁸ Supplying alcohol to a minor is affirmative evidence of awareness of a likelihood of harm under section 260.10.¹⁷⁹ Further, there is a clear violation of the statute given the sexualized nature Clauson was posed in¹⁸⁰ because offenses under section 260.10 may be based on patterns of sexual behavior towards children.¹⁸¹ Several of the photographs depicted Clauson with various body parts and intimate undergarments either expressly or impliedly displayed or featured as the focal point of the photographs.¹⁸² Parry was aware that Clauson was a minor; thus, permitting and encouraging such poses could be characterized as a pattern of sexual behavior towards a child under section 260.10 because Clauson's moral welfare could conceivably be threatened by the activity.¹⁸³ These instances are merely examples and not an exclusive list of the myriad of situations in which section 260.10 might be applied to prohibit child fashion modeling. Section 260.10 thus passes muster under the intent of the law as well as New York precedent; however, there is a compelling counter-argument that must be dispelled before an in-depth proposal might be defined. Expanding the interpretation of child welfare endangerment requires an acknowledgement of the possible First Amendment freedom of speech

¹⁷⁶ *Where Size 0 Doesn't Make the Cut*, N.Y. TIMES, Sept. 22, 2006, at A20.

¹⁷⁷ Jan Jewett & Karen Peterson, *Stress and Young Children*, ERIC DIGEST, Dec. 2002, available at <http://ecap.crc.illinois.edu/ecearchive/digests/2002/jewett02.pdf>.

¹⁷⁸ Amended Complaint, *supra* note 115, at *7-10.

¹⁷⁹ See *People v. Strickland*, 909 N.Y.S.2d 846 (App. Div. 2010).

¹⁸⁰ Amended Complaint, *supra* note 115, at *7.

¹⁸¹ See *People v. Keindl*, 502 N.E.2d 577 (N.Y. 1986).

¹⁸² Amended Complaint, *supra* note 115, at *7-10.

¹⁸³ See, e.g., *City of New York v. Stringfellow's of N.Y., Ltd.*, 684 N.Y.S.2d 544 (App. Div. 1999); *People v. Allen*, No. 2002BX023994, 2003 WL 22056858, at *4-5 (N.Y. Crim. Ct. Aug. 27, 2003).

infringement that could occur as a result of restricting designers' and photographers' abilities to cast models that are underage.

III. ADDRESSING THE CRITICS: FASHIONING A CONSTITUTIONAL APPROACH TO CHILD MODELING REGULATION

Applying section 260.10 to the prohibition of child fashion models raises the potential counter-argument that the freedom of speech rights of actors in the fashion and modeling industry will be abridged by their inability to use younger models in advertising campaigns. Therefore, if the New York State legislature were to prohibit models under the age of seventeen from appearing in fashion advertisements under Penal Law section 260.10, it must be determined that the restriction would not infringe on the free speech rights of advertisers under the *Central Hudson*¹⁸⁴ commercial speech doctrine.¹⁸⁵

First Amendment jurisprudence in the United States often revolves around the amorphous penumbra known as commercial speech, a concept lacking an express definition that is universally accepted by the courts or legislature.¹⁸⁶ The United States Supreme Court has treaded carefully in carving out the parameters of commercial speech so as not to create too broad a definition for the doctrine, lest more deserving forms of speech slip through the cracks of First Amendment protections.¹⁸⁷ Commercial speech in its most basic iteration is that which proposes a commercial transaction and unequivocally covers fashion advertisements.¹⁸⁸

The commercial speech doctrine finds its modern definition in the landmark Supreme Court decision of *Central Hudson Gas & Electric Corp. v. Public Service Commission*,¹⁸⁹ which laid out the test that is still in use over three decades after the opinion was written. In striking down a regulation promulgated by the New York Public Service Commission that prohibited electric utilities from all promotional advertising activities, the Court established a four-prong test to evaluate the constitutionality of commercial speech regulations: 1) The speech sought to be regulated must neither be unlawful nor misleading; 2) there

¹⁸⁴ *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n*, 447 U.S. 557 (1980).

¹⁸⁵ The commercial speech doctrine developed in *Central Hudson* involves a four-part test designed to determine whether a restriction on commercial speech is violative of the First Amendment. *Id.* at 566.

¹⁸⁶ Courts have historically refused to promulgate a rigid definition of commercial speech. See *Bolger v. Youngs Drug Prods. Corp.*, 463 U.S. 60, 81 (1983); *Cent. Hudson*, 447 U.S. at 579 (Stevens, J., concurring).

¹⁸⁷ See *Cent. Hudson*, 447 U.S. at 579 (Stevens, J., concurring).

¹⁸⁸ See *Bd. of Trs. of State Univ. of N.Y. v. Fox*, 492 U.S. 469 (1989).

¹⁸⁹ *Cent. Hudson*, 447 U.S. at 557 (majority opinion).

must exist a substantial government interest in regulating the speech; 3) the regulation must directly advance the achievement of the government interest; and 4) the regulation must be narrowly tailored to the interest it seeks to promote.¹⁹⁰ The test results in an “intermediate” level of scrutiny used to evaluate commercial speech regulations.¹⁹¹ Each prong of the *Central Hudson* test deserves individual and discrete treatment in its application to child models.¹⁹²

A. *The Federal Trade Commission: A Simpler Solution?*

Under the first line of analysis of the *Central Hudson* test, any speech that is false, misleading, or deceptive is not extended protection under either the First Amendment or the commercial speech doctrine.¹⁹³ Speech that is knowingly untruthful has never been granted protection, and commercial speech in particular is closely regulated because of the consumer’s inability to verify the information put forward by an advertiser.¹⁹⁴ Featuring child models in fashion is currently not prohibited by either statutory or common law,¹⁹⁵ and the consumer’s access to truthful information from fashion advertisements is arguably increased by using models that are of the same age as the demographics targeted by the advertisements themselves.

Commercial speech also may not promote illegal transactions.¹⁹⁶ If the fashion advertisement featured child models acting in a way that specifically promoted an illegal activity while wearing the clothing or products being advertised, the speech would not survive analysis and would be fully unprotected, making analysis under *Central Hudson* irrelevant.¹⁹⁷ Fashion advertisements within the context of this Note—

¹⁹⁰ See *id.* at 564.

¹⁹¹ Ashutosh Bhagwat, *A Brief History of the Commercial Speech Doctrine (with Some Implications for Tobacco Regulation)*, 2 HASTINGS SCI. & TECH. L.J. 103, 107 (2010).

¹⁹² Application of the *Central Hudson* test requires analysis of each of the four prongs in turn. See *Cent. Hudson*, 447 U.S. at 566–71 (analyzing each prong individually in order to fully assess whether the restriction at issue was constitutional).

¹⁹³ See *id.* at 564; see also *Va. State Bd. of Pharm. v. Va. Citizens Consumer Council*, 425 U.S. 748, 771 (1976); *Hamling v. United States*, 418 U.S. 89, 94 (1974); *Dacourt Grp., Inc. v. Babcock Indus.*, 747 F. Supp. 157, 161 (D. Conn. 1990).

¹⁹⁴ *Va. State Bd.*, 425 U.S. at 771–72.

¹⁹⁵ Johnson, *supra* note 42, at 863–64 (“The modeling industry relies on . . . young thin models. The connection between size and age is direct—deprivation may not be required for a 13-year-old to maintain the traditional underweight form of today’s model, but it is required for a 20-year-old.”).

¹⁹⁶ See, e.g., *New Eng. Accessories Trade Ass’n v. Tierney*, 528 F. Supp 404 (1st Cir. 1982); *Cabash, Inc. v. Thone*, 651 F.2d 551 (8th Cir. 1981); *Dacourt*, 747 F. Supp. 157.

¹⁹⁷ See 15 U.S.C §§ 41–48 (2012).

those that do not feature child models engaging in illegal activities—therefore survive the first prong of the *Central Hudson* test.¹⁹⁸

B. *Substantiality of the Government's Interest in Child Modeling Regulations*

The second line of analysis under the *Central Hudson* test asks whether the government maintains a substantial interest in the regulation it seeks to enact.¹⁹⁹ Typically, fulfillment of this requirement is easily achieved by the legislature and the instances in which governmental regulations of commercial speech have been rejected under this prong are very limited, involving primarily interests that were too narrow or tenuously related to justify the sweeping regulations the government sought to implement.²⁰⁰ A prohibition against the use of child models in fashion advertisements must be reflective of the state government's interests in protecting the welfare of children in general, and more specifically, child models.

In the State of New York, the most striking examples of the government's interest in regulating the work of child models appear in Article 35 of the Arts and Cultural Affairs Law,²⁰¹ and section 150 of the Labor Law.²⁰² Sections 35.01, 35.03, and 35.07 provide for the instances in which children may act as performers, including as a model, as well as the strict labor procedures that must be followed in order to make such employment lawful.²⁰³ In 2013, the government drastically sharpened its focus on the welfare of child models in amending Labor Law section 150 to include print and runway models in the definition of "child performers," which increasingly highlights the government's desire to promote and ensure a safe work environment for child models.²⁰⁴ The existence of laws regulating and restricting the employment of children specifically as models substantiates the government's significant interest

¹⁹⁸ *Cent. Hudson*, 447 U.S. at 566.

¹⁹⁹ *See id.* at 564.

²⁰⁰ In rejecting commercial speech regulations under this prong, courts appear to conflate the third or fourth prongs of analysis under the *Central Hudson* test with the second prong, further supporting the notion that regulations are not typically struck down for purely a lack of substantial government interest. *See, e.g.*, *Marras v. City of Livonia*, 575 F. Supp. 2d 807 (E.D. Mich. 2008) (holding that a regulation prohibiting the parking of vehicles containing commercial messages on a visible street was unconstitutional because the regulation did not directly advance the government's interest in safety and aesthetics); *All Am. Sign Rentals, Inc. v. City of Orlando*, 592 F. Supp. 85, 88–89 (M.D. Fla. 1983) (holding that a regulation regarding trailer signs was unconstitutional because the regulation was not related to the state's safety and aesthetic interests).

²⁰¹ N.Y. ARTS & CULT. AFF. LAW §§ 35.01, 35.03, 35.07 (McKinney 2014).

²⁰² N.Y. LAB. LAW § 150 (McKinney 2014).

²⁰³ ARTS & CULT. AFF. §§ 35.01, 35.03, 35.07; *see also supra* Part I.C.

²⁰⁴ LAB. LAW § 150.

in protecting children and the manners in which they are employed as such. The State of New York also demonstrates a substantial interest in regulating the mental and physical health of child models.²⁰⁵ Section 154 of New York's Labor Law provides for the establishment of an advisory board to prevent eating disorders in child models, recognizing that child models are increasingly susceptible to diseases such as anorexia nervosa and bulimia nervosa.²⁰⁶ The bill proposing section 154 expressly mentioned the CFDA's health guidelines and the industry's inability to self-regulate.²⁰⁷ This discussion legitimized and substantiated the government's ability to establish the advisory board and the necessity of more forceful intervention in order to protect the welfare of child models.²⁰⁸

The New York State government's substantial interest in regulating the employment of children as models is palpable enough to justify a prohibition against the use of children as models in high-end fashion advertisements.²⁰⁹ This is most clearly evinced in *New York v. Ferber*,²¹⁰ in which the Supreme Court upheld a New York statute prohibiting persons from knowingly promoting sexual performances by children under the age of sixteen.²¹¹ The Court succinctly summarized the legislature's interest in protecting child welfare, stating that "[w]hen a definable class of material . . . bears so heavily and pervasively on the welfare of children engaged in its production, the balance of competing interests is clearly struck, and it is permissible to consider these materials as without the First Amendment's protection."²¹² While it is not being argued that fashion advertisements featuring children should be wholly without First Amendment protection, the Supreme Court's statement bears heavily on the clear and substantial interest that the New York State legislature takes in protecting children.

²⁰⁵ *Id.* § 154.

²⁰⁶ *Id.*

²⁰⁷ New York Sponsors Memorandum, S. 6158, 230th Cong. (2007).

²⁰⁸ *Id.*

²⁰⁹ New York State courts further support the substantial interest in protecting children's welfare from numerous sources of potential danger and abuse, including sex offenders, mental and physical health, and social stability. *See, e.g.*, *People v. Ferber*, 422 N.E.2d 523, 525–26 (N.Y. 1981) ("The State has a legitimate interest in protecting the welfare of minors within its borders, and, at times, that interest may transcend First Amendment concerns." (citation omitted)), *rev'd on other grounds*, *New York v. Ferber*, 458 U.S. 747 (1982); *People v. Meares*, 876 N.Y.S.2d 615, 619–20 (Crim. Ct. 2009) ("Protecting the public, especially children, from sex offenders is a primary governmental interest." (quoting Introducer's Memorandum in Support of Sen. Bill S. 11–B, at 2–3 (1996))); *People v. Oshry*, 502 N.Y.S.2d 590, 592 (Clarkstown Justice Ct. 1986) (explaining that there exists a "compelling interest of the State in safeguarding the physical and psychological well-being of minors").

²¹⁰ 458 U.S. 747.

²¹¹ *Id.* at 747.

²¹² *Id.* at 747–48.

Additionally, there exists a powerful argument that the potentially adverse effects of fashion and beauty advertising on both models and consumers warrant closer government regulation. Medical researchers have noted the significant relationship between media consumption and changing standards of physical beauty, even referring to eating disorders as “socially transmitted diseases.”²¹³ A recognizable link between media use, such as reading fashion magazines, which are rich with advertisements, and eating disorder symptomatology, including overall body dissatisfaction and experimenting with dangerous dieting practices, is consistently researched and supported.²¹⁴ Fashion models are at particular risk for eating disorders,²¹⁵ under pressure from their agencies²¹⁶ to fit into the small “sample sizes” that designers offer for editorial and advertising purposes.²¹⁷ Young girls in the industry that develop disordered eating habits are at risk of infertility, stunted bone development, and deterioration of brain and cardiovascular function, often coinciding with critical junctures of adolescent development.²¹⁸ Girls of increasingly younger ages are developing fears of becoming fat, reinforcing the social stigma associated with being overweight, as well as further encouraging abnormal dieting and eating habits.²¹⁹ The use of young models, while neither the sole nor the defining factor of causation in eating disorder development,²²⁰ arguably contributes to the thin ideal in fashion advertising and social thought, and might be aggressively diminished if designers, photographers, and advertisers were resigned to

²¹³ Christine Hsu, *Researchers Believe Government Should Ban Skinny Models to Curb Anorexia*, MED. DAILY (Mar. 2, 2012, 5:06 PM), <http://www.medicaldaily.com/articles/9226/20120302/anorexia-fashion-models-bulimia-eating-disorders-government.htm>.

²¹⁴ Helen Champion & Adrian Furnham, *The Effect of the Media on Body Dissatisfaction in Adolescent Girls*, 7 EUR. EATING DISORDERS REV. 213 (1999); Kristen Harrison & Joanne Cantor, *The Relationship Between Media Consumption and Eating Disorders*, 41 J. COMM. 40 (1997); Leora Pinhas et al., *The Effects of the Ideal of Female Beauty on Mood and Body Satisfaction*, 25 INT’L J. EATING DISORDERS 223 (1998).

²¹⁵ Santonastaso et al., *supra* note 43 (finding that partial-syndrome eating disorders were significantly more common among fashion models than among others).

²¹⁶ Lauren McCarthy, *Model Call: Amanda Gullickson*, WOMEN’S WEAR DAILY (Nov. 27, 2012), <http://www.wwd.com/eye/fashion/model-call-amanda-gullickson-6503525> (noting that a prominent young model’s “biggest shock” about her career was having to carefully monitor her diet); Otis, *supra* note 167 (“There is pressure on young girls to get thinner without any nutritional guidance or concern for the link between dieting and disordered eating.”).

²¹⁷ BEN BARRY, FASHIONING REALITY: A NEW GENERATION OF ENTREPRENEURSHIP 154 (2007); Otis, *supra* note 167 (“If you show up to a photo shoot and the only size available is a double-zero, the unspoken expectation is still loud and clear.”).

²¹⁸ Norman P. Spack, *Medical Complications of Anorexia Nervosa and Bulimia*, in THEORY AND TREATMENT OF ANOREXIA NERVOSA AND BULIMIA: BIOMEDICAL, SOCIOCULTURAL, AND PSYCHOLOGICAL PERSPECTIVES 5–19 (Steven Wiley Emmett ed., 1985).

²¹⁹ Levina Clark & Marika Tiggemann, *Appearance Culture in Nine- to 12-Year-Old Girls: Media and Peer Influences on Body Dissatisfaction*, 15 SOC. DEV. 628, 639 (2006).

²²⁰ *Factors That May Contribute to Eating Disorders*, NAT’L EATING DISORDERS ASS’N, <http://www.nationaleatingdisorders.org/factors-may-contribute-eating-disorders> (last visited Mar. 20, 2014).

using adults. The government thus has a substantial interest in not only further developing the current legislation in place for child models to establish more desirable labor and health conditions, but also in protecting the health of consumers, particularly those under the age of seventeen.

C. *Advancing the Government's Interests by Prohibiting Use of Child Models*

Under the third prong of the *Central Hudson* test, the state must demonstrate that the regulation it seeks to enact makes significant progress towards advancing the government's substantial interest.²²¹ This prong, like fulfilling the substantial government interest requirement, is similarly easily satisfied by establishing that the connection between the government's interest and the related regulation is neither too vague nor too attenuated.²²² An "immediate connection" is sufficient to satisfy that the regulation directly advances that government's interest.²²³ Additionally, the government must be able to address in a meaningful manner exactly how the regulation in question achieves its purpose in a material way, not simply in an ancillary or supplementary manner.²²⁴

The most straightforward strategy to satisfy this prong is to ensure that the regulation is not arbitrarily discriminatory in the types of communication it seeks to prohibit.²²⁵ In regulating the use of child models, the government must apply the prohibition uniformly to all areas of commercial advertising that pose the most salient dangers to children.²²⁶ A direct and succinct resolution would be to prohibit child models from appearing in fashion advertisements across the board, similar to child pornography laws.²²⁷ Child pornography laws provide umbrella protection to children's physical, mental, and moral welfare by punishing production, promotion, and possession of material containing children in sexual performances.²²⁸ Child modeling poses

²²¹ *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n*, 447 U.S. 557, 564 (1980).

²²² *Id.* ("[T]he regulation may not be sustained if it provides only ineffective or remote support for the government's purpose.")

²²³ *United States v. Edge Broad. Co.*, 509 U.S. 418, 434 (1993).

²²⁴ *Cent. Hudson*, 447 U.S. at 569.

²²⁵ *See Rubin v. Coors Brewing Co.*, 514 U.S. 476, 481 (1995) (noting that the third prong was unsatisfied because the government prohibited advertising the alcohol content on beer labels, but not in general advertisements).

²²⁶ *See id.* at 488–89 (explaining that the government's failure to prohibit the disclosure of alcohol content in all advertising, as opposed to solely on labels, was irrational and inconsistent and failed to directly and materially advance its goals).

²²⁷ N.Y. PENAL LAW § 263.00–.30 (McKinney 2014).

²²⁸ *See id.* §§ 263.05, .10, .11.

risks similar in type to those of child pornography, and many of the same justifications for prohibition exist in both categories: sexual abuse,²²⁹ psychological damage,²³⁰ and the creation of economic incentives to continue harmful behaviors,²³¹ for example. Preventing children from engaging in the precise behavior that the government deems dangerous, i.e. modeling in fashion advertisements, would drastically and directly diminish the opportunities for children to be harmed in said situations, meeting the requirements of the third prong.

D. *Narrowly Tailoring Child Fashion Modeling Regulation*

A commercial speech restriction will not pass constitutional muster if, after satisfying the first three prongs, it is not narrowly drawn to serve the precise governmental interest it asserts to serve without being excessive or over-inclusive.²³² Effective analysis of this fourth and final prong under the *Central Hudson* test requires that the government employ the least restrictive means, which is loosely interpreted to require only a reasonable fit between the government's goal and the means employed to achieve it.²³³ It is worth noting that legislatures do not have unlimited discretion in pursuing speech restrictions for paternalistic purposes.²³⁴

Regulating the ability of child models to pursue careers in high fashion modeling before reaching the age of maturity in order to better protect their well-being is arguably a paternalistic purpose on behalf of the government. The legitimacy of the government's concern over

²²⁹ See *New York v. Ferber*, 458 U.S. 747, 759 (1982) (noting that child pornography is linked to sexual abuse of children); *People v. Alexander*, No. B220072, 2012 WL 2311554, at *1–7 (Cal. Ct. App. June 19, 2012) (unpublished opinion) (stating that seven underage models alleged sexual abuse, sexual battery, child pornography, and statutory rape against Anand Jon, a prominent New York and California fashion designer). Anand Jon has also been indicted in New York based on the alleged assaults. Jack Leonard, *Designer Anand Jon Is Convicted in Sex Assaults; Jury Finds the Beverly Hills Man Guilty of Attacking Seven Girls and Young Women*, L.A. TIMES, Nov. 14, 2008, at B1; see also Johnson, *supra* note 42, at 866 (“An age limit . . . would certainly work to keep underage models from experiencing this type of abuse in the United States.”).

²³⁰ See *Ferber*, 458 U.S. at 756–57; Janet L. Treasure et al., *Models as a High-Risk Group: The Health Implications of a Size Zero Culture*, 192 BRIT. J. PSYCHIATRY 243 (2008).

²³¹ See *Ferber*, 458 U.S. at 761–62.

²³² *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n*, 447 U.S. 557, 564–65 (1980).

²³³ See *Bd. of Trs. of the State Univ. of N.Y. v. Fox*, 492 U.S. 469 (1989) (requiring a “fit that is not necessarily perfect, but reasonable; that represents not necessarily the single best disposition but one whose scope is ‘in proportion to the interest served’” (quoting *In re R.M.J.*, 455 U.S. 191, 203 (1982))).

²³⁴ See *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484 (1996) (holding that a state statutory ban on advertising of alcoholic beverages violated freedom of speech under the First Amendment). *But see id.* at 517 (Scalia, J., concurring) (“[I]t would also be paternalism for us to prevent the people of the States from enacting laws that we consider paternalistic . . .”).

protecting minors is apparent,²³⁵ however, and is perhaps one of the most important roles the government can occupy, often referred to as even “transcendent.”²³⁶ Particularly evidenced by the breadth and extent of the legislature’s substantial efforts to regulate the welfare of child performers, including models, the legislature demonstrably exercises its power in a permissible manner by controlling the manner of methods of child employment within the state.²³⁷ Any governmental attempt at regulating the use of child models in fashion advertisements would be regarded as an acceptable exercise of legislative power.

The determinative factor in the present analysis under the fourth prong of *Central Hudson* depends on whether the legislature might craft the regulation more narrowly to better serve its interest. This prong is closely connected to the third prong, which asks whether the regulation directly advances the government’s substantial interest.²³⁸ Under *Board of Trustees of the State University of New York v. Fox*, while a restriction must be narrowly tailored, the legislature need not eliminate all less restrictive alternatives in selecting a means by which to further its goals.²³⁹ Courts are hesitant to question the judgment of the legislature in furthering its interests and commercial speech restrictions will be struck down under this prong only where they are substantially excessive.²⁴⁰ In *Metromedia, Inc. v. City of San Diego*, the Supreme Court upheld a blanket ban on off-site billboard advertising, explaining that an inquiry into every less restrictive means was unnecessary because the ban was the only truly direct and effective approach to achieve the legislature’s goals of reducing traffic hazards and improving city aesthetics.²⁴¹ Analogously, prohibiting child models from appearing in all fashion advertisements would most effectively and neatly achieve the government’s goal of protecting child fashion models from sexualization and other instances of legal, financial, and mental

²³⁵ See *In re Stanford*, 537 U.S. 968, 970 (2002) (“[T]he very paternalism that our society shows toward youths and the dependency it forces upon them mean[s] that society bears a responsibility for the actions of juveniles”); *Moe v. Dinkins*, 533 F. Supp. 623, 629 (S.D.N.Y. 1981) (“The State possesses paternalistic power to protect and promote the welfare of children who lack the capacity to act in their own best interest.”).

²³⁶ See, e.g., *People v. Kahan*, 206 N.E.2d 333, 334 (N.Y. 1965) (Fuld, J., concurring) (taking into consideration “society’s transcendent interest in protecting the welfare of children”); *Young v. Young*, 921 N.Y.S.2d 895, 896 (App. Div. 2011) (considering as a factor “the State’s enormous interest in protecting the welfare of children” (quoting *In re Diane P.*, 494 N.Y.S.2d 881, 882 (App. Div. 1985))); *In re Smith*, 513 N.Y.S.2d 483, 485 (App. Div. 1987) (finding the “overwhelming State interest in protecting and promoting the best interests and safety of children” to be “[o]f paramount importance” (quoting *In re T. Children*, 506 N.Y.S.2d 378, 379 (App. Div. 1986))).

²³⁷ See *supra* Part I.C.

²³⁸ See *supra* Part III.C.

²³⁹ *Bd. of Trs. of the State Univ. of N.Y. v. Fox*, 492 U.S. 469, 478 (1989).

²⁴⁰ *Id.* at 479.

²⁴¹ *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 508 (1981).

exploitation by adults in particular, regardless of the content of the advertisement or the intended audience without being overly excessive. Additionally, the fact that a violation of New York Penal Law section 260.10 is criminally punishable as a misdemeanor is not dispositive of excessiveness and does not materially alter the analysis.²⁴²

Banning models under the age of seventeen from appearing in any and all fashion advertisements bears the risk of over-inclusiveness of the government's goal by proscribing speech that could be beneficial.²⁴³ Beneficial speech could result from the use of models under the age of seventeen modeling clothing intended for consumers under the age of seventeen because using older and more developed or mature models would likely give a less realistic depiction of how clothing is expected to look or be worn, especially in the case of small children's clothes. The legislature might alternatively promulgate speech that instead discourages the use of child models in fashion advertisements by raising awareness about the dangers of the industry to minors instead of implementing an outright ban. It is not necessary, however, to employ a "counterspeech" method to achieve the government's goals because courts regularly defer to the legislature's ability to determine which policies are the most effective.²⁴⁴ In *Posadas de Puerto Rico Ass'n v. Tourism Co. of Puerto Rico*, the Supreme Court upheld strict restrictions on casino gambling advertisements in Puerto Rico, reasoning that residents were likely to be induced to gamble regardless of whether they were educated about the risks of the behavior.²⁴⁵ Similarly, it is likely that industry actors will continue to use child fashion models in their advertisements, despite awareness of the potential dangers it poses to minors, as already evidenced by the industry's inability to follow the CFDA and *Vogue* guidelines, for example.²⁴⁶ Thus, a government ban on using child models only for high-end photo shoots and fashion advertisements that are not targeted at or intended for younger demographics would not be more restrictive than necessary. The ban would be narrowly tailored to achieve the legislature's interest in insulating and protecting child fashion models from the dangers of being thrust prematurely into an adult-oriented and driven world of high fashion.

In summary, a prohibition on employing child models in high-end fashion advertisements permissibly satisfies the *Central Hudson* commercial speech doctrine test and would not infringe on the free

²⁴² See *Am. Acad. of Pain Mgmt. v. Joseph*, 353 F.3d 1099, 1102, 1111 (9th Cir. 2004) (holding that a commercial speech restriction was constitutional under the least restrictive means test without considering whether the severity of punishment for violation was excessive).

²⁴³ See *Thompson v. W. States Med. Ctr.*, 535 U.S. 357 (2002).

²⁴⁴ *Posadas de P.R. Assocs. v. Tourism Co. of P.R.*, 478 U.S. 328, 344 (1986).

²⁴⁵ *Id.*

²⁴⁶ See *supra* Part I.B.

speech rights of the photographers, designers, and advertisers in the industry.

IV. OVER THE CONSTITUTIONAL HURDLE: A PROPOSAL FOR APPLICATION OF SECTION 260.10 TO CHILD FASHION MODELING

Children could be successfully prohibited from being employed as fashion models under New York Penal Law section 260.10 without infringing on the free speech rights of those involved in the fashion industry. The scope of such a prohibition deserves attention, however. Application of section 260.10 to child fashion modeling would operate most successfully if the ban were restricted to runway shows, editorials, photo shoots, and advertisements in the high-fashion sector of the industry and not to other types of catalogs or general advertisements for commercial goods and services given the higher incidence and potential for abuse in the fashion industry in particular.²⁴⁷ Thus, children could still permissibly be employed as models in catalogs; non-fashion magazines, such as those intended for children, teenagers, or families; or in advertisements for children's clothes or mass retailers, for example. These proposed boundaries are not all-inclusive and there could certainly exist other circumstances in which it would be acceptable to employ a child as a model without risking danger to the child.²⁴⁸

In instituting this proposal, it would initially be the duty of the New York courts to explore and define the parameters of the ban. State prosecutors seeking to hold industry actors accountable for the harmful behavior they have directed at children would most effectively develop the prohibition. Promulgating such a ban, however, would likely pose resistance and difficulties in the initial stages of implementation because section 260.10 does not expressly prohibit employment of child fashion models, or any other specific behavior in general, and thus the legislature may take an interest in effecting a unique statute explicitly criminalizing child fashion modeling. The state government would also likely have to invest significant resources in encouraging prosecution under section 260.10 and to spread awareness about the applicability of the law to child fashion modeling; however, these collective efforts by the New York state government are worthwhile and necessary to ensure the long-term safety and security of child fashion models.

²⁴⁷ See *supra* Part I.A.

²⁴⁸ For example, many high-end fashion designers offer children's lines and it would be necessary to hire children to model the clothes accurately. These situations would serve as an exception to the ban and should be highly regulated and monitored to ensure that the abuses the proposal is seeking to eliminate are not continuing.

The fashion and modeling industry would also be impacted by a prohibition on hiring child fashion models. Photographers, designers, editors, and agents would have to alter their casting practices to better enforce identification checks at the door and become more diligent in ensuring that the girls they scout on the street are not underage, or must at least wait until the models they have “discovered” turn seventeen before actually employing them.²⁴⁹ A ban on hiring child fashion models, however, is unlikely to have a drastically negative impact on the industry because there exists a plethora of beautiful and talented adult models that may still be employed.²⁵⁰ Countless modeling agencies, designers, fashion magazines, and the like, already claim to be working towards the elimination of hiring underage models; thus, a statutory ban would merely serve as a powerful incentive to remain true to their intent in protecting underage models.

Finally, the broader context of a ban on the employment of child fashion models must be examined. Section 260.10, a New York statute, would only be applicable in the State of New York. It is certainly possible that photographers, designers, casting directors, and others in the industry could use child fashion models in another state to avoid jurisdiction under section 260.10. However, the center of the fashion and modeling industries in the United States is located in New York City, and the logistical and financial complications associated with potentially moving the industry to another location would be too complex and significant to justify the small trade-off of using younger models.²⁵¹ New York City Fashion Week is an institution in and of itself,²⁵² and New York City is home to the most popular fashion magazines in the United States, making it inconvenient and impractical for a great portion of industry actors to take any aspect of their operations to another state instead of simply hiring mature models.²⁵³ It is also not improbable that upon success of a ban on child fashion modeling under section 260.10, other states or alternatively, the federal government, will follow suit to ensure uniformity in the protection of

²⁴⁹ Wilson, *supra* note 55.

²⁵⁰ This is evidenced by the plethora of successful fashion models that are over the age of seventeen, including all of the world’s highest paid models. See Solomon, *supra* note 1.

²⁵¹ Hitha Prabhakar, *Price of Admission*, FORBES (Feb. 2, 2007, 12:01 AM), http://www.forbes.com/2007/02/01/price-of-admission-forbeslife-cx_hp_0202price.html.

²⁵² Eric Wilson, *A New Home for New York Fashion Week*, N.Y. TIMES (Feb. 2, 2009), <http://www.nytimes.com/2009/02/03/fashion/03TENTS.html>.

²⁵³ Hearst Corporation, for example, owns *ELLE*, *Harper’s Bazaar*, and *Marie Claire* magazines, three of the top fashion magazines, and is based in New York. See Emma Bazilian, *Hearst Projecting September Ad Growth for Fashion Set: Elle, Bazaar, Marie Claire Closing Record-Breakers*, ADWEEK (July 10, 2013, 9:31 AM), <http://www.adweek.com/news/press/hearst-projecting-september-ad-growth-fashion-set-151085>. For a brief history of the Hearst Corporation, see *History*, HEARST CORP., <http://www.hearst.com/newsroom/history> (last visited Mar. 25, 2014).

the welfare of child models. New York's implementation of a criminal ban on the employment of child fashion models would set a unique standard and would constitute a significant step in a positive direction towards the improvement of the plight of child models.

CONCLUSION

The use of New York's child endangerment statute, Penal Law section 260.10, to protect the welfare of child fashion models furthers the purpose of the statute by ensuring that children engaged in the modeling industry are not unduly subjected to psychological, physical, and emotional abuses. The use of section 260.10 would not be an undue restraint on the First Amendment rights of industry professionals because the legislature demonstrates a substantial and valid interest in the protection of child fashion models. The prohibition against using child fashion models would serve to effectively reduce the potential for children to be placed into compromising situations that they are psychologically unable to cope with, and would force the modeling and fashion industries to shift the focus to models that are more physically and mentally developed. Expanding section 260.10 in such a manner would be consistent with the previously broad and varied application of the statute, and would be adequately within the confines of the commercial speech doctrine under the *Central Hudson* test. While Hailey Clauson brought suit against photographer Jason Parry under a variety of legal claims, application of section 260.10 to her circumstances would, in one swift motion, circumvent future similar situations for Clauson and other young fashion models without having to apply countless statutes that do not wholly address the true matter at issue: Child fashion models should not be hired in the circumstances they are currently being hired.