

# Chapter 3

## The Economic, Social, and Regulatory Aspects of Advertising

### Objectives

TO IDENTIFY AND EXPLAIN THE ECONOMIC, SOCIAL, ETHICAL, AND LEGAL ISSUES ADVERTISERS MUST CONSIDER. The basic economic principles that guided the evolution of advertising also have social and legal effects. When they are violated, social issues arise and the government may take corrective measures. Society determines what is offensive, excessive, and irresponsible; government bodies determine what is deceptive and unfair. To be

law-abiding, ethical, and socially responsible, as well as economically effective, advertisers must understand these issues.

After studying this chapter, you will be able to:

- \* Classify the two main types of social criticisms of advertising.
- \* Employ an economic model to discuss advertising's effect on society.
- \* Explain the difference between social responsibility and ethics in advertising.
- \* Understand how governments regulate advertising here and abroad.
- \* Discuss recent court rulings that affect advertisers' freedom of speech.
- \* Describe how federal agencies regulate advertising to protect both consumers and competitors.
- \* Define the roles state and local governments play in advertising regulation.
- \* Discuss the activities of nongovernment organizations in fighting fraudulent and deceptive advertising.

In their constant quest to attract consumers and associate products with “cool” or luxurious and hedonistic lifestyles, some advertisers have consistently pushed the boundaries of what is ethically and socially acceptable. American advertising has always embraced erotic suggestiveness while usually staying clear of full nudity and explicit sexuality. Campaigns that blur that distinction often arouse controversy and even protest. For two decades, the most notorious purveyor of sensual “cool” was Calvin Klein—beginning in the late 1970s with the “nothing comes between me and my Calvin’s” campaign featuring Brooke Shields and culminating in 1998’s “kiddie-porn” controversy. Klein’s racy advertisements provoked the ire of conservative groups but earned him the respect of edgier critics who viewed his campaigns as artistically ironic. In the end, the controversies benefited Klein, as the media firestorm provided free publicity for his brand name and underscored the sophisticated “cool” of the campaigns. Since the millennium, however, the mantle of “most controversial advertiser” has passed from Klein to trendy teen retailer Abercrombie and Fitch (A&F). A subsidiary of The Limited since

1988, A&F flirted with controversy in the early 1990s, when a black-and-white print ad, ostensibly featuring a father and son on a boating outing, was misinterpreted as a gay couple. Capitalizing on the angle, A&F hired iconic 1980s fashion photographer Bruce Weber, who had been responsible for some of the steamier Calvin Klein images, as the principal photographer for the *A&F Quarterly*, a hybrid catalog and lifestyle magazine, known as a “magalog.” According to *Quarterly* contributor Sean Collins, the magalog was intended as an “outside-looking-in fantasy version of college life” that parodied “the idealized life of leisure, while at the same time celebrating that ideal for its very unattainability.” The magazine originally featured pseudo-adult photographs of hunky, underdressed young adult men, but as it became increasingly popular in campus Greek culture, it began featuring under- and undressed women as well, in increasingly suggestive sexual situations. The publication’s articles, sexually explicit but often tongue-in-cheek, underscored this “sex and games” attitude. Although opposition always existed toward Weber’s erotic photographs, the explicit articles bred controversy, particularly as it was hard to see what they had to do with the clothing. A feature article on alcohol consumption, called “Drinking 101,” caught the attention of Mothers Against Drunk Driving, and the magazine’s 1999 issue “Naughty or Nice” prompted Illinois Lieutenant Governor Corinne Wood to call for a boycott of the retailer for “peddling soft porn in the guise of a clothing catalog.” In 2002–2003, the company faced two public relations problems regarding ethnically insensitive T-shirt designs and racial discrimination in hiring practices. So when controversy over the *Quarterly* broke out again, in December 2003, this time over an article on group sex, the company finally reformatted the magalog and introduced a new publication for summer 2004, *A&F Magazine*, which focused exclusively on artistic photographs of models wearing A&F clothing. The outcry over the *Quarterly* occurred in spite of the fact that the magalog was sold in a wrapper labeling it as “for over 18” and required identification to purchase. Although containing no full-frontal nudity and only marginally raunchier than magazines like *Maxim* and *Stuff*, the confusion of the soft-porn genre

with conventional advertising seemed particularly distressing to conservative critics like the National Coalition for the Protection of Children and Families, who claim that the company uses “clothing to sell a sexual philosophy.” Especially since the target market is teens and young adults, the advertising is viewed as transgressing the proper place of marketing. Critics claim it reverses the conventional purpose of ads, using the clothing to sell the lifestyle rather than invoking the lifestyle to sell the clothing. But as with the Calvin Klein ads, the impact of controversy on brand-name recognition is sometimes worth the risk to the corporate image: Abercrombie and Fitch’s profits were up for the second quarter of 2004, and copies of the last issue of the A&F Quarterly fetch up to \$100 on eBay. And although the lifestyle depicted may not be popular with certain groups, the clothes themselves have achieved the status of uniform among preppy suburban youth. In advertising, it seems generating controversy is a sure way to be seen.

## The Many Controversies about Advertising

Advertising is one of the most visible activities of business. By inviting people to try their products, companies risk public criticism and attack if their advertising displeases or offends the audience or if their products don’t measure up to the advertised promise. Proponents of advertising say it’s therefore safer to buy advertised products because, when a company’s name and reputation are on the line, it tries harder to fulfill its promises (especially when it lists product benefits).

Advertising is both applauded and criticized not only for its role in selling products but also for its influence on the economy and on society. For years, critics have denigrated advertising for a wide range of sins—some real, some imagined.

John O’Toole, the late chair of Foote, Cone & Belding and president of the American Association of Advertising Agencies, pointed out that many critics attack advertising because it isn’t something else. Advertising isn’t journalism, education, or entertainment—although it often performs the tasks of all three. To go back to Albert Lasker’s original definition, advertising is salesmanship in print (or in today’s parlance, in the paid space and time of mass media). As a means of communication, advertising shares certain traits

of journalism, education, and entertainment, but it shouldn't be judged by those standards. Sponsors advertise because they hope it will help them sell some product, service, or idea.

Notwithstanding O'Toole's articulate defense, many controversies still swirl around the whole field of advertising. Some of them focus on advertising's economic role. For example, how does advertising affect the value of products? Does it cause higher or lower prices? Does it promote competition or discourage it? How does advertising affect overall consumer demand? What effect does it have on consumer choice and on the overall business cycle?

Other controversies focus on the societal effects of advertising. For instance, does advertising make us more materialistic? Does it force us to buy things we don't need? Does it reach us subliminally in ways we can't control? How does it affect the art and culture of our society? Does advertising debase our language?

From these economic and social controversies, new questions arise regarding the responsibility for and control of advertising. What is the proper role for participants in the marketing process? How much latitude should marketers have in the kinds of products they promote and how they advertise them? And what about consumers? Don't they have some responsibility in the process? Finally, what is the proper role of government? What laws should we have to protect consumers? And what laws go too far and violate the marketer's freedom of speech?

These are important questions, and there are no simple answers. But debate is healthy. This chapter addresses some of the major questions and criticisms about advertising, both the pros and the cons, and delves into the regulatory methods used to remedy advertisers' abuses.

Recall from Chapter 2 the underlying principle of free-market economics—that a society is best served by empowering people to make their own decisions and act as free agents, within a system characterized by four fundamental assumptions: self-interest, many buyers and sellers, complete information, and absence of externalities (social costs).

This fundamentally utilitarian framework, derived from the goal of society to promote behaviors that foster the greatest good for the most people, offers a system of economic activity—free enterprise—that has

accomplished that goal better than any other economic system in history. This is why societies around the world are increasingly adopting free-enterprise economics.

By using this framework for our discussion of advertising controversies, we have a basis for understanding how advertising may contribute to, or detract from, the basic goal of free enterprise: “the most good for the most people.”

## The Economic Impact of Advertising

Advertising accounts for approximately 2.3 percent of the U.S. gross domestic product (GDP). In relation to the total U.S. economy, this percentage is small, but it’s higher than in most countries. It amounts to a spending level of \$437.60 for every person in the country—the highest per capita spending in the world. As Marcel Bleustein-Blanchet, the father of modern French advertising, pointed out, it’s no coincidence that the level of advertising investment in a country is directly proportional to its standard of living.

The economic effect of advertising is like the break shot in billiards or pool. The moment a company begins to advertise, it sets off a chain reaction of economic events. The extent of the chain reaction, although hard to predict, is related to the force of the shot and the economic environment in which it occurred. Let’s consider the economic questions we posed earlier.

### Effect on the Value of Products

Why do most people prefer Coca-Cola to some other cola? Why do some people prefer Calvin Klein underwear to some other unadvertised brand? Are the advertised products functionally better? Not necessarily. But, in the mind of the consumer, advertising has given these brands added value.

In the mid-1960s, a famous psychologist named Ernest Dichter asserted that a product’s image, created in part by advertising and promotion, is an inherent feature of the product itself. Subsequent studies showed that while an ad may not address a product’s quality directly, the positive image conveyed by advertising may imply quality. Moreover, by simply making the product better known, advertising can make the product more desirable to the consumer. In these ways, advertising adds value to the brand. That’s why people pay more for Bufferin than an unadvertised brand displayed right next to it—even though all buffered aspirin, by law, is functionally the same.

Advertising also adds value to a brand by educating customers about new uses for a product. Kleenex was originally advertised as a makeup remover, later as a disposable handkerchief. AT&T first promoted the telephone as a necessity and later as a convenience.

One advantage of the free-market system is that consumers can choose the values they want in the products they buy. If, for example, low price is important, they can buy an inexpensive economy car. If status and luxury are important, they can buy a fancy sedan or racy sports car. Many of our wants are emotional, social, or psychological rather than functional. One way we communicate who we are (or want to be) is through the products we purchase and display. By associating the product with some desirable image, advertising offers people the opportunity to satisfy those psychic or symbolic wants and needs.

In terms of our economic framework, by adding value to products, advertising contributes to self-interest—for both the consumer and the advertiser. It also contributes to the number of sellers. That increases competition, which also serves the consumer's self-interest.

## Effect on Prices

If advertising adds value to products, it follows that advertising also adds cost, right? And if companies stopped all that expensive advertising, products would cost less, right?

Wrong.

Some advertised products do cost more than unadvertised products, but the opposite is also true. Both the Federal Trade Commission and the Supreme Court have ruled that, by encouraging competition, advertising has the effect of keeping prices down. That again serves the consumer's self-interest. And that is why professionals such as attorneys and physicians are now allowed to advertise.

Sweeping statements about advertising's positive or negative effect on prices are likely to be too simplistic. We can make some important points, though:

- \* As one of the many costs of doing business, advertising is indeed paid for by the consumer who buys the product. In most product categories, though, the amount spent on advertising is usually very small compared with the total cost of the product.

- \* Advertising is one element of the mass-distribution system that enables many manufacturers to engage in mass production, which in turn lowers the unit cost of products. These savings can then be passed on to consumers in the form of lower prices. In this indirect way, advertising helps lower prices.
- \* In industries subject to government price regulation (agriculture, utilities), advertising has historically had no effect on prices. In the 1980s, though, the government deregulated many of these industries in an effort to restore free-market pressures on prices. In these cases, advertising has affected price—usually downward, but not always.
- \* In retailing, price is a prominent element in many ads, so advertising tends to hold prices down. On the other hand, national manufacturers use advertising to stress features that make their brands better; in these cases advertising tends to support higher prices for their brands.

## Effect on Competition

Some observers believe advertising actually restricts competition because small companies or industry newcomers can't compete with the immense advertising budgets of large firms.

It's true that intense competition does tend to reduce the number of businesses in an industry. However, some of the firms eliminated by competition may be those that served customers least effectively. In other cases, competition is reduced because of mergers and acquisitions (big companies working in their own self-interest).

High costs may inhibit the entry of new competitors in industries that spend heavily on advertising. In some markets, the original brands probably benefit greatly from this barrier. However, the investments needed for plants, machinery, and labor are of far greater significance. These are typically the real barriers to entry, not advertising.

Advertising by big companies often has only a limited effect on small businesses because a single advertiser is rarely large enough to dominate the whole country. Regional oil companies, for example, compete very successfully with national oil companies on the local level. In fact, the freedom to advertise encourages more sellers to enter the market. And we've all seen non-advertised store brands of food compete very effectively with nationally advertised brands on the same grocery shelves.

## Effect on Consumer Demand

The question of advertising's effect on total consumer demand is extremely complex. Numerous studies show that promotional activity does affect aggregate consumption, but they disagree as to the extent. Many social and



economic forces, including technological advances, the population's educational level, increases in population and income, and revolutionary changes in lifestyle, are more significant. For example, the demand for CD players, cellular phones, and personal computers expanded at a tremendous rate, thanks in part to advertising but more to favorable market conditions. At the same time, advertising hasn't reversed declining sales of such items as hats, fur coats, and manual typewriters.

As we shall discuss in Chapter 6, advertising can help get new products off the ground by giving more people more "complete information," thereby stimulating primary demand—demand for the entire product class. In declining markets, when the only information people want is price information, advertising can influence selective demand—demand for a particular brand. But the only effect it will have on primary demand is to slow the rate of decline. In growing markets, advertisers generally compete for shares of that growth. In mature, static, or declining markets, they compete for each other's shares—conquest sales.

### Effect on Consumer Choice

For manufacturers, the best way to beat the competition is to make their product different. For example, look at the long list of car models, sizes, colors, and features designed to attract different buyers. And grocery shelves may carry more than 100 different brands of breakfast cereals—something for everybody.

The freedom to advertise encourages businesses to create new brands and improve old ones. When one brand reaches market dominance, smaller brands may disappear for a time. But the moment a better product comes along and is advertised skillfully, the dominant brand loses out to the newer, better product. Once again, the freedom to advertise promotes the existence of more sellers, and that gives consumers wider choices.

### Effect on the Business Cycle

The relationship between advertising and gross domestic product has long been debated. John Kenneth Galbraith, a perennial critic of advertising, concedes that, by helping to maintain the flow of consumer demand (encouraging more buyers), advertising helps sustain employment and income. But he maintains that, despite declines in the value of the dollar, the U.S. trade deficit persists because advertising and marketing activities create consumer preference for certain foreign products.

Historically, when business cycles dip, companies cut advertising expenditures. That may help short-term profits, but studies prove that businesses that continue to invest in advertising during a recession are better able to protect, and sometimes build, market shares. However, no study has shown that if everybody just keeps advertising, the recessionary cycle will turn around. We conclude that when business cycles are up, advertising contributes to the increase. When business cycles are down, advertising may act as a stabilizing force by encouraging more buyers to buy.

### The Abundance Principle: The Economic Impact of Advertising in Perspective

To individual businesses such as Calvin Klein, the local car dealer, and the convenience store on the corner, advertising pays back more than it costs. If advertising didn't pay, no one would use it. And the various news and entertainment media that depend on advertising for financial support would go out of business.

Advertising costs less for the consumer than most people think. The cost of a bottle of Coke includes about a penny for advertising. And the \$20,000 price tag on a new car usually includes a manufacturer's advertising cost of less than \$400.

To the economy as a whole, the importance of advertising may best be demonstrated by the abundance principle. This states that in an economy that produces more goods and services than can be consumed, advertising serves two important purposes: It keeps consumers informed of their alternatives (complete information), and it allows companies to compete more effectively for consumer dollars (self-interest). In North America alone, the U.S. and Canadian economies produce an enormous selection of products. Most supermarkets carry more than 30,000 different items. Each carmaker markets dozens of models. And many suppliers compete for the consumer dollar. This competition generally results in more and better products at similar or lower prices.

Advertising stimulates competition (many buyers and sellers). In countries where consumers have more income to spend after their physical needs are satisfied, advertising also stimulates innovation and new products. However, no amount of advertising can achieve long-term acceptance for products that do not meet consumer approval. Despite massive advertising expenditures, fewer than a dozen of the 50 best-known cars developed in the twentieth century are still sold today.

Advertising stimulates a healthy economy. It also helps create financially healthy consumers who are more informed, better educated, and more demanding. As a result, consumers now demand that manufacturers be held accountable for their advertising. This has led to an unprecedented level of social criticism and legal regulation, the subject of our next sections.

## The Social Impact of Advertising

Because it's so visible, advertising gets criticized frequently, for both what it is and what it isn't. Many of the criticisms focus on the `style` of advertising, saying it's deceptive or manipulative. Collectively we might refer to these as short-term manipulative arguments. Other criticisms focus on the `social` or `environmental impact` of advertising. These are long-term macro arguments.

In our discussion of the economic impact of advertising, we focused primarily on the first two principles of free-market economics: self-interest and many buyers and sellers. The social aspect of advertising typically involves the last two principles: `complete information` and `absence of externalities`. In fact, social issue debates can be seen as instances where advertising tends to violate one or more of these basic economic principles. We can examine many issues from these two perspectives. Some of the most important are deception and manipulation in advertising, the effect of advertising on our value system, commercial clutter, stereotypes, and offensiveness. Let's look at some of these common criticisms of advertising, debunk some misconceptions, and examine the problems that do exist.

### Deception in Advertising

One of the most common short-term arguments about advertising is that it is so frequently deceptive. Professor Ivan Preston notes that the essence of a marketplace lies in the willingness of buyers and sellers to enter commercial transactions. Anything that detracts from the satisfaction of the transaction produces a loss of activity that ultimately hurts both parties. If a product does not live up to its ads, dissatisfaction occurs—and in the long term that is as harmful to the advertiser as to the buyer.

For advertising to be effective, consumers must have confidence in it. So any kind of deception not only detracts from the complete information principle of free enterprise but also risks being self-defeating. Even meaningless (but legal) puffery might be taken literally and therefore become deceptive. Puffery refers to

exaggerated, subjective claims that can't be proven true or false, such as "the best," "premier," or "the only way to fly."

Under current advertising law, the only product claims—explicit or implied—that are considered deceptive are those that are *factually false* or convey a false impression and therefore have the potential to deceive or mislead reasonable people. But puffery is excluded from this requirement because regulators maintain that reasonable people don't believe it anyway. Preston points out that since advertisers regularly use puffery and nonproduct facts to enhance the image of their products, they must think consumers *do* believe it. Nonproduct facts are not about the brand but about the consumer or the social context in which the consumer uses the brand. An example is "Pepsi. The choice of a new generation."

The fact is that advertising, by its very nature, is *not* complete information. It is biased in favor of the advertiser and the brand. People expect advertisers to be proud of their products and probably don't mind if they puff them a little. But when advertisers cross the line between simply giving their point of view and creating false expectations, that's when people begin to object. One problem is the difficulty of seeing the line, which may be drawn differently by different people. Papa John's Pizza no doubt thought it was just puffing when it advertised "Better ingredients. Better pizza." Pizza Hut saw it differently, though, and sued Papa John's for deceptive advertising. A U.S. District judge agreed and awarded Pizza Hut close to half a million dollars in damages. The judge then ordered Papa John's to stop using its "Better ingredients" slogan. This decision was later overturned on appeal, but the case still goes to show that there are limits on what an advertiser can safely puff. Preston points out, "Only puffs open to measurement lose their invisible shields. If Papa John's says it has better dough, you can attack it. But if Papa John's says it's better overall, that's OK. The bigger the lie, the bigger the protection. Isn't that amazing?" For more on this story and on puffery, see the Ethical Issue: "Truth in Advertising: Fluffing and Puffing," on page 72.

Ivan Preston believes these kinds of problems can be avoided if marketers simply improve the kind of information they give in their advertising. He would require advertisers to have a reasonable basis for any claims they make, whether those claims are facts about the product, nonfacts such as "Coke is it," or nonproduct facts.

This, he believes, would contribute positively to our free market system. Ad Lab 3–A lists some other common deceptive practices.

## The Subliminal Advertising Myth

Wilson Bryan Key promotes the notion that, to seduce consumers, advertisers intentionally create ads with sexual messages hidden in the illustrations just below the limen—or the threshold of perception. He calls this subliminal advertising. His premise is that by embedding dirty words in the ice cubes in a liquor ad, for instance, advertisers can somehow make us want to buy the product. Over the years, many academic studies have completely debunked this theory. In fact, to date, no study has proved that such embedding exists or that it would have any effect if it did exist. Unfortunately, by promulgating this fiction, Key has been able to sell many thousands of books; worse, he has propagated a generation of consumers who believe in the poppycock of subliminal advertising.

The chord that Key has been able to touch on, though, is important to discuss: the widespread fear that advertisers are messing with our heads—manipulating us psychologically, and without our consent, into buying things we don't want or need. This gets to the heart of the `complete information` principle because the criticism suggests that advertising does not give consumers information upon which to base rational decisions, but rather manipulates us through brainwashing. Consumers are, therefore, like captured prey, helpless in the jaws of marketing predators.

If this were true, it would be cause for great alarm and a congressional investigation. But, in fact, if we stop to think about it, we all know it's `not` true. Marketers introduce thousands of new products to the marketplace every year. And every year—despite massive advertising expenditures—the vast majority of them fail. Why? Because of competition—many sellers are fiercely competing for the patronage of the same customers. Only some succeed. Most fail.

If you think about all the products you buy, how many involve a choice between different brands and different styles? And how many involve a decision based on price or convenience? Probably most. So how many of your purchases can you trace to having been helplessly manipulated? Probably none. You receive information from many different sources: friends and relatives, store displays, ads, packaging, and retail store clerks. At some

point, you make a decision. In many cases, your decision is not to buy at all—to wait for either more information or more money. As always, the customer, acting in his or her own self-interest, is king.

## The Effect of Advertising on Our Value System

A related long-term argument, often voiced by certain professional critics—sociologists, journalists, consumer advocates, and government regulators—is that advertising degrades people’s value systems by promoting a hedonistic, materialistic way of life. Advertising, they say, encourages us to buy more cars, more CDs, more clothing, and more junk we don’t need. It is destroying the essence of our “citizen democracy,” replacing it with a self-oriented consumer democracy.

Critics claim advertising manipulates us into buying things by playing on our emotions and promising greater status, social acceptance, and sex appeal. It causes people to take up harmful habits, makes poor kids buy \$170 sneakers, and tempts ordinary people to buy useless products in the vain attempt to emulate celebrity endorsers. Again, they claim advertising is so powerful consumers are helpless to defend themselves against it.

Once again, this argument exaggerates the power of advertising. In fact, most Americans express a healthy skepticism toward it. One study showed that only 17 percent of U.S. consumers see advertising as a source of information to help them decide what to buy. Perhaps that’s why more advertised products fail than succeed in the marketplace.

Still, this may be the most damning criticism of advertising because there’s no question that advertisers do indeed spend millions trying to convince people their products will make them sexier, healthier, and more successful. The very amount of advertising we witness every day seems to suggest that every problem we have can be solved by the purchase of some product.

Even if we assume that most people can willingly accept or reject an advertising message, they are still not getting the whole picture. After all, advertising is supported by marketers who want to sell their products, but nobody markets the opposite stance of why we don’t need to or shouldn’t buy a particular product at all. In this sense, consumers don’t have complete information, so our advocacy system has failed. This is an important issue of externalities, because the aggregate activities of the nation’s advertisers affect many people outside the immediate marketing transaction and create an unexpected cost to society.

## The Proliferation of Advertising

One of the most common long-term complaints about advertising is that there's just too much of it. In the United States alone, the average person may be exposed to 500 to 1,000 commercial messages a day. With so many products competing for attention (more than 30,000 in the average supermarket), advertisers themselves worry about the negative impact of excessive advertising. According to a recent study by the American Association of Advertising Agencies, ad clutter is still on the rise. In 2002, the amount of nonprogram time ranged from a low of 16 minutes per hour in prime time to nearly 21 minutes per hour in daytime, a day part that is particularly important to advertisers. The networks add to the problem themselves by jamming every possible moment with promotions for their shows. Too much advertising creates an externality not only for consumers (nuisance), but for the advertisers themselves—the more commercials that hit the consumer's brain, the less effective paid advertising is. Conscious of this, Meredith Broadcasting Group cut 15 percent of its advertising inventory from local newscasts at its CBS-affiliate, WGNX Atlanta, and saw its household ratings go up 20 percent. Higher ratings, of course, means they can charge more for their remaining commercial time. Hopefully, other stations will follow suit.

While the clutter problem is irksome to viewers and advertisers alike, most people tolerate it as the price for free TV, freedom of the press, and a high standard of living. However, with the proliferation of new media choices, this externality is only likely to get worse. Virtually every popular website is cluttered with advertising banners, and our e-mail boxes are flooded with advertising messages on a daily basis. While the Federal Communications Commission exercises no jurisdiction over the Internet, it did consider reinstating commercial time limits on television. But, as of now, the only limits currently in force relate to TV programming aimed at children 12 and under—advertising may not exceed 10.5 minutes per hour on weekends and 12 minutes per hour on weekdays.

Clutter is not so evident in other countries. In France, for example, government-owned stations can carry no more than 12 minutes of commercials per hour. During movies there is only one 4-minute commercial break, although the government is considering changing that rule to allow two breaks.

In North America we should be so lucky. During election periods, the clutter problem gets worse, seriously devaluing an advertiser's commercial. One year, in fact, after an unexpectedly large number of political ads ran during the fall election season, the Association of Canadian Advertisers urged its members to try to renegotiate the prices they had been charged for air time during that period.

## The Use of Stereotypes in Advertising

Advertising has long been criticized for insensitivity to minorities, women, immigrants, the disabled, the elderly, and a myriad of other groups—that is, for not being “politically correct.” This long-term argument also addresses externalities because the very presence of advertising affects the nature of our culture and environment, even when we do not want it. This is ironic, because marketing and advertising practitioners are supposed to be professional students of the communication process and consumer behavior (a subject we cover in Chapter 5). But, in fact, they sometimes lose touch with the very people they're trying to reach. This is one reason the discipline of account planning (discussed in Chapter 4) is growing so rapidly.

Since the 1980s, national advertisers have become more sensitive to the concerns of minorities and women. Latinos, African Americans, Asians, Native Americans, and others are now usually portrayed favorably in ads, not only because of pressure from watchdog groups, but also because it's just good business; these consumers represent sizable target markets. Marilyn Kern-Foxworth, a Texas A&M professor and an expert on minorities in advertising, points out that positive role portrayal in some mainstream ads has had a positive effect on the self-esteem of African-American youth. As we'll see in Chapter 4, this positive trend has accelerated with the emergence of many ad agencies owned and staffed by minorities that specialize in reaching minority markets.

In national advertising, the image of women is also changing from their historic depiction as either subservient housewives or sex objects (see the Ethical Issue, “Does Sex Appeal?” in Chapter 12). This may be partially due to the increasing number of women in managerial and executive positions with both advertisers and agencies. Stanford professor Debra Meyerson says “the glass ceiling definitely exists, but at the same time, there are an increasing number of women who are breaking through it.” By 2000, more than 60 percent of all women were participating in the workforce, with more than 20 million of them in managerial and professional careers. Advertisers want to reach, not offend, this sizable market of upwardly mobile consumers. Some agencies now



retain feminist consultants to review ads that may risk offending women. And in 2003, Ann Fudge shattered the glass ceiling when she was named chairman and CEO of Young and Rubicam and became the first African-American woman to head a major U.S. agency.

However, problems still exist, especially in local and regional advertising and in certain product categories such as beer and sports promotions. Many advertisers are just not aware of the externalities that their ads can create, and they may perpetuate male and female stereotypes without even realizing it. Other advertisers resort to stereotypes for convenience. All too often, women are still not represented accurately. And the minimal use of minorities in mainstream ads, both local and national, still smacks of tokenism. Observers hope that with increasing numbers of women and minorities joining the ranks of marketing and advertising professionals, and with continuing academic studies of minority and sex-role stereotyping, greater attention will be focused on these issues.

### Offensiveness in Advertising

Offensiveness is another short-term style argument that also speaks to externalities. Many parents, for instance, were incensed at Calvin Klein's ads because they perceived them as pornographic, thereby causing a social cost that extended well beyond the limited scope of merely selling clothes. More recently, Abercrombie & Fitch came under attack for showing nude and seminude models in the company's quarterly catalogs. The fact is, people just don't want their children exposed to messages that they deem immoral, offensive, or strictly adult-oriented.

Taste, of course, is highly subjective: What is bad taste to some is perfectly acceptable to others. And tastes change. What is considered offensive today may not be so tomorrow. People were outraged when the first ad for underarm deodorant appeared in a 1927 *Ladies Home Journal*; today no one questions such ads. Yet, even with the AIDS scare, all the broadcast networks except Fox still restrict condom ads to local stations, and all forbid any talk of contraception.

Taste is also geographic. A shockingly bloody ad for a small surfwear company in Sydney, Australia, showed a gutted shark lying on a dock. Protruding from its cut-open belly were a human skeleton and an intact pair of surfer shorts. The tagline: "Tough clothes by Kadu—Triple stitched. Strongest materials available. Homegrown and sewn."

While we might consider that ad quite offensive in North America, it won the Grand Prix at the International Advertising Festival in Cannes, France, several years ago. In Australia it received wide media coverage, since two surfers were killed by sharks while it was running. Rather than pulling the ad out of respect, the company reveled in its timeliness, and the local surfer set responded very favorably.

Today, grooming, fashion, and personal hygiene products often use partial nudity in their ads. Where nudity is relevant to the product, people are less likely to regard it as obscene or offensive—except, as in the case of Abercrombie & Fitch, when the advertising is targeting kids. In many European countries, in fact, nudity in commercials is commonplace. Even the usually staid Brits are starting to see women's breasts in TV commercials and posters.<sup>36</sup> Some industry observers predict that nudity in U.S. advertising will increase in the twenty-first century but there will be fewer overt sexual scenes of the Abercrombie & Fitch style.

Some consumers get so offended by both advertising and TV programming that they boycott sponsors' products. Of course, they also have the option to just change the channel. Both of these are effective strategies for consumers because, ultimately, the marketplace has veto power. As the 2003 demise of A&F Quarterly shows, if ads don't pull in the audience, the campaign will falter and die.

### The Social Impact of Advertising in Perspective

Marketing professionals earnestly believe in the benefits that advertising brings to society. Advertising, they say, encourages the development and speeds the acceptance of new products and technologies. It fosters employment. It gives consumers and business customers a wider variety of choices. By encouraging mass production, it helps keep prices down. And it stimulates healthy competition between producers, which benefits all buyers. Advertising, they point out, also promotes a higher standard of living; it pays for most of our news media and subsidizes the arts; it supports freedom of the press; and it provides a means to disseminate public information about important health and social issues.

Critics of advertising might agree with some of these points but certainly not all of them. For example, critics charge that rather than supporting a free press, advertising actually creates an externality that interferes with it. The media, they say, pander to national advertisers to attract the big ad dollars. In the process, they modify their

editorial content to suit their corporate benefactors and consequently shirk their primary journalistic responsibility of presenting news in the public interest.

In summary, we can conclude that while advertising may legitimately be criticized for offering less-than-complete information and, in some instances, for creating unwanted externalities, it should also be applauded when it contributes to the validity of the principles of free enterprise economics. In most cases, by being a rich information source (albeit not complete), advertising contributes to the existence of many buyers and sellers and, therefore, to the self-interest of both consumers and marketers.

## Social Responsibility and Advertising Ethics

When advertising violates one of the basic economic assumptions we've described, some corrective action is needed. As we'll discuss in the next section, numerous laws determine what advertisers can and cannot do, but they also allow a significant amount of leeway. That's where ethics and social responsibility come into play. An advertiser can act unethically or irresponsibly without breaking any laws. Beer and tobacco companies could sponsor rock concerts for college students, and a shoe company could market a basketball sneaker to urban youth as the "Run 'N Gun" brand. As Ivan Preston says, ethics begin where the law ends.

Ethical advertising means doing what the advertiser and the advertiser's peers believe is morally right in a given situation. Social responsibility means doing what society views as best for the welfare of people in general or for a specific community of people. Together, ethics and social responsibility can be seen as the moral obligation of advertisers not to violate our basic economic assumptions, even when there is no legal obligation.

### Advertisers' Social Responsibility

The foundation of any human society is the amicable relationship among its members. Without harmony, a society will collapse. So all the institutions within a society have some responsibility for helping to maintain social harmony through proper stewardship of families and companies, exercise of honesty and integrity in all relationships, adherence to accepted ethical standards, willingness to assist various segments of the society, and the courtesy to respect the privacy of others.

Advertising plays an important role in developed countries. It influences a society's stability and growth. It helps secure large armies, creates entertainment events attracting hundreds of thousands of fans, and often affects

the outcome of political elections. Such power places a burden of responsibility on those who sponsor, buy, create, produce, and sell advertising to maintain ethical standards that support the society and contribute to the economic system.

In the United States, for example, the advertising industry is part of a large business community. Like any good neighbor, it has responsibilities: to keep its property clean, participate in civic events, support local enterprises, and improve the community. U.S. advertising professionals have met these challenges by forming local advertising clubs, the American Advertising Federation (AAF), the American Association of Advertising Agencies (AAAA), and the Ad Council. These organizations provide thousands of hours and millions of dollars' worth of pro bono (free) work to charitable organizations and public agencies. They also provide scholarships and internships, contributions that serve the whole society. As we discuss later, they even regulate themselves fairly effectively.

Advertisers such as AT&T, IBM, and Honda commit significant dollars to supporting the arts, education, and various charitable causes as well as their local Better Business Bureaus and Chambers of Commerce. Still, advertisers are regularly chided when they fail the social responsibility litmus test. Concerned citizens, consumer advocates, and special-interest groups pressure advertisers when they perceive the public's welfare is at risk. The earliest "green advertising" campaigns, for instance, exemplified a blatant effort by some advertisers to cash in on consumers' desire for a cleaner environment. Some promoted nebulous product qualities, such as "environmental friendliness," that actually had no basis in fact. Finally, when the state attorneys general got together and defined relevant terms for use in green advertising, marketers cleaned up their act.

Advertisers also receive criticism when they sponsor programming with content that offends particular interest groups. The Southern Baptist Church, for instance, urged its members in 1997 to boycott Disney theme parks and movies because of its perception that Disney had strayed from its tradition of promoting family values.

## Ethics of Advertising

Philosophies of ethics span the centuries since Socrates. We can hardly do them justice here. But for practical purposes, let's consider three levels of ethical responsibility and apply them to advertising.

On one level, ethics comprise two interrelated components: the traditional actions taken by people in a society or community and the philosophical rules that society establishes to justify such past actions and decree future actions. These components create the primary rules of ethical behavior in the society and enable us to measure how far an individual or company (or advertiser) strays from the norm. Here, the individual's rights are subject to the standards of what is customary (and therefore proper) for the group.

Every individual also faces a second set of ethical issues: the attitudes, feelings, and beliefs that add up to a personal value system. When these two systems conflict, should the individual act on personal beliefs or on the obligation to serve the group and its policies? For example, nonsmoking ad agency people may create ads for a tobacco client. At the first societal level of ethics there is some conflict: Smoking has been a custom in the United States for centuries and is not illegal today. However, the U.S. Surgeon General has declared that smoking is a national health problem (harmful to the group). This conflict at the first ethical level passes the responsibility for decision making to the second, individual level. Because the penalty may be the loss of income, nonsmokers may decide to produce the ads while keeping their own work area smoke-free. The ethical issue is at least temporarily and partially resolved, or at least rationalized, at the second ethical level.

When the group or individuals cannot resolve an ethical dilemma, they must redefine the issue in dispute. Thus, the third level of ethics concerns singular ethical concepts such as good, bad, right, wrong, duty, integrity, and truth. Are these concepts absolute, universal, and binding? Or are they relative, dependent on situations and consequences? A person's moral and ethical philosophy, influenced by religion, society, and individual values, will determine their answer.

Let's say, for example, the copywriter for a cigarette ad is a smoker, and he writes copy that implies that smoking is a favorable behavior. But the ad's art director, a nonsmoker, complains that the ad is unethical because the copy conflicts with the truth, because smoking is actually an unsafe behavior. At this point they reach the third ethical level, and a more senior person, such as the creative director, may step in and lead a discussion aimed at defining the agency's ethical policy on smoking.

As we mentioned before, ethics is such an important topic that we address those issues that pertain to advertising in Ethical Issue sidebars in each chapter. The Ethical Issue here considers the issue of puffery as it relates to truth in advertising.

Most advertisers today strive to maintain fair ethical standards and practice socially responsible advertising. Ad agencies rarely force employees to work on accounts they morally oppose. Once a free-swinging, unchecked business, advertising is today a closely scrutinized and heavily regulated profession. Advertising's past shortcomings have created layer upon layer of laws, regulations, and regulatory bodies. Consumer groups, governments, special-interest groups, and even other advertisers now review, control, and modify advertising in order to create more complete information and reduce the impact of unwanted externalities.

## How Government Regulates Advertising

One of the characteristics of the American political scene is our tripartite system of checks and balances. There are many laws that govern what advertisers can and cannot do. These laws are passed by legislatures, enforced by the executive branch, and interpreted by the judiciary. This system is repeated at the state and local levels.

On the national level, the president, cabinet departments, and various federal commissions are responsible for executing the laws passed by Congress. On the state level, the governor, attorney general, and state departments administer state laws. Locally, mayors, city managers, city attorneys, and police chiefs enforce the laws passed by city councils.

Similarly, local laws are interpreted by municipal courts, while the superior courts and state supreme courts interpret state laws. Federal laws are interpreted by federal district courts and the U.S. Supreme Court. Every day, advertisers from the local copy shop to international soft-drink marketers have to deal with the actions and decisions of all these branches of government. We'll discuss shortly some of the most important issues that concern U.S. regulators.

## Government Restraints on International Advertisers

Now that advertising has become global, many campaigns use similar themes and even the same ads across frontiers. But foreign governments often regulate advertising considerably more than either the United States or Canada. And while Europe has moved toward uniformity in marketing activities, the laws governing advertising

remain largely national. So advertisers need to keep up with the changing legal environments of the countries in which they advertise.

Foreign governments are frequently more authoritarian, and many do not have a system of checks and balances like ours. Some governments not only regulate what ads say, show, or do; they often impose severe restrictions or outright bans on advertising specific products. The Swedes ban advertising to children on television. The Greeks ban toy advertising before 10:00 P.M. Throughout Europe, broadcast advertising for tobacco products is prohibited, and liquor ads are sharply restricted, especially in France.

In fact, the European Union enacted legislation in 1998 that would gradually have phased out all forms of tobacco advertising and sponsorships by the year 2006. But the highest court on the Continent, the European Court of Justice, struck down the ban in October 2000 declaring it unlawful. Notwithstanding, the British still enacted legislation in 2002 that outlawed all consumer advertising for tobacco products. And late in 2002, the 15-nation European Union passed a bill that would outlaw all tobacco ads in newspapers and magazines, on the Internet, and at international sporting events beginning in 2005.

Many countries prohibit puffery superlatives. In Germany, for example, advertisers may use only scientifically provable superlatives. McCann-Erickson once had to retranslate the old Coca-Cola slogan, “Refreshes you best,” because it implied a leadership position that was unprovable. The agency substituted “Refreshes you right” in Germany (in Austria, however, which typically follows Germany’s lead in advertising law, the original line would be permissible).

Many European countries also ban coupons, premiums, free tie-in offers, and the like. Companies may advertise price cuts only during “official sales periods,” and advertisers often need government approval before publishing a sale ad. Across Europe, advertising on television must be clearly recognizable and kept separate from other programming. Paid product placements in programs, therefore, are typically prohibited.

In Singapore, the state-owned broadcasting company yanked a Qantas Airline spot after the Ministry of Information and the Arts criticized the ad’s “harmful values.” The spot had used the line “last of the big spenders,” which the ministry felt encouraged reckless spending by consumers.

Costa Rica has more than 250 laws regulating advertising. Recently, government officials agreed to consider an industry proposal that would overturn the particularly onerous law mandating preclearance of all advertising.

Regulators are cracking down in China as well. A new comprehensive advertising law targets false, “unscientific, and superstitious” claims and requires preclearance of all advertising in all media. However, China now allows Taiwanese advertising on mainland billboards—after preclearance, of course.

In international advertising, the only solution to this morass of potential legal problems is to retain a good local lawyer who specializes in advertising law.

## Current Regulatory Issues Affecting U.S. Advertisers

In recent years, both federal and state courts have made a number of significant rulings pertaining to advertising issues. The most important of these concern First Amendment rights and privacy rights. We’ll discuss each of these, with special attention paid to the recent controversy surrounding tobacco advertising as well as the very sensitive issue of advertising to children.

### Freedom of Commercial Speech

The Supreme Court historically distinguishes between “speech” and “commercial speech” (speech that promotes a commercial transaction). But decisions over the last two decades suggest that truthful commercial speech is also entitled to significant, if not full, protection under the First Amendment.

The trend started in 1976 when the Supreme Court held in *Virginia State Board of Pharmacy versus Virginia Citizens Consumer Council* that ads enjoy protection under the First Amendment as commercial speech. The next year the Court declared that the ban by state bar associations on attorney advertising also violated the First Amendment. Now a third of all lawyers advertise, and a few states even permit client testimonials. To help guard against deceptive and misleading lawyer ads, the American Bar Association issues guidelines for attorneys.

In 1980 the Court used *Central Hudson Gas versus Public Service Commission* to test whether specific examples of commercial speech can be regulated. The four-pronged *Central Hudson* test includes the following parts:



1. Does the commercial speech at issue concern a lawful activity? The ad in question must be for a legal product and must be free of misleading claims.
2. Will the restriction of commercial speech serve the asserted government interest substantially? The government must prove that the absence of regulation would have a substantial negative effect.
3. Does the regulation directly advance the government interest asserted? The government must be able to establish conclusively that cessation of the advertising would be effective in furthering the government's interest.
4. Is the restriction no more than necessary to further the interest asserted? The government would have to establish that there are no other means to accomplish the same end without restricting free speech.

In 1982, the Supreme Court upheld an FTC order allowing physicians and dentists to advertise. Since then, advertising for medical and dental services has skyrocketed.

In 1993, the Supreme Court gave the advertising industry its biggest win in years. It said the Cincinnati City Council violated the First Amendment when it banned racks of advertising brochures from city streets for "aesthetic and safety reasons" while permitting newspaper vending machines.

The issue of freedom of commercial speech is far from settled. Allowing greater freedom of commercial speech enhances the "government interests" of many buyers and sellers and complete information. But the additional interest of reducing externalities creates heated controversies surrounding issues like tobacco and alcohol advertising and advertising to children. These will likely continue for years to come.

### The Tobacco Advertising Controversy

Take the case of cigarette advertising. While tobacco is a legal product, the harm created by smoking ends up killing or disabling more than half a million people annually and costing taxpayers billions of dollars every year in health costs—a major externality. To recover these costs, a number of states' attorneys general sued the

tobacco industry. In 1998, they reached a historic settlement. It mandated significant reform on cigarette marketing activities and provided for the largest financial recovery in the nation's history. Because the industry had abused its freedom of commercial speech for so many years, the settlement called for sweeping changes in how, when, and where tobacco companies could advertise. Most important, the attorneys general sought to protect children from tobacco advertising. Thus, the settlement banned outdoor advertising posters (for example, on billboards, buses, and video arcades), sponsorship of events with a significant youth audience, as well as the use of cartoon characters in any tobacco advertising.

For businesspeople who believe that freedom of commercial speech should be afforded equal protection under the First Amendment, the tobacco case is ominous. Many people are antismoking, antialcohol, antipornography, or antigun. But the "free speakers" believe it's a travesty of the First Amendment to selectively abridge any free speech, whether it's for any political, social, or religious idea or any legal, commercial product. They warn that this selective limitation of freedom of commercial speech threatens every legal business in America, especially because any limitation on the freedom to advertise automatically gives a huge, monopolistic advantage to those big brands that are already the category leaders.

#### The Issue of Advertising to Children

Advertising to children presents different challenges. Kids aren't sophisticated consumers. Their conceptions of self, time, and money are immature. As a result, they know very little about their desires, needs, and preferences—or how to use economic resources rationally to satisfy them. And the nature of children's conceptual ability makes it likely that child-oriented advertising can lead to false beliefs or highly improbable product expectations.

While most children and parents are still joint consumers, more and more children are becoming sole decision makers. To protect them, and their parents, both critics and defenders agree that advertisers should not intentionally deceive children. The central issue is how far advertisers should go to ensure that children are not misled by their ads.

To promote responsible children's advertising and to respond to public concerns, the Council of Better Business Bureaus established the Children's Advertising Review Unit (CARU). CARU provides a general

advisory service for advertisers and agencies and also offers informational material for children, parents, and educators. For more than 20 years, CARU's Self-Regulatory Guidelines for Children's Advertising has guided marketers in the development of child-directed advertising for all traditional media. In 1997, CARU published its updated Guidelines to include new directions for marketing to children via online media.

The basic activity of CARU is the review and evaluation of child-directed advertising in all media. When children's advertising is found to be misleading, inaccurate, or inconsistent with the Guidelines, CARU seeks changes through voluntary cooperation of the advertisers.

In the developed world, other countries are far more strict than the United States about advertising to children. Sweden and Norway, for example, do not permit any television advertising to be directed toward children under 12, and no advertisements at all are allowed during children's programs. Germany and Holland prohibit sponsorship of children's shows, and the Flemish region of Belgium permits no ads five minutes before or after any programs for children. While the highest level of advertising to children is in Australia (an average of 34 ads per hour), that country allows no ads on programs aimed at preschool children.

In the area of television advertising, the government and consumer groups play an important role at both the national and international level to ensure that adequate consumer protection for children is maintained and strengthened where necessary. For more on child-oriented TV advertising, see the Ethical Issue in Chapter 16.

## Consumer Privacy

The second major regulatory issue facing advertisers is privacy. Today, most advertisers know it's illegal to use a person's likeness in an ad without the individual's permission. And since 1987, even using a celebrity lookalike (or soundalike) can violate that person's rights. The courts have also ruled that people's privacy rights continue even after their death.

Now, with the increased use of fax machines, cell phones, and the Internet, all of which can be used for advertising directly to prospects, the issue of privacy rights is again in the news. This time it's over people's right to protect their personal information. As we shall see in Chapter 17, privacy is an ethical issue as well as a legal one. It's also a practical issue: Prospective customers who find advertising faxes, telemarketing calls, and e-mails annoying and intrusive aren't likely to buy the offending company's products.

Internet users worry about people they don't know, and even businesses they do know, getting personal information about them. And their concern is not without reason. Many websites create profiles of their visitors to get data such as e-mail addresses, clothing sizes, or favorite books. Some sites also track users' surfing habits, usually without their knowledge, to better target ads for products.

To create these user profiles, websites use tiny software programs, called cookies, that keep a log of where people click, allowing sites to track customers' Web-surfing habits. The cookies are placed on people's computers when they first visit a site or use some feature like a personalized news service or a shopping cart.

Internet companies argue that such tracking is not personal; it's typically performed anonymously and helps them customize sites and content to match users' interests. However, DoubleClick, a leading provider of marketing tools for Web advertisers, direct marketers, and Web publishers, recently acquired Abacus Direct, a direct-mail company with an extensive offline database of retail and catalog purchasers. This potentially enables DoubleClick to combine online profiles with offline names, addresses, demographic information, and purchasing data. For more on this story, see the Ethical Issue in Chapter 17, "Profiling: Would You Take Cookies from a Stranger?"

A survey conducted in 2000 revealed that only 27 percent of Internet users accept the industry's claim that tracking is helpful. Somewhat more than half, 54 percent, consider it harmful, and 11 percent believe that it both helps and hurts. A large majority of those surveyed, 87 percent, believe sites should ask permission before collecting personal information.

Fortunately, consumers are not completely helpless. They can disable the cookies on their computers. But this may limit their Internet access, because some websites actually require that cookies be implanted. Internet surfers also have the option to "opt-in." This feature allows users to set the terms for which they give personal

information. Also available is the “opt-out” feature, which allows sites to continuously gather information about visitors unless they specifically inform the site not to by clicking on a button.

Responding to the rising concern of many consumers, the Federal Trade Commission together with the Network Advertising Initiative (an organization comprised of leading Internet advertising networks including AdKnowledge, 24/7, Ad Force, and DoubleClick) has created a framework for self-regulation of online profiling. The guidelines are referred to as the “Fair Information Practice Principles” and consist of five core elements:

- \* *Notice*, which requires that the website clearly post their privacy policy.
- \* *Choice*, which relates to consumers’ level of control over being profiled and how their information is used.
- \* *Access*, the ability for consumers to access information collected about them and make amendments to it.
- \* *Security*, which requires that network advertisers make reasonable efforts to protect the data they collect, from loss, misuse, or improper access.
- \* *Enforcement*, a requirement that all industry members subject themselves to monitoring by an independent third party in order to assure compliance with the Fair Information Practice Principles.

Naturally the dot-com companies would prefer to avoid government intervention and the layers of laws and regulations that would bring. So it’s in everybody’s interest for self-regulation to work. Time will tell.

## Federal Regulation of Advertising in North America

The U.S. government imposes strict controls on advertisers through laws, regulations, and judicial interpretations. Among the many federal agencies and departments that regulate advertising are the Federal Trade Commission, the Food and Drug Administration, the Federal Communications Commission, the Patent and Trademark Office, and the Library of Congress. Because their jurisdictions often overlap, advertisers may sometimes have difficulty complying with their regulations.

Canada has a similar maze of federal regulators. But the Canadian legal situation is considerably more complex than the United States’ due to the separate (but often concurrent) jurisdictions of paternalistic federal and provincial governments, the broad powers of government regulators, the vast array of self-regulatory codes, and the very nature of a bilingual and bicultural society. One simple example of this is the fact that all packages and labels must be printed in both English and French throughout Canada.

## The U.S. Federal Trade Commission

In the United States, the Federal Trade Commission (FTC) is the major regulator of advertising for products sold in interstate commerce. Established by an act of Congress, the FTC has a mission of ensuring “that the nation’s markets function competitively, and are vigorous, efficient, and free of undue restrictions.” The commission enforces a variety of federal antitrust and consumer protection laws and works to enhance the operation of the marketplace by eliminating acts or practices that are deceptive or unfair. In other words, it is the FTC’s responsibility to maintain the existence of many sellers in the marketplace, strive to provide more complete information to consumers, and keep the marketing process as free of externalities as possible.

The FTC’s job is complicated by the fact that the definitions of deceptive and unfair are controversial.

### Defining Deception

The FTC defines deceptive advertising as any ad that contains a misrepresentation, omission, or other practice that can mislead a significant number of reasonable consumers to their detriment. Proof that consumers were deceived is not required, and the representation may be either expressed or implied. The issue is whether the ad conveys a false impression—even if it is literally true.

Take the case of the FTC against Office Depot, Buy.com, and Value America. According to the FTC, the companies engaged in deceptive practices in advertising “free” and “low-cost” personal computer (PC) systems because they failed to adequately disclose the true costs and important restrictions on the offers. The low cost of the PCs was tied to rebates that were conditioned on the purchase of long-term Internet service contracts.

While the companies’ advertisements plugged low-cost and, in some cases, free computer systems, the true costs for the systems were far higher. For example, one ad featured a computer for \$269. But the purchaser’s actual expenses would exceed \$1,000 when taking into account the cost of the required three-year Internet service contract. The FTC said the restrictions and charges were inadequately disclosed or that they were disclosed in tiny print. And that amounted to deception.

Without admitting any wrongdoing, the companies all signed consent agreements, agreeing to disclose the information prominently in the future to help consumers easily determine the real costs of such deals.

The FTC is a powerful regulator. The commission cracked down on Exxon and ordered a groundbreaking educational campaign to inform consumers that the right octane for most cars is regular octane, not the more expensive premium grade. The FTC also looks at environmental claims such as biodegradable, degradable, photodegradable, and recyclable. To avoid confusing terminology, the FTC and the Environmental Protection Agency (EPA) worked jointly with attorneys general from many states to develop uniform national guidelines for environmental marketing claims.

### Defining Unfairness

According to FTC policy, some ads that are not deceptive may still be considered unfair to consumers. Unfair advertising occurs when a consumer is “unjustifiably injured” or there is a “violation of public policy” (such as other government statutes). In other words, unfair advertising is due to the inadequacy of complete information or some other externality. For example, practices considered unfair are claims made without prior substantiation, claims that exploit vulnerable groups such as children and the elderly, and cases where the consumer cannot make a valid choice because the advertiser omits important information about the product or about competing products mentioned in the ad.

In one case, the FTC found that an automaker’s failure to warn of a safety problem was not deceptive but was unfair. Advertising organizations have argued that the word “unfair” is so vague it can mean whatever any given individual wants it to. They have lobbied Congress to eliminate the FTC’s power to prosecute on unfairness grounds, and Congress did pass a compromise bill requiring the FTC to show that (1) an alleged unfair practice involves substantial, unavoidable injury to consumers; (2) the injury is not reasonably avoidable by consumers themselves; and (3) the injury is not outweighed by benefits to consumers or competition. This legislation suggests that in the future the FTC will have to balance on a far narrower beam in its effort to regulate unfairness.

### Comparative Advertising

Advertisers use comparative advertising to claim superiority to competitors in some aspect. In the United States, such ads are legal (and encouraged by the FTC) so long as the comparison is truthful. In fact, the FTC cracked down on the Arizona Automobile Dealers Association for restricting truthful, nondeceptive comparative price advertising among its members.

The AADA's 199 members constitute 99 percent of the new-automobile and truck dealers in Arizona. The FTC challenged the association's Standards for Advertising Motor Vehicles, which, among other things, prohibited members from advertising that prices are equal to or lower than a competitor's, or are the lowest; that the advertiser will match or beat any price; or that the advertiser will offer compensation if it cannot offer an equal or lower price.

These prohibitions, according to the FTC, unreasonably restrained competition among the member dealers and injured consumers by depriving them of truthful information concerning the prices and financing available for new cars and trucks.

The 1988 Trademark Law Revision Act closed a loophole in the Lanham Act, which governed comparison ads but did not mention misrepresenting another company's product. Under current law, any advertiser that misrepresents its own or another firm's goods, services, or activities is vulnerable to a civil action.

In addition to being truthful, comparative ads must compare some objectively measurable characteristic. And the greatest scrutiny must be given to the substantiation. Given the potential for sizable damages—up to millions of dollars—for faulty comparative advertising, the greatest care must be exercised in this area.

#### Investigating Suspected Violations

If it receives complaints from consumers, competitors, or its own staff members who monitor ads in various media, the FTC may decide to investigate an advertiser. The agency has broad powers to pursue suspected violators and demand information from them. Typically, the FTC looks for three kinds of information: substantiation, endorsements, and affirmative disclosures.

If a suspected violator cites survey findings or scientific studies, the FTC may ask for substantiation. Advertisers are expected to have supporting data before running an ad, although the FTC sometimes allows postclaim evidence. The FTC does not solicit substantiation for ads it is not investigating.

The FTC also scrutinizes ads that contain questionable endorsements or testimonials. If a noncelebrity endorser is paid, the ad must disclose this on-screen. The endorsers may not make claims the advertiser can't substantiate. Further, celebrity endorsers must actually use the product or service (if portrayed), and they can be held personally liable if they misrepresent it.



Advertisers must make affirmative disclosure of their product's limitations or deficiencies: for example, EPA mileage ratings for cars, pesticide warnings, and statements that saccharin may be hazardous to one's health.

#### Remedies for Unfair or Deceptive Advertising

When the FTC determines that an ad is deceptive or unfair, it may take three courses of action: negotiate with the advertiser for a consent decree, issue a cease-and-desist order, and/or require corrective advertising.

A consent decree is a document the advertiser signs agreeing to stop the objectionable advertising without admitting any wrongdoing. Before signing, the advertiser can negotiate specific directives with the FTC that will govern future advertising claims.

If an advertiser won't sign a consent decree, the FTC may issue a cease-and-desist order prohibiting further use of the ad. Before the order is final, it is heard by an administrative law judge. Most advertisers sign the consent decree after the hearing and agree, without admitting guilt, to halt the advertising. Advertisers that violate either a consent decree or a cease-and-desist order can be fined up to \$11,000 per showing of the offending ad.

The FTC may also require corrective advertising for some period of time to explain and correct offending ads. In 1999 the FTC ruled that pharmaceutical giant Novartis advertised without substantiation that its Doan's Pills brand was more effective against back pain than its rivals. Because the deceptive advertising had gone on for more than nine years, the FTC ordered Novartis to run \$8 million worth of corrective advertising. The advertising was to include the statement: "Although Doan's is an effective pain reliever, there is no evidence that Doan's is more effective than other pain relievers for back pain." The FTC also ordered Doan's to place the statement on their packaging for a year.

To help advertisers avoid such expense, the FTC will review advertising before it runs and give "advance clearance" in an advisory opinion. It also publishes *Industry Guides and Trade Regulation Rules*, which gives advertisers, agencies, and the media ongoing information about FTC regulations.

In Canada, the laws are even tougher and the consequences stiffer. It's an offense for any public promotion to be "false or misleading in a material respect." It is not necessary that anyone be misled by the representation, only that it be false. An offense is a crime. If convicted, an advertiser or agency executive could go to jail for up to five years, pay a fine, or both.

## The Food and Drug Administration (FDA)

A division of the Department of Health and Human Services, the Food and Drug Administration (FDA) is authorized by Congress to enforce the Federal Food, Drug, and Cosmetic Act and several other health laws. The agency monitors the manufacture, import, transport, storage, and sale of over \$1 trillion worth of products annually, which accounts for 25 cents of every dollar spent annually by American consumers. And they do so at a cost to the public of little more than a penny a day per person.

It's the FDA's job to see that the food we eat is safe, the cosmetics we use won't hurt us, and the medicines and therapeutic devices we buy are safe and effective. With authority over the labeling, packaging, and branding of packaged foods and therapeutic devices, the FDA strives to give consumers complete information by ensuring that products are labeled truthfully with the information people need to use them properly. The FDA requires manufacturers to disclose all ingredients on product labels, in in-store product advertising, and in product literature. The label must accurately state the weight or volume of the contents. Labels on therapeutic devices must give clear instructions for use. The FDA can require warning statements on packages of hazardous products. It regulates "cents off" and other promotions on package labels and has jurisdiction over the use of words such as giant or family to describe package sizes.

When consumer-oriented drug ads became common in the mid-1980s, the FDA ruled that any ad for a brand-name drug must include all the information in the package insert. That meant advertisers had to run lengthy commercials or use minuscule type in print ads. In 1997, the FDA changed that rule, allowing pharmaceutical companies to advertise their drugs on broadcast media as long as they mentioned any important possible side effects and directed people to their print ads, their Internet sites, or consumers' own doctors for more information. With that ruling, prescription drug advertising instantly soared on television and radio, tripling over the next five years. It's estimated that in 2001, pharmaceutical companies spent some \$2.7 billion in direct-to-consumer advertising. Although the FDA is responsible for ensuring that all these ads are fair and accurate, the agency is so understaffed that many questionable and, unfortunately, deceptive or misleading ads do get through. However, any time the FDA has sent a letter to marketers citing false advertising claims, the companies have stopped running the misleading ads.

The Nutritional Labeling and Education Act (NLEA), which went into effect in 1994, gave the FDA additional muscle by setting stringent legal definitions for terms such as *fresh*, *light*, *low fat*, and *reduced calories*. It also sets standard serving sizes and requires labels to show food value for one serving alongside the total recommended daily value as established by the National Research Council.

The first time the FDA took severe action against a prominent marketer over a labeling dispute, it seized 2,400 cases of Procter & Gamble's Citrus Hill Fresh Choice orange juice. Fresh Choice was made from concentrate, not fresh-squeezed juice as P&G claimed. Due to increased FDA scrutiny, many advertisers are now more cautious about their health and nutritional claims.

### The Federal Communications Commission (FCC)

The seven-member Federal Communications Commission (FCC) is an independent federal agency with jurisdiction over the radio, television, telephone, satellite, the Internet, and cable TV industries. The FCC is responsible for protecting the public interest and encouraging competition. Its control over broadcast advertising is actually *indirect*, stemming from its authority to license broadcasters (or take away their licenses). The FCC stringently controls the airing of obscenity and profanity, and it can restrict both the products advertised and the content of ads. For example, the FCC required stations to run commercials about the harmful effects of smoking even before Congress banned cigarette advertising on TV and radio.

In the 1980s, the FCC decided there were enough buyers and sellers that marketplace forces could adequately control broadcast media, so it deregulated both radio and TV stations. The FCC no longer limits commercial time or requires stations to maintain detailed program and commercial logs. However, stations still keep records of commercial broadcasts to assure advertisers they ran.

The 1992 Cable Television Consumer Protection and Competition Act gave the FCC additional teeth. It placed new controls on the cable TV industry to encourage a more service-oriented attitude and to improve the balance between rates and escalating ad revenues. The FCC can set subscriber rates for cable TV, so subscription revenues should slow while advertising rates rise.

Studies show violence on TV is linked to violent behavior (a public health issue). Congress responded by enacting the 1992 Television Violence Act, exempting network and cable companies from antitrust laws if they

agree to self-regulate violence. Because network and cable companies deny that violence on TV is related to violence in life, government intervention is a possibility.

## The Patent and Trademark Office and the Library of Congress

A basic role of government is to promote and protect the economic well-being (self-interest) of its citizens. One way the U.S. government does this is by promoting “the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries”; in other words, by registering and protecting their intellectual property.

Through the issuance of patents, the government provides incentives to invent, invest in, and disclose new technology worldwide. By registering trademarks and copyrights, the government helps businesses protect their investments, promote their goods and services, and safeguard consumers against confusion and deception in the marketplace (complete information).

A trademark such as Coca-Cola, AT&T, or Levi’s is a valuable asset. According to the Lanham Trade-Mark Act (1947), a trademark is “any word, name, symbol, or device or any combination thereof adopted and used by a manufacturer or merchant to identify his goods and distinguish them from those manufactured or sold by others.”

Patents and trademarks are registered with and protected by the U.S. Patent and Trademark Office, a bureau of the Department of Commerce. Ownership of a trademark may be designated in advertising or on a label, package, or letterhead by the word *Registered*, the symbol ®, or the symbol ™. If someone persists in using a trademark owned by another or confusingly similar to another’s mark, the trademark owner can ask for a court order and sue for trademark infringement.

The Library of Congress protects all copyrighted material, including advertising, in the United States. A copyright is a form of protection provided to the authors of “original works of authorship,” including literary, dramatic, musical, artistic, and certain other “intellectual works.” A copyright issued to an advertiser grants the exclusive right to print, publish, or reproduce the protected ad for the life of the copyright owner plus 50 years. An ad can be copyrighted only if it contains original copy or illustrations. An idea cannot be copyrighted; nor can slogans, short phrases, and familiar symbols and designs (although the latter may be trademarkable).

Copyright is indicated by the word *Copyright*, the abbreviation *Copr.*, or the symbol © followed by the year of first publication and the name of the advertiser or copyright owner.

## State and Local Regulation

Advertisers are also subject to state or local laws. Since the U.S. federal deregulation trend of the 1980s, state and local governments have taken a far more active role.

### Regulation by State Governments

State legislation governing advertising is often based on the truth-in-advertising model statute developed in 1911 by *Printer's Ink*, for many years the major trade publication of the industry. The statute holds that any maker of an ad found to contain “untrue, deceptive, or misleading” material is guilty of a misdemeanor. Today 46 states (all except Arkansas, Delaware, Mississippi, and New Mexico) enforce laws patterned after this statute.

All states also have “little FTC acts,” consumer protection laws that govern unfair and deceptive business practices. States themselves can investigate and prosecute cases, and individual consumers can bring civil suits against businesses. To increase their clout, some states team up on legal actions—for example, to challenge deceptive ad promotions in the airline, rental-car, and food-making industries. As one observer pointed out, “Many of the food manufacturers could litigate some of the smaller states into the ground, but they might not be willing to fight it out against 10 states simultaneously.”

Different states have different regulations governing what can be advertised. Some states prohibit advertising for certain types of wine and liquor, and most states restrict the use of federal and state flags in advertising.

This can present a major problem to national marketers. And in some cases, it actually hurts consumers. For example, many companies trying to conduct environmentally responsible marketing programs feel stymied by the different state laws governing packaging materials and recycling. In the tobacco case discussed earlier, the teaming of numerous state attorneys general proved a formidable foe for the giant tobacco industry. In the end, facing the prospect of an infinite number of lawsuits from individual states and even municipalities, the industry buckled under, agreeing to settle and pay the various states hundreds of billions of dollars.

### Regulation by Local Governments

Many cities and counties also have consumer protection agencies to enforce laws regulating local advertising practices. The chief function of these agencies is to protect local consumers against unfair and misleading practices by area merchants.

In one year alone, the Orange County, California, district attorney's office received more than 1,200 complaint letters from consumers about everything from dishonest mechanics and phony sale ads to a taco stand that skimmed on the beef in its "macho" burrito. In a case against Los Angeles-based Closet Factory, Inc., the DA collected \$40,000 in fines to settle a false advertising suit. The company was charged with running newspaper ads that gave consumers a false sense of urgency regarding "sales" that actually never end. This type of advertising, known as a *continuous sale*, violates the state's Business and Professions Code. It also advertises a false percentage off the regular price. Since the sale is never really over, the sale price becomes the regular price.

## Nongovernment Regulation

Nongovernment organizations also issue advertising guidelines. In fact, advertisers face considerable regulation by business-monitoring organizations, related trade associations, the media, consumer groups, and advertising agencies themselves.

### The Better Business Bureau (BBB)

The largest of the U.S. business-monitoring organizations is the Better Business Bureau (BBB), established in 1916. Funded by dues from more than 100,000 member companies, it operates primarily at the local level to protect consumers against fraudulent and deceptive advertising and sales practices. When local bureaus contact violators and ask them to revise their advertising, most comply.

The BBB's files on violators are open to the public. Records of violators who do not comply are sent to appropriate government agencies for further action. The BBB often works with local law enforcement agencies to prosecute advertisers guilty of fraud and misrepresentation. Each year, the BBB investigates thousands of ads for possible violations of truth and accuracy.

The Council of Better Business Bureaus is the parent organization of the Better Business Bureau and a sponsoring member of the National Advertising Review Council. One of its functions is to help new industries develop standards for ethical and responsible advertising. The Code of Advertising of the Council of Better Business Bureaus (the BBB Code) has been called the most important self-regulation of advertising. The BBB Code is only a few pages long, but it is supplemented by a monthly publication called *Do's and Don'ts in Advertising Copy*, which provides ongoing information about advertising regulations and recent court and administrative rulings that affect advertising. Since 1983, the National Advertising Division of the Council of Better Business Bureaus has published guidelines for advertising to children, a particularly sensitive area.

### The National Advertising Review Council (NARC)

The National Advertising Review Council (NARC) was established in 1971 by the Council of Better Business Bureaus, the American Association of Advertising Agencies, the American Advertising Federation, and the Association of National Advertisers. Its primary purpose is to promote and enforce standards of truth, accuracy, taste, morality, and social responsibility in advertising.

NARC is one of the most comprehensive and effective mechanisms for regulating American advertising. A U.S. district court judge noted in a 1985 case that its “speed, informality, and modest cost,” as well as its expertise, give NARC special advantages over the court system in resolving advertising disputes.

### NARC Operating Arms

The NARC has two operating arms: the National Advertising Division (NAD) of the Council of Better Business Bureaus and the National Advertising Review Board (NARB). The NAD monitors advertising practices and reviews complaints about advertising from consumers and consumer groups, brand competitors, local Better Business Bureaus, trade associations, and others. The appeals board for NAD decisions is the NARB, which consists of a chairperson and 70 volunteer members (39 national advertisers, 21 agency representatives, and 10 laypeople).

### The NAD/NARB Review Process

To encourage consumers to register complaints, the NAD itself runs ads that include a complaint form. Most target untruthfulness or inaccuracy.

When the NAD finds a valid complaint, it contacts the advertiser, specifying any claims to be substantiated. If substantiation is inadequate, the NAD requests modification or discontinuance of the claims.

The case of the leather flight jacket shows how well the NAD process works. Neil Cooper LLC is a company that manufactures a leather jacket. In its print ads it claims that its A-2 leather flight jackets are the “official battle gear of U.S. Air Force Pilots.” Avirex, Ltd., a competing company, complained to the NAD since the A-2 jacket currently being purchased by the Department of Defense and worn by U.S. pilots is the jacket manufactured by them, not Neil Cooper. Neil Cooper explained that, while it was not the current supplier, many pilots continued to buy from Neil Cooper directly because they preferred that product. Notwithstanding, the NAD sided with Avirex and recommended that Neil Cooper qualify its claims to make it clear that it is selling a reproduction of an authentic A-2 flight jacket rather than the current official jacket of the U.S. Air Force. Neil Cooper agreed.

If the NAD and an advertiser reach an impasse, either party has the right to a review by a five-member NARB panel (consisting of three advertisers, one agency representative, and one layperson). The panel’s decision is binding. If an advertiser refuses to comply with the panel’s decision (which has never yet occurred), the NARB will refer the matter to an appropriate government body and so indicates in its public record. Of 3,000 NAD investigations conducted between 1971 and 1990, only 70 were disputed and referred to the NARB for resolution.

## Regulation by the Media

Almost all media review ads and reject material they regard as objectionable, even if it isn’t deceptive. Many people think the media are more effective regulators than the government.

### Television

Of all media, the TV networks conduct the strictest review. Advertisers must submit all commercials intended for a network or affiliated station to its broadcast standards department. Many commercials (in script or storyboard form) are returned with suggestions for changes or greater substantiation. Some ads are rejected outright if they violate network policies.

The three major U.S. broadcast networks base their policies on the original National Association of Broadcasters Television Code. But network policies vary enough that it’s difficult to prepare universally



acceptable commercials. Cable networks and local stations tend to be much less stringent, as demonstrated by their acceptance of condom ads.

### Radio

The 19 U.S. radio networks, unlike TV networks, supply only a small percentage of their affiliates' programming, so they have little or no say in what their affiliates advertise. A radio station is also less likely to return a script or tape for changes. Some stations, such as KLBJ in Austin, Texas, look mainly at whether the advertising is illegal, unethical, or immoral.<sup>101</sup> They don't want spots to offend listeners or detract from the rest of the programming.

Every radio station typically has its own unwritten guidelines. KDWB, a Minneapolis/St. Paul station with a large teenage audience, turned down a psychic who wanted to buy advertising time but did allow condom and other contraceptive ads. KSDO in San Diego, a station with a business and information format, won't air commercials for X-rated movies or topless bars.

### Magazines

National magazines monitor all advertising, especially by new advertisers and for new products. Newer publications eager to sell space may not be so vigilant, but established magazines, such as *Time* and *Newsweek*, are highly scrupulous. Many magazines will not accept advertising for certain types of products. *The New Yorker* won't run discount retail store advertising or ads for feminine hygiene or self-medication products. *Reader's Digest* won't accept tobacco ads.

Some magazines test every product before accepting the advertising. *Good Housekeeping* rejects ads if its tests don't substantiate the advertiser's claims. Products that pass are allowed to feature the *Good Housekeeping* "Seal of Approval."

### Newspapers

Newspapers also monitor and review advertising. Larger newspapers have clearance staffs who read every ad submitted; most smaller newspapers rely on the advertising manager, sales personnel, or proofreaders.

The advertising policies set forth in *Newspaper Rates & Data* specify, "No objectionable medical, personal, matrimonial, clairvoyant, or palmistry advertising accepted; no stock promotion or financial advertising,

other than those securities of known value.” Another rule prohibits ads that might easily be mistaken for regular reading material unless they feature the word advertisement or advt .

In addition, most papers have their own acceptability guidelines, ranging from one page for small local papers to more than 50 pages for large dailies such as the Los Angeles Times . Some codes are quite specific. The Detroit Free Press won't accept classified ads containing such words as “affair” or “swinger.” Some newspapers require advertisers who claim “the lowest price in town” to include a promise to meet or beat any price readers find elsewhere within 30 days.

One problem advertisers face is that newspapers' codes are far from uniform. Handgun ads may be prohibited by one newspaper, accepted by another if the guns are antique, and permitted by a third so long as the guns aren't automatic. And newspapers do revise their policies from time to time.

## Regulation by Consumer Groups

Of all the regulatory forces governing advertising, consumer protection organizations have shown the greatest growth. Starting in the 1960s, the consumer movement became increasingly active in fighting fraudulent and deceptive advertising. Consumers demanded that products perform as advertised and that more product information be provided for people to compare and make better buying decisions. The consumer movement gave rise to consumerism, social action to dramatize the rights of the buying public. It is clear now that the U.S. consumer has the power to influence advertising practices dramatically.

Today, advertisers and agencies pay more attention to product claims, especially those related to energy use (such as the estimated miles per gallon of a new car) and the nutritional value of processed foods. Consumerism fostered the growth of consumer advocacy groups and regulatory agencies and promoted more consumer research by advertisers, agencies, and the media in an effort to learn what consumers want—and how to provide it. Investment in public goodwill pays off in improved consumer relations and sales.

## Consumer Information Networks

Organizations such as the Consumer Federation of America (CFA), the National Council of Senior Citizens, the National Consumer League, and the National Stigma Clearinghouse exchange and disseminate information among members. These consumer information networks help develop state, regional, and local consumer organizations and work with national, regional, county, and municipal consumer groups.

Consumer interests also are served by private, nonprofit testing organizations such as Consumers Union, Consumers' Research, and Underwriters Laboratories.

### Consumer Advocates

Consumer advocate groups investigate advertising complaints received from the public and those that grow out of their own research. If a complaint is warranted, they ask the advertiser to halt the objectionable ad or practice. If the advertiser does not comply, they release publicity or criticism about the offense to the media and submit complaints with substantiating evidence to appropriate government agencies for further action. In some instances, they file a lawsuit to obtain a cease-and-desist order, a fine, or other penalty against the violator.

Today, with so many special-interest advocacy groups, even the most sensitive advertisers feel challenged. To attract attention, advertising must be creative and stand out from competing noise. Yet advertisers fear attention from politically correct activists (the "PC police"). Calvin Klein ads were attacked by the Boycott Anorexic Marketing group. A Nike ad starring Porky Pig was protested by the National Stuttering Project in San Francisco. An animated public service spot from Aetna Insurance drew complaints from a witches' rights group.

When the protests start flying, the ads usually get pulled. Steve Hayden, chair of BBDO Los Angeles, believes it would be possible to get any spot pulled with "about five letters that appear on the right stationery." As Shelly Garcia noted in *Adweek*, "The way things are these days, nothing motivates middle managers like the need to avoid attention." She lamented the fact that "there are fewer and fewer opportunities to have any fun in advertising."

### Self-Regulation by Advertisers

Advertisers also regulate themselves. They have to. In today's competitive marketplace, consumer confidence is essential. Most large advertisers gather strong data to substantiate their claims. They maintain careful systems of advertising review to ensure that ads meet both their own standards and industry, media, and legal requirements.

Many advertisers try to promote their social responsibility by tying in with a local charity or educational organization.

Many industries maintain advertising codes that companies agree to follow. These codes also establish a basis for complaints. However, industry advertising codes are only as effective as the enforcement powers of the individual trade associations. And because enforcement may conflict with antitrust laws, trade associations usually use peer pressure rather than hearings or penalties.

### Self-Regulation by Ad Agencies and Associations

Most ad agencies monitor their own practices. Professional advertising associations also oversee members' activities to prevent problems that might trigger government intervention. Advertising publications report issues and court actions to educate agencies and advertisers and warn them about possible legal infractions.

### Advertising Agencies

Although advertisers supply information about their product or service to their agencies, the agencies must research and verify product claims and comparative product data before using them in advertising. The media may require such documentation before accepting the advertising, and substantiation may be needed if government or consumer agencies challenge the claims.

Agencies can be held legally liable for fraudulent or misleading advertising claims. (See the Chapter 8 Ethical Issue, "A War of Comparisons.") For this reason, most major advertising agencies have in-house legal counsel and regularly submit their ads for review. If any aspect of the advertising is challenged, the agency asks its client to review the advertising and either confirm claims as truthful or replace unverified material.

### Advertising Associations

Several associations monitor industrywide advertising practices. The American Association of Advertising Agencies (AAAA), an association of the largest advertising agencies throughout the United States, controls

agency practices by denying membership to any agency judged unethical. The AAAA Standards of Practice and Creative Code set advertising principles for member agencies.

The American Advertising Federation (AAF) helped to establish the FTC, and its early vigilance committees were the forerunners of the Better Business Bureau. The AAF Advertising Principles of American Business, adopted in 1984, define standards for truthful and responsible advertising. Since most local advertising clubs belong to the AAF, it is instrumental in influencing agencies and advertisers to abide by these principles.

The Association of National Advertisers (ANA) comprises 400 major manufacturing and service companies that are clients of member agencies of the AAAA. These companies, pledged to uphold the ANA code of advertising ethics, work with the ANA through a joint Committee for Improvement of Advertising Content.

## The Ethical and Legal Aspects of Advertising in Perspective

Unquestionably, advertising offers considerable benefits to marketers and consumers alike. However, there's also no disputing that advertising has been and still is too often misused. As Adweek editor Andrew Jaffe says, the industry should do all it can to "raise its standards and try to drive out that which is misleading, untruthful, or downright tasteless and irresponsible." Otherwise, he warns, the pressure to regulate even more will become overwhelming.

Advertising apologists point out that of all the advertising reviewed by the Federal Trade Commission in a typical year, 97 percent is found to be satisfactory. In the end, advertisers and consumers need to work together to ensure that advertising is used intelligently, ethically, and responsibly for the benefit of all.

## Chapter Summary

As one of the most visible activities of business, advertising is both lauded and criticized for the role it plays in selling products and influencing society. Some controversy surrounds advertising's role in the economy. To debate advertising's economic effects, we employ the four basic assumptions of free-enterprise economics: self-interest, many buyers and sellers, complete information, and absence of externalities.

The economic impact of advertising can be likened to the opening shot in billiards—a chain reaction that affects the company as well as its competitors, customers, and the business community. On a broader scale,

advertising is often considered the trigger on a country's mass-distribution system, enabling manufacturers to produce the products people want in high volume, at low prices, with standardized quality. People may argue, though, about how advertising adds value to products, affects prices, encourages or discourages competition, promotes consumer demand, narrows or widens consumer choice, and affects business cycles.

Although controversy surrounds some of these economic issues, few dispute the abundance principle: In an economy that produces more goods and services than can be consumed, advertising gives consumers more complete information about the choices available to them, encourages more sellers to compete more effectively, and thereby serves the self-interest of both consumers and marketers.

Social criticisms of advertising may be short-term manipulative arguments or long-term macro arguments. While the economic aspect of advertising focuses on the free-enterprise principles of self-interest and many buyers and sellers, the social aspect typically involves the concepts of complete information and externalities.

Critics say advertising is deceptive; it manipulates people into buying unneeded products, it makes our society too materialistic, and there's just too much of it. Further, they say, advertising perpetuates stereotypes, and all too frequently, it is offensive and in bad taste.

Proponents admit that advertising is sometimes misused. However, they point out that despite its problems, advertising offers many social benefits. It encourages the development of new products and speeds their acceptance. It fosters employment, gives consumers and businesses a wider variety of product choices, and helps keep prices down by encouraging mass production. It stimulates healthy competition among companies and raises the overall standard of living. Moreover, sophisticated marketers know the best way to sell their products is to appeal to genuine consumer needs and be honest in their advertising claims.

In short, while advertising can be criticized for giving less than complete information and for creating some unwanted externalities, it also contributes to the free enterprise system by encouraging many buyers and sellers to participate in the process, thereby serving the self-interest of all.

Under growing pressure from consumers, special-interest groups, and government regulation, advertisers developed higher standards of ethical conduct and social responsibility. Advertisers confront three levels of

ethical consideration: the primary rules of ethical behavior in society, their personal value system, and their personal philosophy of singular ethical concepts.

The federal and state courts are involved in several advertising issues, including First Amendment protection of commercial speech, and infringements on the right to privacy. Advertising is regulated by federal, state, and local government agencies, business-monitoring organizations, the media, consumer groups, and the advertising industry itself. All of these groups encourage advertisers to give more complete information to consumers and eliminate any externalities in the process.

The Federal Trade Commission, the major federal regulator of advertising in the United States, is responsible for protecting consumers and competitors from deceptive and unfair business practices. If the FTC finds an ad deceptive or unfair, it may issue a cease-and-desist order or require corrective advertising.

The Food and Drug Administration (FDA) monitors advertising for food and drugs and regulates product labels and packaging. The Federal Communications Commission (FCC) has jurisdiction over the radio and TV industries, although deregulation severely limited its control over advertising in these media. The Patent and Trademark Office governs ownership of U.S. trademarks, trade names, house marks, and similar distinctive features of companies and brands. The Library of Congress registers and protects copyrighted materials.

State and local governments also enact consumer protection laws that regulate advertising.

Nongovernment regulators include the Council of Better Business Bureaus and its National Advertising Division. The NAD, the most effective U.S. nongovernment regulatory body, investigates complaints from consumers, brand competitors, or local Better Business Bureaus and suggests corrective measures. Advertisers that refuse to comply are referred to the National Advertising Review Board (NARB), which may uphold, modify, or reverse the NAD's findings.

Other sources of regulation include the codes and policies of the print media and broadcast media. Consumer organizations and advocates also control advertising by investigating and filing complaints against advertisers and by providing information to consumers. Finally, advertisers and agencies regulate themselves.

## Review Questions

1. What role does advertising play in our economic system?
2. What are the two types of social criticisms of advertising?
3. What is puffery? Give some examples. Do you ever feel deceived by puffery in advertising?
4. Does advertising affect our value system? In what ways?
5. What is the difference between an advertiser's ethics and its social responsibility?
6. How does government regulation of advertising in the United States differ from regulation in many foreign countries?
7. How does commercial speech differ from political speech? Do you think advertisers should have the same First Amendment rights as everyone else? Explain.
8. What is the role of the FTC in advertising? Do you think this role should be expanded or restricted?
9. How do regional and local governments affect advertisers?
10. How well do advertisers regulate themselves? In what areas do you think advertisers have done well, and where should they clean up their act?
11. The Advertising Experience

In order to understand better a technique, even a questionable one, it is sometimes best to have practiced it oneself. Take a common product and create a responsible advertisement for it. Next, puff the ad up using the techniques studied in the chapter. Be prepared to discuss the differences between the advertisements and how the puffery affects consumer perception.

## Exploring the Internet

The Internet exercises for Chapter 3 address three areas of advertising covered in the chapter: advertising law, government regulation of advertising, and ethical self-regulation.

### 1. Advertising Law

As you learned in this chapter, advertisers and their agencies are held accountable for the work they produce and must know the law(s) governing their communication. Understanding the legal ramifications behind a piece of communication is critical to any advertiser.

Therefore, finding ways to keep abreast of the latest cases/issues relating to advertising law and the implications thereof is of the utmost importance to advertising practitioners. Visit the advertising law firm Hall Dickler Kent Goldstein & Wood site ([www.adlaw.com](http://www.adlaw.com)) and the Advertising Law Resource Center ([www.lawpublish.com](http://www.lawpublish.com)), and then discuss the following:

- a. Review the documents/articles at these sites and discuss the fundamental principles behind advertising law, including substantiation, deception, and unfairness.



- b. Choose one article/discussion or one case study in Lewis Rose's archives and illustrate its importance to advertisers and their agencies.
- c. Discuss the value these websites provide the advertising community, with special emphasis on local advertisers.

## 2. Regulation of Advertising

The FTC's Division of Advertising Practices protects consumers from deceptive and unsubstantiated advertising. Apply what you have learned by visiting the division's website ([www.ftc.gov](http://www.ftc.gov)) and answering the following questions. (You may want to review the policies and guides found at [www.ftc.gov/bcp/guides/guides.htm](http://www.ftc.gov/bcp/guides/guides.htm).)

- a. Give a general description of what the FTC considers to be deceptive and unfair advertising.
- b. Describe the requirements for substantiating advertising and the process advertisers and their agencies must undergo to do so.
- c. Choose a fourth topic covered on the site and discuss its relevance and importance to the advertising industry.

Be sure to check out the following sites that are also related to the regulation of the advertising industry:

- n Council of Better Business Bureaus' National Advertising Division (NAD) [www.nadreview.org](http://www.nadreview.org)
- n Consumers International [www.consumersinternational.org](http://www.consumersinternational.org)
- n European Commission [europa.eu.int](http://europa.eu.int)

## 3. Pushing the Limits of Legality

Although the Internet may seem borderless and boundless, the FTC does work to enforce consumer protection laws online. However, violations may occur, especially in the online advertising campaigns of recently founded dot-coms. Visit [www.ftc.gov/bcp/conline/pubs/buspubs/dotcom](http://www.ftc.gov/bcp/conline/pubs/buspubs/dotcom) for an overview of developments in Internet advertising regulation. Then find two websites you believe to be making inflated claims. Discuss in detail how the sites exaggerate their products. Using the FTC's guidelines, note which claims are legal, even if exaggerated, and which claims have crossed the line legally.

Views of offensiveness vary a great deal from country to country. Clothing retailer Benetton uses the same ads all over the world, and sometimes the ads impinge on the customs and religious beliefs of certain countries. The intended message in this ad, poignantly called "A Kiss from God," is that love surmounts all conventional taboos. But the Italian Advertising Authority banned it. In areas where the influence of the church was less strong, the message was better understood. In England, for example, it won the Eurobest Award. And Sister Barbara of Alzey wrote to Benetton from Germany: "I think that this photo expresses a great deal of tenderness, serenity, and peace." Spend some time on Benetton's website ([www.benetton.com](http://www.benetton.com)) and see how the company uses its themeline, the United Colors of Benetton, to promote racial tolerance and peace among nations.

## Ad Lab 3–A

## Unfair and Deceptive Practices in Advertising

The courts have held that these acts constitute unfair or deceptive trade practices and are therefore illegal.

### False Promises

Making an advertising promise that cannot be kept, such as “restores youth” or “prevents cancer.” When Listerine claimed to prevent or reduce the impact of colds and sore throats, the FTC banned the campaign and required the company to run millions of dollars’ worth of corrective ads.

### Incomplete Description

Stating some but not all of a product’s contents, such as advertising a “solid oak” desk without mentioning that only the top is solid oak and the rest is pine.

### False and Misleading Comparisons

Making false comparisons, either explicitly or by implication, such as “Like Tylenol, Advil doesn’t upset my stomach.” That implies that Advil is equal in avoiding stomach upset, though in truth Tylenol is better. To some people, Advil’s claim might even suggest that Tylenol upsets the stomach, which is also false.

### Bait-and-Switch Offers

Advertising an item at an unusually low price to bring people into the store and then “switching” them to a higher-priced model by claiming that the advertised product is out of stock or poorly made.

### Visual Distortions and False Demonstrations

Using trick photography or computer manipulation to enhance a product’s appearance—for example, a TV commercial for a “giant steak” dinner special showing the steak on a miniature plate that makes it look extra large. In one classic case, General Motors and its window supplier, Libby Owens-Ford, rigged a demonstration to show how clear their windows were. The GM cars were photographed with the windows down, the competitor’s car with the windows up—and Vaseline smeared on them.

### False Testimonials

Implying that a product has the endorsement of a celebrity or an authority who is not a bona-fide user, or implying that endorsers have a certain expertise that in fact they don’t.

### Partial Disclosure

Stating certain facts about the advertised product but omitting other material information. An example is claiming, “Kraft’s Singles processed cheese slices are made from five ounces of milk,” which give Singles more calcium than the imitators’ without mentioning that processing loses about two ounces of the milk.

#### Small-Print Qualifications

Making a statement in large print, such as Beneficial’s “Instant Tax Refund,” only to qualify or retract it in obscure, small, or unreadable type elsewhere in the ad: “If you qualify for one of our loans.” To the FTC, if readers don’t see the qualification, it’s not there.

#### Laboratory Applications

1. Describe some examples of deception you have seen in advertising.
2. Who are the principal victims of unfair or deceptive advertising practices and what remedies are available to them?

Status comes in many forms and often what is unsaid has greater impact than what is said. Such is the case in this beautifully photographed ad for The Ritz-Carlton. Notice the sparse, understated copy; the soft enormity of the landscape in relation to the small, off-centered couple; the elegant use of white framing; and the discreet communication of contact information. In the quietest way, the whole ad whispers class—and that screams status.

Some advertising reflects the interest of the public at large in the form of government ads, such as this public service announcement from the Library of Congress. Check out its excellent website (<http://lcweb.loc.gov>).

With tightening markets, advertisers must double their efforts to maintain or expand market share. One way is to expand into minority communities, which have enormous buying power and comprise a significant amount of market share.

Tastes of consumers—and advertisers—may differ geographically, as shown in this award-winning Australian surfwear ad. Local Sydney surfers responded quite favorably to the ad.

Without advertising, public service organizations would be unable to reach a mass audience to educate people about important health and social issues. Here, the Ad Council promotes awareness of the problems associated with learning disabilities.

Today's consumer is more sophisticated than ever about social issues like environmentalism. Leclerc addresses the issue of "plastic bag pollution" in a beautifully produced campaign, where it tells customers "No, Leclerc does not really want to be seen everywhere." Other ads in the series say, "There are some places we don't want to see our name," and "Some advertising we'll pass up willingly."

## Ethical Issues

### Truth in Advertising: Fluffing and Puffing

Perhaps nothing characterizes advertising in the minds of most people more than the term puffery. In advertising, puffery means exaggerated commendation, or hype. The term comes from the Old English word *pyffan*, meaning "to blow in short gusts" or "to inflate; make proud or conceited." Puffery surely predates recorded history.

#### The Nature of Puffery

Regardless of its long heritage and current widespread use, we should question puffery's role in advertising. Inherently, puffery erodes advertising's credibility as a trustworthy messenger by first lowering the public's belief in the advertising they see. People begin to question those who support and create such advertising—the advertisers, ad professionals, and ultimately the media that run such ads. A slogan such as "Quality worth your trust" is immediately deemed false when used in an ad for a product that's generally perceived as inferior. Soon people begin joking that the agency is out of touch or lying or "should be shot."

#### Defining Puffery

Regardless of the criticisms, puffery remains legal. And in the United States, it's relatively well defined by law.

In 1906, as part of the Uniform Sales Act (now called the Uniform Commercial Code), a seller's opinion (an element of puffery) cannot constitute the sole basis of a warranty to the customer; more information is required. In 1916, the law stipulated puffery as acceptable if it is "mere exaggeration" but illegal if it invents advantages and then "falsely asserts their existence." The buyer's state of mind entered the definition in 1941: "'Sales talk,' or 'puffing,' . . . is considered to be offered and understood as an expression of the seller's opinion only, which is to be discounted as such by the buyer, and on which no reasonable man would rely." The Federal Trade Commission joined the dialogue in the late 1950s, confirming, "Puffery does not embrace misstatements of material facts."

As you can see, puffery's legal definition establishes that the characteristics puffed must, in fact, exist. The challenge is defining where puffing crosses over from exaggeration into falsehood and then to deception. Exaggeration is often the starting point of falsehood, but falsehood is not necessarily harmful or injurious—in fact, it may be playful and creative. Deception, however, is interpreted as being injurious to consumers and is therefore illegal.

Take, for example, the case with Papa John's International, who invested millions of dollars over the years in its "Better ingredients, Better pizza," advertising campaign. The vague and subjective claim might be considered puffery. But when it named its rival Pizza Hut in ads, the issue changed from mere puffery to comparison. And comparison advertising requires convincing substantiation; otherwise it may be considered deceptive.

In 1998, Pizza Hut filed a lawsuit in Dallas federal court against Papa John's, alleging that its campaign was "false, misleading, and deceptive," as defined by the Lanham Act. A Texas jury ruled in favor of Pizza Hut, charging that Papa John's "Better ingredients, Better pizza" campaign constituted deceptive advertising. Pizza Hut was awarded \$467,619.75. Papa John's was ordered to remove its slogan from ads, pizza boxes, restaurant signage, and delivery trucks.

Later, the decision was reversed by the District Court of Appeals after Papa John's removed the references to Pizza Hut. But the point had still been made: Advertisers have to be careful about the puffery claims they make—they no longer have free rein. Marketers need to be able to substantiate any claims that they make. An indirect comparison, or even the appearance of one, could render them liable.

### The Use of Puffery

Common usage portrays puffery as praise for the item to be sold using subjective opinions, superlatives, exaggerations, and vagueness, and generally stating no specific facts. Ivan Preston, the leading scholar on the issue of puffery, has established six levels of puffery:

- \* Best (strongest claim): "Nestlé's makes the very best chocolate."
- \* Best possible: "Nothing cleans stains better than Clorox bleach" or "Visa—it's everywhere you want to be."
- \* Better: "Advil just works better."
- \* Especially good: "Extraordinary elegance." (Coty)
- \* Good: "M'm, m'm good." (Campbell's soup)

\* Subjective qualities (weakest claim): “There’s a smile in every Hershey bar.”

Puffery often takes the form of “nonproduct facts,” information not specifically about the product and therefore not directly ascertainable as being truths, falsehoods, or deceptions specific to the product. Nonproduct facts are typically about consumers: their personalities, lifestyles, fears, anxieties. An example is the Army’s positioning message, “Be all that you can be in the Army.” The claim relies on the potential for what can happen to the ad’s readers while they’re in the Army. It doesn’t actually promise any specific benefits such as improved physical fitness or more education. Thus, regardless of what actually happens to readers who join up, the claim is neither true nor false about the Army.

Puffery can also be “artful display,” the visual presentation of a product. Although not well defined by law, visual exaggeration is ever-present in ads to enhance moods, excite viewers, and more. The existence of professional models, for example, suggests that some individuals are more visually attractive than others. This factor makes them appealing (see the Ethical Issue in Chapter 12, “Does Sex Appeal?”). But does their appearance in an ad imply that owning the product will make the buyer more physically attractive? Although most prospective purchasers don’t expect the product to improve their physical appearance, they might well become disappointed if the product failed to live up to the implied promise—the puffery—that it can improve their psychological self-image.

### Judging Puffery

We live in exciting times. Populations are more literate, satellites and the Internet keep the world informed instantly, and modern technology speeds up the way we live and play. And part of the glitz of our modern life is puffery, adding pizzazz and stimulating our dreams.

But who should protect consumers from their love/hate relationship with puffery, especially when puffery crosses the line and becomes injurious? Who should evaluate puffery’s ethics? The courts may, but only when a consumer challenges an advertiser. The actions and attitudes of the advertising profession can make a huge difference. If the First Amendment doesn’t curtail them, the media can also affect the use and abuse of puffery.

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## Ad Lab 3–B

### The Importance of Good Legal Counsel in Advertising

For many years, Jack Russell had dreamed of this opportunity—opening a members-only club for young people who were not yet old enough to drink. He could already taste the success that was about to be his—money, fame, and fortune were all within his reach. He took every avenue possible to promote the new, exclusive club. He ran ads in local entertainment magazines and community newspapers. Local rock radio stations, though, were the mainstay—shouting out the good news for kids all over town, complete with a phone number and address for sending in their charter membership fees. Jack’s wonderful idea was about to take flight. But then the local district attorney ripped the magic carpet out from underneath him. See, Jack Russell was selling memberships to a club that had not opened yet. In fact, he hadn’t even signed the lease on the proposed premises. To the DA, it smelled of scam. He figured Jack was taking money from kids for something that didn’t exist. That would be fraud. The DA charged him with false advertising—and fraud. When Jack answered his ringing doorbell, two uniformed officers were standing there. They handcuffed him, gave him a ride downtown, and threw him in jail. If Jack had just passed his ads by a communications lawyer, he could have avoided a very embarrassing and expensive nightmare. And he’d be a free man.

Ethical and legal problems with advertising seem to pop up constantly. Not only government officials, but competitors and consumer rights groups scrutinize ads carefully—either for their own self-interest or to protect the rights of consumers. As a result, every agency and advertiser needs to have a strong understanding of the laws

that govern advertising. They also need to retain the services of a good law firm that specializes in advertising and communication law.

One such firm is Hall Dickler Kent Goldstein & Wood LLP. With offices in New York and Los Angeles, Hall Dickler serves a blue-chip client roster that includes some of the nation's largest advertisers as well as numerous prominent advertising associations such as the 4As, the Association of National Advertisers, and the American Advertising Federation.

Hall Dickler routinely provides its clients with a wide array of services: checking advertising copy for legal acceptability; reviewing promotional concepts, scripts, and testimonials as they relate to sweepstakes, games, and contests; and representing clients before federal and state regulatory bodies. Hall Dickler helps clients adopt corporate procedures and policies to protect against the legal liabilities of doing business in new media outlets such as the Internet. The firm handles all aspects of intellectual property on a worldwide basis. This includes determining the availability of proposed trademarks, trade names, corporate names, Internet domain names, and copyright works/titles.

As a public service, the firm publishes a sophisticated newsletter and maintains a website, both under the name of ADLAW. From the newsletter, clients and prospects can get important information about new laws or proposed legislation affecting advertising; and the website ([adlaw.com](http://adlaw.com)) offers a wide array of regularly updated resources including the ADLAW handbook, a guide to key legal issues in advertising, a Contract Forms database with sample legal documents, and articles on the legal complexities of promotional programs. Another highlight of the site is the Resource Files tab, which provides up-to-date links to key sites relevant to legal issues.

#### Laboratory Applications

1. Go to [adlaw.com](http://adlaw.com) and explore the website. Click on the "What's New" tab and read about current advertising-related legal cases. Pick one that interests you, read it, and then write a brief report including the title of the case, the names of the parties involved, the issues at stake, and a summary of the decision that was handed down if there has been a judgment.



2. Click on the “Resource Files” tab and then the “Sweepstakes, Games, Etc.” link. Study the list of articles, choose one, and prepare a summary you can present to your class. If possible, include examples from your own personal experience.
3. What ethical, social, or legal issues do you think will be addressed in the next 10 years relative to advertising and the Internet?

Despite the constraints of stricter advertising laws overseas, ads can still be very effective and creative. The copy for this cute ad from IVO, Finland’s power company, reads: “The more pleasant way. Electrical heating.” The ad is certainly appropriate given that country’s somewhat chilly climate.

When planning to advertise overseas, companies must be very cautious about the do’s and don’ts of other countries. Typically, they retain the services of attorneys familiar with local laws. Many international law firms have websites that can be quickly located on the Internet. Hall Dickler refers its clients to GALA ([www.gala-marketlaw.com](http://www.gala-marketlaw.com)), an international network of lawyers it belongs to.

Seven basic principles underlie CARU’s guidelines for advertising to children under the age of 12:

1. Advertisers should always take into account the level of knowledge, sophistication, and maturity of the audience to which their message is primarily directed. Younger children have a limited capacity for evaluating the credibility of information they receive. They also may lack the ability to understand the nature of the information they provide. Advertisers, therefore, have a special responsibility to protect children from their own susceptibilities.
2. Realizing that children are imaginative and that make-believe play constitutes an important part of the growing up process, advertisers should exercise care not to exploit unfairly the imaginative quality of children. Unreasonable expectations of product quality or performance should not be stimulated either directly or indirectly by advertising.
3. Products and content that are inappropriate for use by children should not be advertised or promoted directly to children.
4. Recognizing that advertising may play an important part in educating a child, advertisers should communicate information in a truthful and accurate manner and in language understandable to young children with full recognition that the child may learn practices from advertising that can affect his or her health and well being.
5. Advertisers are urged to capitalize on the potential of advertising to influence behavior by developing advertising that, wherever possible, addresses itself to positive and beneficial social behavior such as friendship, kindness, honesty, justice, generosity, and respect for others.

6. Care should be taken to incorporate minority and other groups in advertising in order to present positive and prosocial roles and role models wherever possible. Social stereotyping and appeals to prejudice should be avoided.

7. Although many influences affect a child's personal and social development, it remains the prime responsibility of the parents to provide guidance for children. Advertisers should contribute to this parent-child relationship in a constructive manner.

The purpose of comparative ads is to demonstrate the superiority of one product over another. Dy•Dee Wash takes the au natural marketing approach, with a cloth diaper service that is more environmentally friendly than the use of disposable diapers.

In Canada, all packages and labels must be printed in both English and French, and most major companies also run their ads in both languages. The layout of the French version of HP ad is modified to accommodate the slightly longer text.

Advertising law requires that celebrity endorsers actually use the product. For example, this ad for Crest toothpaste features the beautiful smile of actress Vanessa Williams. Since the implication is that Crest helped her keep this "ageless smile," she would have to be an actual user of the product.

To provide consumers with more complete information, the U.S. Food and Drug Administration regulates the content of pharmaceutical ads. It used to require that advertisers include all the information from the product insert in its TV ads. This necessitated lengthy commercials with minuscule copy. In 1997, the rule was changed, allowing pharmaceutical companies to advertise on TV and radio as long as they mentioned any important side effects and directed consumers to other sources for further information, such as their magazine ads or their website. Notice how this magazine ad for Animal Health's Revolution complies with the FDA's disclosure requirements.

Coca-Cola's trademark varies from country to country. But the overall look is retained through use of similar letterforms and style, even with different alphabets.

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The Board of Directors of the American Association of Advertising Agencies recognizes that when used truthfully and fairly, comparative advertising provides the consumer with needed and useful information.

However, extreme caution should be exercised. The use of comparative advertising, by its very nature, can distort facts and, by implication, convey to the consumer information that misrepresents the truth.

Therefore, the Board believes that comparative advertising should follow certain guidelines:

1. The intent and connotation of the ad should be to inform and never to discredit or unfairly attack competitors, competing products, or services.
2. When a competitive product is named, it should be one that exists in the marketplace as significant competition.
3. The competition should be fairly and properly identified but never in a manner or tone of voice that degrades the competitive product or service.
4. The advertising should compare related or similar properties or ingredients of the product, dimension to dimension, feature to feature.
5. The identification should be for honest comparison purposes and not simply to upgrade by association.
6. If a competitive test is conducted, it should be done by an objective testing source, preferably an independent one, so that there will be no doubt as to the veracity of the test.
7. In all cases the test should be supportive of all claims made in the advertising that are based on the test.
8. The advertising should never use partial results or stress insignificant differences to cause the consumer to draw an improper conclusion.
9. The property being compared should be significant in terms of value or usefulness of the product to the consumer.
10. Comparatives delivered through the use of testimonials should not imply that the testimonial is more than one individual's thought unless that individual represents a sample of the majority viewpoint.

To help consumers make informed decisions, *Good Housekeeping* magazine tests the products in their ads and provides a seal of approval to those advertisers, such as Heat-N-Glo, who substantiate their claims. This gives the consumer a more authoritative voice to listen to when trying to decide on purchases.

## Ad Lab 3–C

Editorial or Advertising: It's Adversarial

Pick up a glossy magazine such as Vogue, Esquire, or Sports Illustrated and you'll find it loaded with ads for cars, liquor, and cigarettes. Advertising agencies like buying space in these upscale publications as long as nothing in the publication directly offends their clients. Agencies are very protective of their clients, so they're careful about where their ads are placed. If an ad runs alongside a story that might reflect badly on the client's product or, even worse, might offend the client's customers, the ad agency will either pull the ad or request that the article be dropped. Moreover, agencies and their clients want to be warned ahead of time when a controversial story will appear. Increasingly, this is becoming a sore point with magazine editors and is creating an ethical stir in the industry. Editors see it as an assault on their independence and integrity. Advertisers see it as their responsibility to sponsor content suitable for, and not offensive to, their customers.

On the other hand, a survey sponsored by the Newspaper Advertising Association and the American Society of Magazine Editors discovered that newspaper ads actually meet consumer expectations better than the quality of news coverage. Consumers told the survey they believe newspaper ads are useful and relevant, saving them both time and money by allowing them to comparison shop at home. As a result, newspaper editors are now looking at expanding their partnership with advertisers.

"I think we need to have advertising and editorial work more closely together to produce a paper, especially since advertising has this solid local franchise," said Washington Post research chief Sharon P. Warden.

In the world of print media, publishers are the businesspeople who worry about the bottom line and editors worry about editorial content and journalistic integrity. Often their interests collide. To interest more advertisers, magazine publishers now create whole sections, sometime entire issues, devoted to advertorials—pages of commercial copy dressed up as news stories. Often it's difficult to differentiate between actual editorial copy and advertising text. Sports Illustrated (SI) publishes an annual special issue called Golf Plus, figuring that the 500,000-plus copies will generate higher interest from advertisers such as Foot Joy and Titleist golf balls.

Maxim Publications is one of a few remaining publications that separate the editorial and business sides of publications. Even so, advertisers with Maxim exert influence over the content that surrounds their ads by reminding editors of revenue loss if certain material is published. Ms magazine solved the conflict by going ad-free in 1990.

Print is not the only medium that falls under editorial scrutiny. Radio and TV are also constantly monitored for content. Some advertisers buying time on radio stations that air syndicated personalities such as Rush Limbaugh and Howard Stern specify “NO RUSH” and “NO HOWARD.” Because of the shows’ controversial content, they simply refuse to allow their ads to be placed there. Except for the news, television is taped in advance. Many advertisers can review episodes prior to airing and decide to pull the ads if necessary. (See Chapters 15 through 18 for more information on media buying.)

One Michigan homemaker was angered by sexual innuendoes on Fox’s TV sitcom *Married . . . with Children*. So she persuaded Procter & Gamble and other leading advertisers not to buy time on the show. Similarly, many blue-chip advertisers shunned the police drama *NYPD Blue* on ABC because of scenes with partial nudity and blunt language—until it did too well in the ratings for them to ignore. During the coming-out episode of *Ellen* in 1997, many advertisers such as Chrysler pulled their spots. The spots, however, were quickly replaced by other sponsors eager to be part of a show that was expected to reach an unusually large audience.

“With TV, it’s a case of supply and demand, and right now the demand for commercial time exceeds the supply,” said Kevin Goldman, a former advertising columnist for *The Wall Street Journal*.

However, the case is not the same for magazines. “Magazines are different because there’s a finite number of advertisers that want in on a particular book. If Chrysler pulls out of an issue, the pool of advertisers that might take its place is shallow,” explained Goldman.

Moreover, magazines (especially new specialty magazines) increasingly tailor their editorial focus to reach niche audiences or a particular demographic. This narrows their options for ad dollars to those marketers targeting the same groups—in effect, giving greater influence to fewer advertisers.

Years ago, the American Society of Magazine Editors drew up guidelines on how magazines should distinguish advertising from regular editorial pages. In October 1996, The ASME released a three-paragraph “Standard for Editorial Independence” following a few episodes in which editors left magazines as a result of apparent interference from their corporate employers. The standard states, “Editors need the maximum possible protection from untoward commercial or extra-journalistic pressures. The chief editor of any magazine must have final authority over the editorial content, words and pictures, that appear in the publication.”

## Laboratory Applications

When is it okay for an advertiser to give its “editorial” view in a publication or on a show? Provide data to support your answers to the following questions.

1. To what degree, if any, should an advertiser exercise control over placement of its ads or content of the publication?
2. What effect, if any, could advertorials have on national problems such as age discrimination, racism, sexism, and teenage pregnancy? Be specific.

## Exhibit 3–6

Advertising Principles of American Business of the American Advertising Federation (AAF).

1. Truth. Advertising shall tell the truth, and shall reveal significant facts, the omission of which would mislead the public.
2. Substantiation. Advertising claims shall be substantiated by evidence in possession of the advertiser and the advertising agency prior to making such claims.
3. Comparisons. Advertising shall refrain from making false, misleading, or unsubstantiated statements or claims about a competitor or his products or services.
4. Bait advertising. Advertising shall not offer products or services for sale unless such offer constitutes a bona fide effort to sell the advertised products or services and is not a device to switch consumers to other goods or services, usually higher priced.
5. Guarantees and warranties. Advertising of guarantees and warranties shall be explicit, with sufficient information to apprise consumers of their principal terms and limitations or, when space or time restrictions preclude such disclosures, the advertisement shall clearly reveal where the full text of the guarantee or warranty can be examined before purchase.
6. Price claims. Advertising shall avoid price claims that are false or misleading, or savings claims that do not offer provable savings.
7. Testimonials. Advertising containing testimonials shall be limited to those of competent witnesses who are reflecting a real and honest opinion or experience.

8. Taste and decency. Advertising shall be free of statements, illustrations, or implications that are offensive to good taste or public decency.

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