

CHAPTER 02 THE ECONOMIC, SOCIAL, AND REGULATORY ASPECTS OF ADVERTISING

OBJECTIVES

The main objectives of this chapter are to identify and explain the economic, social, ethical, and legal issues advertisers must consider. The basic economic principles that guide 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; governmental bodies determine what is deceptive and unfair. To be law-abiding, ethical, and socially responsible, as well as economically effective, an advertiser must understand these issues (p. 27).

After studying this chapter, your students will be able to:

1. **Describe** the impact of advertising on the economy.
2. **Debate** the validity of the various social criticisms of advertising.
3. **Explain** the difference between social responsibility and ethics in advertising.
4. **Describe** how government agencies regulate advertising to protect both consumers and competitors.
5. **Discuss** the activities of nongovernmental organizations in fighting fraudulent and deceptive advertising.

TEACHING TIPS AND STRATEGIES

Using the opening vignette in the classroom

Students often recognize and relate to some celebrity product endorsees, while not others. You might start by showing the Tag Heuer web site (<http://us.tagheuer.com/>) and then click to the “register your watch” page, which features a celebrity promoting the Tag Heuer brand. Start your discussion by asking if anyone finds the Tag Heuer brand more desirable based on the celebrity association. Then ask what personality the actor or athlete has and if that personality reflects appropriately on Tag Heuer. You might also ask students if they know an approximate price range for Tag Heuer watches (\$3,000 to \$6000) and if they believe the celebrity or athlete association influences consumers in purchasing this brand and product line.

I find that the best way to enliven these discussions is to let students find a natural voice for their thoughts. If there is a mixture of responses, I try to just let the debate happen. Conversely (as is often the case), if no one initially comments on the association versus brand value topic, I then raise the issue of Michael Phelps and Tiger Woods—that of the “brand transgressions” they potentially created based on a conflict between the acts in their personal lives and the products they represented. Some thoughts to cultivate this discussion:

- 1) Are celebrities really victims of the state of our culture? Does society set the standards for what is acceptable in life and in product endorsements?

- 2) Do athletes and celebrity endorsees have a responsibility to behave in a certain “ethical” fashion? Are they required to serve as role models when they choose to be public and endorse mainstream products such as Kellogg’s cereal and Nike sports apparel?
- 3) Ask if anyone eats Kellogg’s Corn Flakes or wears Nike apparel. Do athletes like Phelps and Woods influence purchasing decisions based on the use of illegal drugs, or through marital indiscretions?
- 4) Many companies include a “morals clause” in celebrity and athlete agreements. What type of requirements might you require if you were drafting the language for this clause?
- 5) Are the high endorsement fees associated with celebrities worth the investment? Would companies like Tag Heuer and Nike better serve their customers by discontinuing endorsee advertising and then using those savings to drop the cost of their products?

Other tips and strategies

Before discussing the legal issues surrounding advertising I ask students whether or not they believe commercial speech like advertising is protected by the First Amendment. I frequently find many students have never considered that there might be some forms of speech that are not protected. This leads in to a discussion of the 1942 Supreme Court case *Valentine v. Christenson*, in which the court first considered the issue. In that case, a businessman named Christenson attempted to market tours of his submarine, which resided in New York’s harbor, by distributing leaflets. Police chief Valentine, citing New York’s anti-littering code, attempted to stop him. The Supreme Court ultimately ruled that New York could regulate advertising because commercial speech does not enjoy First Amendment protection. In subsequent cases the court moved away from that conclusion, but the precedent remained important for many years and in many Court decisions, including its decision to permit a ban on tobacco advertising on TV and radio. I ask students if commercial speech provides something of value to consumers, and if so, what does it provide?

All students have been influenced by advertising in one way or another. Ask students if they have ever bought a product/service they saw an ad for and were disappointed by the ad because it created an expectation that wasn’t met. For instance, I had an ad with a coupon for Stanley Steemer (a carpet-cleaning company). The coupon conveyed they would clean the carpets of three rooms for a special price of \$99. When the company arrived, they told me they could put a pet deodorizer in the cleaning solution for an extra charge, as well as a type of stain repellent.

I didn’t think it would be that much difference. I ordered the stain repellent and pet deodorizer, and to my surprise the bill was well over \$200. My neighbor had her carpets cleaned as well, and her bill approached \$300 because she had a couple of furniture pieces treated as well. I asked the company representative how many people actually spend \$99 for service. He replied, “Most people need more than the minimum.” Was this deceptive advertising? I think so.

The Doan’s Backache relief campaign is a discussion topic that helps illustrate what deceptive advertising is or isn’t. For over 90 years Doan’s was advertised as one of the better back-pain medicines on the market. The problem was that Novartis (the manufacturer of Doan’s) had no scientific data indicating that Doan’s was more efficient at treating back pain than the other pain medicines on the market. A doctor I know explained, “Doan’s has the same ingredients as ibuprofen.” The point: people who took ibuprofen would get results similar to those who took Doan’s.

In 1996, the FTC took Novartis to court on grounds of deceptive advertising. Here are some of Doan's claims (I write these claims on the board to convey to the class what Doan's main message/deception was).

- "Doan's is made for back pain relief with an ingredient [other] pain relievers don't have. Doan's makes back pain go away . . . The Back Specialist."
- "If nothing seems to help, try Doan's. It relieves back pain no matter where it hurts. Doan's has an ingredient these pain relievers don't have."
- "Back pain is different. Why use these pain relievers? Doan's is just for back pain."

In 1998, the courts ruled in favor of the FTC, and had Novartis run corrective advertising to try to let the public know that Doan's is no more effective than other pain medicines on the market. Holding a class discussion after explaining this issue will allow students to consider other instances when they have seen deceptive advertising, and its implications for society and business. Ask the students if what Novartis did was ethical or unethical and why?

Source: "Doan's Pills Must Run Corrective Advertising," FTC Office of Public Affairs, May 27, 1999, available from www.ftc.gov/opa/1999/05/doans.htm.

Web Resources for Enhancing your Lectures:

Tag Heuer	http://us.tagheuer.com/
Nike Golf	http://store.nike.com/us/en_us/?cp=USNS_KW_0611081618&l=shop_search,c-1+100701/f-4294967119/pn-1/sl-nike%20golf#l=shop.pwp,c-1+100701/f-4294967064/hf-50144+4294967118/ipp-48/pn-1
12 key advertising laws you should know	http://www.lawpublish.com/12-key-advertising-related-laws-you-should-know.html
Advertising and the First Amendment	http://www.lawpublish.com/amend1.html
Federal Trade Commission	http://www.ftc.gov/
Food and Drug Administration	http://www.fda.gov/
Federal Communications Commission	http://www.fcc.gov/
Adlaw by request	http://www.adlawbyrequest.com/
Copyright Web site	http://www.benedict.com/

LECTURE OUTLINE

I. Vignette: Celebrity endorsements (p. 27–29)



Lance Armstrong (p. 28–29)

Utilizing celebrities to market products and services is a well known tactic in the advertising industry. But what happens when celebrities attract negative publicity and bring a “brand transgression” to high profile companies such as Nike? Other celebrities such as Tiger Woods, Kobe Bryant, and Michael Vick are also examples of how controversial publicity can impact product associations. When companies choose to establish relationships with celebrities and athletes, ethics and social responsibility become a large component of business planning.

The Many Controversies about Advertising (p. 29)

A. Advertisers face criticism—and loss of revenues

1. Public can be displeased or offended by what an ad says or how it looks.
2. Consumers and consumer groups can complain when the product doesn’t live up to an ad’s promised benefits.

B. Advertising both applauded and criticized for its effect on the economy

1. Some claim advertising raises the cost of products while others claim it lowers costs.
2. Some claim advertising encourages competition; some assert that it reduces competition.

C. Advertising has social consequences

1. Some point out that it makes people more materialistic.
2. Some believe that advertising attempts to cajole people to buy things they don’t need.
3. Some claim that it reaches people subliminally in ways they cannot control.

D. Framework for a discussion of advertising controversy

1. Recall the underlying principle of free-market economics (a society is best served when its people are empowered to make their own decisions as free agents).
2. Use the four assumptions associated with this principle (self-interest, many buyers and sellers, complete information, absence of externalities [social cost]).

III. The Economic Impact of Advertising (p. 30)

Advertising accounts for about 2 percent of U.S. GDP. Marcel Bleustein-Blanchet, the “father” of modern French advertising, points out that the level of advertising expenditure is directly proportional to a country’s standard of living.

A. Effect on the Value of Products (p. 31)



Exhibit 2–1 Per capita ad spending around the world (p. 30)



Exhibit 2–2 Billiards model of the economic effect of advertising (p. 30)

In a free-market society, consumers can choose the values they want in the products they buy.

1. Advertising can add value to a product in the consumer’s mind by communicating the brand’s image.
2. Advertising creates added value by educating customers on new uses for the product.

3. By associating the product with a desirable image, advertising offers people the opportunity to satisfy those psychological, symbolic wants and needs. By adding value, advertising contributes to the self-interest of the manufacturer, consumer, and the advertiser. It also contributes to the number of sellers. That increases competition, which also serves the consumer's self-interest.

 Darty ad (p. 31)

 Anthony's Pizza ad (p. 31)

B. Effect on Prices (p. 32)

1. Although advertising can add value to a product and ultimately allow it to be sold at a higher price, both the Federal Trade Commission and the Supreme Court have ruled that, by encouraging competition, advertising has the effect of keeping prices down.
2. Additional important points include:
 - a. As advertising is a cost of doing business, consumers ultimately offset the advertiser's cost of advertisement by buying the product. However, the cost for advertising is quite small when compared to the total cost of the product.
 - b. Advertising is one element of any mass-distribution system, a system that allows manufacturers to engage in mass production, which in turn lowers the unit cost of products. In this indirect way, advertising helps lower prices.
 - c. Historically, in industries subject to government price regulations (e.g., agriculture, utilities), advertising has had no effect on prices. However, 1980s deregulation (an effort to restore free-market pressures) led to cases where advertising affected prices, both downward and upward.
 - d. 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 result in higher prices for their brands.

C. Effect on Competition (p. 32)

1. Some ways advertising restricts competition are:
 - a. Large companies out-spend small companies when it comes to advertising. In addition, many companies go out of business because they served customers less effectively or because they are consumed in a merger.
 - b. High costs inhibit the entry of new competitors in industries that spend heavily on advertising. In some markets, original brands can benefit from this barrier. However, capital investment needed for plants, machinery, and labor is of far greater importance.
 - c. Advertising by big business typically has a limited effect on small businesses because big businesses cannot dominate the entire country; local and regional businesses can advertise more heavily in select, localized market areas. The freedom to advertise encourages more sellers to enter the market. Example: store brands competing with national brands at grocery stores.

D. Effect on Consumers and Businesses (p. 32)

1. Studies show that promotional activity does affect aggregate consumption, but disagree as to the extent. Social and economic forces such as technological advances, increases in a population and its educational level, and changes in lifestyle are more significant. For example, advertising has not arrested declining sales in hats, fur coats, or manual typewriters.
2. Advertising can affect demand in the following ways:

- a. Increase amount of “complete information” and thereby stimulate **primary demand** for a product category.
- b. In declining markets where people only want price information, advertising can affect **selective demand**—demand for a particular brand. But the only effect it will have on primary demand is to slow the rate of decline.
- c. In growing markets, advertisers generally compete for a share of the growth.
- d. In mature, static, or declining markets, they compete for each other’s share of the market, making “conquest sales.”

 “Got Milk?” ad (p. 32).

E. The Abundance Principle: The Economic Impact of Advertising in Perspective (p. 33)

1. As businesses compete, they must differentiate their products (with a unique logo, feature, or blend of features) and then inform people of such differences. Advertising can create awareness of such differences, increasing consumer awareness of their choices.
2. **Abundance Principle:** When an economy produces more goods and services than can be consumed, advertising helps keep consumers informed of their alternatives and allows companies to compete more effectively for consumer dollars.
3. Advertising pays back more than it costs.
 - a. If it didn’t pay, no one would use it.
 - b. Cost is one cent/bottle of Coke, \$400 for a \$20,000 new car.

 Edsel ad (p. 33)

✓ **Check Yourself 2–1** (p. 33)

- ✓ Why do countries with higher advertising spending per capita tend to have a higher standard of living?
- ✓ Explain the effect of advertising on brand, prices, and competition.
- ✓ What beneficial roles does advertising play in a healthy economy?
- ✓ In what ways does advertising have an impact on our economy?
 - Advertising gives brands added value.
 - Advertising can lower prices by lowering the unit costs of goods, or raise prices by stressing features that make brands better.
 - Advertising may decrease competition by ensuring small companies are not able to compete with big companies with immense ad budgets. Advertising may increase competition by encouraging more companies to enter the marketplace.
 - Advertising may stimulate primary demand by giving people more “complete information,” and may stimulate selective demand through brand-focused messages.
 - The freedom to advertise encourages businesses to create new brands and improve old ones.
 - By encouraging consumer demand, advertising can sustain employment and income, but may also maintain the U.S. trade deficit by encouraging preference for foreign products.
 - Advertising keeps people informed of their alternatives and allows companies to compete more effectively for consumer dollars

IV. The Social Impact of Advertising (p. 34)

Criticisms of advertising can often be categorized as *style* arguments (deceptive ads, for example) or *social* or *environmental impact* arguments (pointing out social or environmental effects). Whereas our prior discussion of the economic effects of advertising involved the first two principles of free-market economics (self-interest and many buyers and sellers), the following discussion involves the last two principles: complete information and the absence of externalities. In fact, social issues, whether discussed as style or impact arguments, can be seen as instances where one or more economic principles are violated. Let's discuss the common criticisms of advertising:

A. Deception in Advertising (p. 34)

📖 Tabasco ad (p. 34)

📖 Daffy's ad (p. 34)

1. To be effective, advertising must have consumer confidence. Thus, deceptive, inaccurate, or misleading advertising is self-defeating. Even **puffery** (exaggerated, subjective claims that cannot be proved true or false) can be interpreted at face value and spawn a lack of confidence and even result in revenue-damaging publicity or legal action.
2. Under current advertising law, only product claims (whether explicit or implied) must be *factually false* or convey a misimpression for an ad to be seen as illegal (puffery is excluded based on the idea that reasonable people wouldn't believe it anyway). It is argued that if advertisers use puffery so much, they must believe it does work. Puffery uses nonproduct facts (facts based on the social context in which the product is used rather than the brand itself, for example, "Coke is the one").
3. By its very nature, advertising is not complete information; it's biased towards the advertiser's point of view and often employs nonproduct facts and puffery.
4. People and the law will accept puffery, but when the advertising creates false impressions, consumers and the regulators ought to react.

🌐 **Ethical Issue** Truth in Advertising: Fluffing and Puffing (p. 35)

B. The Subliminal Advertising Myth (p. 36)

1. Wilson Bryan Key is a promoter of the notion that advertisers embed dirty words and suggestive shapes into the graphics and illustrations in ads to improve viewer response. He calls this **subliminal advertising**. This concept has been debunked by scientific studies, but Key's idea has become lore following the sale of thousands of his books and promulgated a generation of consumers who believe in subliminal advertising.
2. If consumers could be "brainwashed," then there would be congressional hearings (by those officials who used advertising to get elected) and thousands of new products that are heavily advertised would not fail each year. Competition is a bigger factor than subliminal advertising. When were you helplessly manipulated into buying a product? Consumers act in their own self-interest, most of the time deciding not to make a purchase.

C. Advertising and Our Value System (p. 36)

1. Professional critics argue that advertising:
 - a. Degrades people's value systems by promoting a hedonistic, materialistic way of life, encouraging the purchase of things people really do not need.
 - b. Destroys the essence of our citizen democracy.
 - c. Manipulates people by playing on emotions, promising status, social acceptance, and sex appeal.
 - d. Is so powerful and ubiquitous that consumers are sometimes powerless to defend themselves against it.

2. In response, proponents contend that:
 - a. Advertising's influence has been greatly exaggerated.
 - b. Studies show U.S. consumers to be very skeptical—only 17 percent of them see advertising as a source of information for what to buy.
3. Advertising is biased in favor of the advertiser and thereby is not complete information.
 - a. This fact suggests a failed “advocacy” system.
 - b. This fact affects society as whole: the aggregate activities of the nation's advertisers affect many people outside the immediate marketing transaction, creating an unexpected cost to society (externality).

 House of Fraser ad (p. 36)

D. The Proliferation of Advertising (p. 36)

1. A social impact criticism is that there is just too much advertising.
 - a. The average person is exposed to 500–1,000 commercial messages daily.
 - b. There are nearly 40,000 brand choices in the average supermarket alone.
 - c. In 2010, non-program time runs to as much as 14 minutes per hour on TV.

Too much advertising creates an externality not only for customers (nuisance), but for the advertisers as well. The more advertisements that hit customers' brains, the less effective paid advertising becomes. It's not just TV—Web sites are also cluttered with advertising banners, and our e-mail boxes are flooded with advertising.

E. Stereotypes in Advertising (p. 37)

1. Advertising has long been criticized for not being more sensitive to the concerns of minorities, women, immigrants, the disabled, and myriad other groups.
 - a. Latinos, African-Americans, Asians, Native Americans, and others now being favorably portrayed in ads not only because of pressure from watchdog groups but also because it's good business; these consumers represent sizable target markets.
 - b. Studies show that a positive role portrayal in some mainstream ads has had a positive effect on the self-esteem of African-American youth.
 - c. Advertisers do not want to offend the 58 percent of women who work outside the home.
2. Problems still exist, especially in local and regional advertising and in promoting certain product categories (beer and sports, for example).
 - a. Many advertisers are not aware of the externalities their ads can create, and that they may be perpetuating male and female **stereotypes**.
 - b. Inaccurate portrayals of women and minimalist depiction of minorities in mainstream ads still smacks of tokenism.

F. Offensive Advertising (p. 37)

 Hirter Beer ad (p. 37)

1. Offensiveness is a style argument that refers to unwanted externalities—the perceived unwanted social cost of some styles of advertising.
2. Taste is highly suggestive and it changes. When the first underarm deodorant ad appeared in *Ladies Home Journal* in 1927, people were outraged. Today, we accept these ads without a thought (even some with nudity).
3. When nudity is relevant to the product, people are less likely to regard it as offensive or obscene.

4. Some consumers become so offended they boycott products, while others just change the channel. In the end, consumers do exercise some veto power.
- G. The Social Impact of Advertising in Perspective (p. 38)
1. Marketing professionals believe in the benefits that advertising brings to society:
 - a. Encourages product development.
 - b. Speeds acceptance of new products and technologies.
 - c. Fosters employment.
 - d. Provides variety of information about choices.
 - e. Keeps prices down (encourages mass production).
 - f. Stimulates healthy competition.
 - g. Promotes higher standard of living (subsidizes arts).
 - h. Supports freedom of the press and the dissemination of information.
 2. Critics charge that advertising actually creates an externality that interferes with a free press. The media, they note, pander to national advertisers to attract big ad dollars and modify their editorial content to mollify their corporate benefactors.
 3. Even if advertising can be criticized for not giving complete information, it is still a rich source of information that overcomes many unwanted externalities and contributes to the existence of many buyers and sellers, satisfying the self-interest of consumers, manufacturers, and marketers.

- ✓ **Check Yourself 2–2** What are some of the criticisms that are leveled against advertising? (p. 38)

Critics charge that advertising:

- Is frequently deceptive.
- Involves frequent use of meaningless information (puffery).
- Presents information below the threshold of perception (subliminal advertising).
- Promotes a hedonistic, materialistic way of life.
- Is too ubiquitous and clutters our mass media.
- Perpetuates inaccurate or simplistic stereotypes.
- Is offensive or pornographic.

V. Social Responsibility and Advertising Ethics (p. 39)

 Ad Council ad (p. 39)

- A. Ethics begin where the law leaves off.
1. **Ethical advertising** means doing what the advertiser and the advertiser's peers believe is morally right in a given situation.
 2. **Social responsibility** is doing what society views as best for the welfare of the people in general or for a specific community of people.
- B. Advertisers' Social Responsibility (p. 39)
1. Advertising promotes harmony within a society (societies without harmony collapse), a responsibility all institutions share.
 2. Advertising plays an important role in developed countries.
 3. It influences the society's stability and growth.

4. It helps secure large armies, creates entertainment events attracting hundreds of thousands of fans, and often influences the outcome of political elections.
5. Promotes social responsibility by advertising messages on “green advertising,” education, safety, health, self-fulfillment, etc., and by being a good neighbor via *pro bono* work.
6. Such power places a burden of responsibility on those who buy, create, produce, and sell advertising to maintain ethical standards that support society—advertisers are regularly chided when they fail the social responsibility litmus test (as in the case of tobacco marketing).

 Leclerc ad (p. 39)

C. Ethics of Advertising (p. 40)

There are three levels of ethical responsibility:

1. At the first level, ethics are evaluated according to the traditional actions and rules followed by a society or community and the philosophical rules that society establishes to justify its past actions and decree future actions.
2. At the second level, the individual evaluates the meaning and nature of ethical issues via his or her attitude, feelings, and beliefs, in order to arrive at a personal value system.
3. When neither the group (first level) nor the individual (second level) can effectively decide what to do ethically, then the definition of the ethic (third level), becomes the focus of activity. Here, a group or the individual must take time to create a definition for the ethical behavior required. Often, a third party may referee or even bias the nature of the newly defined ethical solution.

My Ad Campaign: Your Campaign Assignment (p. 40)

- ✓ **Check Yourself 2–3** Provide examples of actions that advertisers or their agencies might take that would demonstrate social responsibility and ethical behavior. (p. 41)

Social Responsibilities:

- Advertisers and their agencies are socially responsible by maintaining clean business facilities, participating in civic events, supporting local enterprises, and improving the community. Ad professionals might provide *pro bono* (free) work to charitable organizations and public agencies or provide scholarships and internships.

Ethical Responsibilities:

- Ethics comprise two interrelated components: traditional actions and philosophical rules.

To meet their responsibilities, advertisers should practice socially responsible advertising. They should provide complete information and reduce unwanted externalities. The advertising business is more highly scrutinized in the past. Consumer groups and special-interest groups keep advertising in check.

VI. Current Regulatory Issues Affecting U.S. Advertisers (p. 41)

A. Freedom of Commercial Speech (p. 41)

1. The Supreme Court historically distinguishes between “speech” and “commercial speech” (speech that promotes a commercial transaction), but decisions over the past two decades suggest that truthful commercial speech is entitled to significant, although not full, protection under the law.
 - a. Litmus test for regulating commercial speech (based on the 1980 *Central Hudson Gas v. Public Service Commission* case):

1. The ad in question must be for a legal product and free of misleading claims.
 2. The government must prove that the absence of regulation would have substantial negative effect.
 3. The government must establish conclusively that cessation of the advertising would be effective in furthering the government's objective.
 4. The government has to establish that there are no other means to accomplish the same end without restricting free speech.
- b. In 1982 the Supreme Court upheld an FTC order allowing physicians and dentists to advertise, and in 1993, it declared that the Cincinnati City Council violated the First Amendment by banning racks of advertising brochures from city streets for "aesthetic and safety reasons" while permitting newspaper vending machines.
 - c. In 1993 the Supreme Court gave the advertising industry its biggest win in years when it ruled the Cincinnati City Council violated the First Amendment when it permitted newspaper vending machines but banned racks of advertising brochures from city streets for "aesthetic and safety reasons."
 - d. The issue of commercial speech freedom is far from settled. While greater freedom of commercial speech enhances the government's interests in many buyers and sellers and complete information, it may come at a cost of increased externalities, as in the cases of tobacco advertising, alcohol advertising, and advertising to children.
2. Tobacco Advertising (p. 42)
 - a. Although tobacco is a legal product, the harm created by cigarette marketing has far-reaching effects, including health consequences for half a million people a year and government health costs of billions of dollars a year—a major externality.
 - b. To recover these costs, a number of state attorneys general sued the tobacco industry. In 1998, they reached a major settlement, providing for major reforms in tobacco marketing and the largest financial recovery in the nation's history.
 - c. In an effort to protect children, the settlement banned all outdoor advertising posters, sponsorship of events with a significant youth audience, and use of cartoon characters in any tobacco advertising.
 - d. Critics of the settlement are disturbed by the government's abridgement of free commercial speech. They warn that the selective limitation of free speech gives an unfair, monopolistic advantage to those brands that are already the category leaders and threatens every legal business in America.

 Joe Camel ad (p. 42)

3. Advertising to Children (p. 42)

- a. Kids are not sophisticated consumers; their conceptions of self, time, and money are immature. So they know little about how to use economic resources rationally. Unregulated, child-oriented advertising can lead to false beliefs or improbable product expectations.
- b. Many children are also becoming sole decision makers, making them further vulnerable to unscrupulous marketing activities.
- c. To promote responsible children's advertising the BBB established CARU (Children's Advertising Review Unit), which provides an advisory service and self-regulatory guidelines to advertisers and agencies.
- d. Other countries are far stricter about advertising to children. In Scandinavia, no ads are allowed during children's programs, and no TV ads are allowed directed to kids under 12. Sweden and Norway prohibit ads directed to children under 12; and Australia prohibits ads directed to preschoolers.

 **Exhibit 2-3** CARU guidelines for advertising to children (p. 43)

B. Consumer Privacy (p. 43)

1. Privacy rights are in the news because of the increased use of wireless handheld devices, cell phones, and the Internet. The issue here is over people's right to protect their personal information.
2. Internet Web sites create profiles of their users and track their Web surfing habits, often without the surfer's knowledge.

 Facebook privacy issues (p. 44)

VII. Federal Regulation of Advertising in the United States (p. 44)

The U.S. government imposes strict controls on advertisers through laws, regulations, and judicial interpretations.

A. The U.S. Federal Trade Commission (p. 45)

 GALA ad (p. 44)

Major U.S. regulator of national advertising for products sold in interstate commerce. The Federal Trade Commission (FTC) has the power to protect both consumers and competitors from deceptive and unfair advertising. The FTC's responsibility is to enforce federal antitrust and consumer protection laws and make sure that markets maintain competitiveness through the elimination of deceptive and other unfair trade practices.

1. Defining Deception (p. 45)—**Deceptive advertising** is any advertisement in which there is misrepresentation, omission, or other practices that can mislead a significant number of reasonable consumers to their detriment. Proof that consumers were deceived is not required, and representation may be express or implied. The issue is whether the ad conveys a false impression—even if it is literally true.
 - a. The FTC accused Office Depot and others of deception for advertising “low-cost” and sometimes “free” computer systems because they failed to adequately disclose the true costs and important restrictions on the offers, which were tied to rebates on long-term Internet service contracts.
 - b. The FTC looks at environmental claims (such as biodegradable, degradable, photodegradable, and recyclable products). To avoid confusing terminology, the FTC and the Environmental Protection Agency (EPA) work jointly with attorneys general from many states to develop uniform national guidelines for environmental claims.
2. Defining Unfairness (p. 45)—**Unfair advertising** occurs when a consumer is “unjustifiably injured” or there is a “violation of public policy” (such as government statutes). Unfair advertising is the result of a lack of complete information, and/or some other externality. FTC critics charge that the word unfair is too vague and gives the FTC too much power.
3. Comparative Advertising (p. 46)
 - a. **Comparative advertising** is a claim of superiority over competitors in some aspect. In the U.S. this is legal, as long as the comparison can be proven to be truthful.
 - b. The FTC cracked down on the Arizona Auto Dealers Association for restricting truthful, nondeceptive, comparative price advertising among its members.
 - c. Under current law, any advertiser that misrepresents its own products or another firm’s goods, services, or activities, it is vulnerable to a civil action.
 - d. In addition to being truthful, comparative ads must use an objective, measurable characteristic. K9 Advantix ad (p. 46)
4. Investigating Suspected Violations (p. 46)—The FTC investigates claims submitted by consumers, competitors, and its own monitors. Typically, the FTC looks for three kinds of information:
 - a. **Substantiation**—The FTC looks at whether an advertiser can substantiate product claims.
 - b. **Endorsements (or testimonials)**—The FTC requires that both advertisers and endorsers be able to substantiate their claims; celebrity endorsers may be held personally liable for misrepresenting a product or service or for not using it.

- c. **Affirmative Disclosures**—Advertisers must make affirmative disclosure of their product’s limitations or deficiencies (e.g., EPA mileage, warnings).

 Covergirl ad (p. 47)

5. Remedies for Unfair or Deceptive Advertising (p. 47)—The FTC has three courses of action when it determines that an ad is deceptive or unfair. It may:
 - a. Request that the advertiser sign a **consent decree** agreeing to stop the objectionable advertising without admitting any wrongdoing.
 - b. Issue a **cease-and-desist order** prohibiting further use of the advertisement.
 - c. Require **corrective advertising** for some period of time to explain and correct the offending ads.

B. The Food and Drug Administration (FDA) (p. 47)

The FDA has authority over the labeling, packaging, and branding of packaged foods and therapeutic devices.

1. The FDA strives to provide consumers with complete information, requiring disclosure of ingredients on package labels, in all product advertising featured in stores, and all accompanying or separately distributed product literature. Labels must disclose such things as package weight or volume, contents, special instructions, side effects, etc. The FDA can require warning statements on packages of poisonous or hazardous products.
2. The **Nutritional Labeling and Education Act (NLEA)** went into effect in 1994 and gives the FDA additional muscle by setting stringent legal definitions for terms such as fresh, light, low fat, and reduced calorie.

C. The **Federal Communications Commission (FCC)** (p. 48)

The FCC has jurisdiction over the radio, television, telephone, satellite and cable TV industries, and the Internet.

1. The FCC has *indirect* control over broadcast advertising through its authority to license broadcasters (or remove their licenses).
2. In the 1980s the FCC concluded there were enough buyers and sellers that marketplace forces could control broadcast media so it deregulated both radio and TV stations.
3. Following Janet Jackson’s Super Bowl “wardrobe malfunction,” the FTC has increased its visibility as an arbiter of broadcast decency.

 Pfizer Revolution ad for pet medicine has a long disclosure (p. 48)

D. The Patent and Trademark Office and the Library of Congress (p. 49)

 Coke trademarks (p. 50)

1. The U.S. government protects the self-interest of its citizens by registering and protecting **intellectual property**, the exclusive rights of writings and inventions.
2. **Patents** protect new technology, of which the positive aspects for patent-holders include providence of incentive for invention, encouragement of investment, and disclosure of new products worldwide.
3. **Trademarks** are “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,” according to the Lanham Trademark Act (1947).

4. *U.S. Patent and Trademark Office*—The PTO is a bureau of the Department of Commerce that registers and protects ownership of trademarks that appear on letterheads, packaging, and labeling. The creator of a trademark can add the designation TM to signal a willingness to defend the logo. Once registered, the owner can designate ownership with the symbol ® and receive full effect of the law against violators.
5. **Copyright**—The Library of Congress registers and protects “original works of authorship” (all literary, dramatic, musical, artistic, and other “intellectual works”).
 - a. 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. One cannot copyright slogans, short phrases, familiar symbols and designs, or ideas (although trademarks can be used in many cases). Advertising can only be copyrighted if it uses original illustrations or copy.
 - b. Copyright is indicated by the word “Copyright” (or the abbreviation “Copr.”) or the symbol © followed by the year of first publication and the name of the advertiser or copyright owner.

VIII. State and Local Regulation (p. 50)

Since the deregulation trend of the 1980s, state and local laws have taken a more active role in governing advertising.

A. Regulation by State Governments

1. State legislation governing advertising is often based on the truth-in-advertising model developed in 1911 by *Printer’s Ink*. The statute holds that any maker of an ad found to contain “untrue, deceptive, or misleading” material is guilty of a misdemeanor. Today, most states enforce laws patterned after this statute.
2. All states have “little FTC” consumer protection acts that govern unfair and deceptive business practices.
3. Different states have different regulations governing what can be advertised, some prohibiting ads for beer and wine, and most restrict the use of federal and state flags in advertising. These can present a major problem for national marketers.

B. Regulation by Local Governments

Many cities and counties have consumer protection agencies to enforce laws regulating local advertising practices.

✓ **Check Yourself 2-4** In what ways do government agencies restrict the activities of advertisers? (p. 51)

- Tobacco restrictions
- “Hard” alcohol advertising
- Alcoholic energy drinks
- Condom advertising

Exhibit 2-4 AAAA guidelines for comparative advertising (p. 51)

IX. Nongovernment Regulation (p. 51)

Nongovernmental organizations also issue advertising guidelines.

A. The *Better Business Bureau (BBB)*

1. The largest of the U.S. business-monitoring organizations is the BBB, established in 1916. It operates primarily at the local level to protect consumers against fraudulent and deceptive advertising and sales practices.
 2. When BBB learns of a violation by a member, it contacts the violator. Most violators comply. If they do not, appropriate government agencies are contacted. Violator's files are open to the public.
- B. *The Advertising Self-Regulatory Council (ASRC)* (p. 51)
- The National Advertising Review Council (NARC), established in 1971, changed its name to the Advertising Self-Regulatory Council (ASRC) in 2012. The primary purpose of the organization is to promote and enforce standards of truth, accuracy, morality, and social responsibility in advertising.
1. ASRC has two operating arms: the *National Advertising Division (NAD)* and the *National Advertising Review Board (NARB)*. The NAD monitors advertising practices and reviews complaints from consumers, consumer groups, brand competitors, local BBBs, trade associations, and others.
 2. The appeals board for NAD decisions is the NARB, which consists of a chairperson and 70 volunteer members.
 - Heat-N-Glo Good Housekeeping approval al (p. 53)
- C. *Regulation by the Media* (p. 52)
- Many people think the media are more effective regulators than the government.
1. **Television**—The strictest review of advertising is conducted by broadcast TV networks, which require submission of all ads to their **broadcast standards department** for evaluation.
 2. **Radio**—Radio networks, unlike TV, supply only a small percentage of advertising, so they have little say in regulating ads on their local affiliate stations. Local stations are less likely to return a script or tape, and every station has its own unwritten guidelines on what is allowable in commercials.
 3. **Magazines**—National magazines monitor all advertising, particularly from new advertisers and ads for new products. Many magazines will not accept advertising for certain types of products, and some test every product before accepting the advertisement.
 4. **Newspapers**—These monitor and review advertising and have rules regarding what kinds of ads they will not accept. Advertising policies are set forth in the *Newspaper Rates & Data* publication.
- D. *Regulation by Consumer Groups* (p. 53)
- The growing consumer movement has caused advertisers and agencies to pay more attention to product claims. **Consumerism** refers to social action designed to promote the rights of the buying public. **Consumer advocates** are groups or individuals that act on advertising complaints received from the public and those that grow out of their own research.

E. Self-Regulation by Advertisers and Ad Agencies (p. 53)

Advertisers also regulate themselves. Agencies are compelled to keep the confidence of the public. Thus, most large advertisers gather strong data to substantiate their claims. Most advertisers also aim for a sense of social responsibility in their advertising. The ad industry has organizations that have developed codes of conduct to which their member ad agencies subscribe. These codes also establish a basis for complaints.

1. Advertising agencies must research and verify all product claims and comparative product data before using them in advertising. Agencies can be held liable for misleading and fraudulent advertising claims. Most major agencies have in-house legal counsel for reviewing ads.
2. Advertising associations monitor industry-wide advertising practices. They are the *American Association of Advertising Agencies (AAAA)*, *American Advertising Federation (AAF)*, and *Association of National Advertisers (ANA)*.
 - a. The AAAA, an association of the largest ad agencies throughout the United States, controls agency practices by denying membership to any agency judged unethical.
 - b. The AAF, which helped establish the FTC and led the way for the BBB, has established the *AAF Advertising Principles of American Business*, adopted in 1984, that define truth in advertising.
 - c. The ANA comprises 370 major manufacturing and service companies that are clients of AAAA member agencies. These companies, pledged to uphold the ANA code of advertising ethics.



Exhibit 2-5 AAF Advertising Principles (p. 54)

- ✓ **Check Yourself 2-5** Why do advertisers and ad agencies work so diligently to regulate their own activities? (p. 54)

Self-regulation by advertisers and ad agencies can be critical to success. Agencies need the confidence of the public and thus have an incentive to substantiate their claims. Also, without self-regulation, more government intervention is possible, as can be seen with the debate surrounding fast food marketed to children. The ad industry has organizations that have developed codes of conduct which establish a basis for complaints. Advertising associations monitor industry-wide advertising practices. They are the *American Association of Advertising Agencies (AAAA)*, *American Advertising Federation (AAF)*, and *Association of National Advertisers (ANA)*.

F. Government Restraints on International Advertisers (p. 54)

1. Foreign governments are more involved in regulating advertising than the U.S.
2. European laws remain primarily national.
3. Advertisers need to keep up with the changing legal environments of the countries in which they advertise.
 - a. Some advertising is highly restricted or even prohibited, depending on the product or service.
 - b. Many countries prohibit puffery.
 - c. Many European countries ban coupons, premiums, free tie-in offers, etc. Product placement is typically prohibited.

4. A good, local communications lawyer is a company's only protection against the morass of conflicting international laws.
- X. The Ethical and Legal Aspects of Advertising in Perspective (p. 54)
- A. There is no disputing that advertising has been and still is often misused. Some believe that, if the industry doesn't raise its standards, there may be pressure to regulate even more.
 - B. Others believe advertising regulation is not warranted because of the success rate with self-regulation (3% of advertising reviewed by the FTC is considered unsatisfactory).
 - C. Advertisers and consumers need to work together to ensure that advertising is used intelligently, ethically, and responsibly for the benefit of all.

ETHICAL ISSUE Truth in Advertising: Fluffing and Puffing (p. 35)

1. How would you react to an ad that proclaims a product "is the greatest ever," "will change your life," or "can't be beat?" Does it pique your interest to give it a try—or do just the opposite?

Answer guidelines:

- a. Deception is interpreted as injurious and is thereby illegal.
 - b. Puffery is a form of falsity, which may or may not be deceptive.
2. If puffery were outlawed, how would similar products (toothpaste, detergents, and cereals, for example) differentiate themselves? If advertisers were restricted to telling only the literal truth, how would that affect creativity in advertising?

Answer guidelines:

- a. For many products, differentiation is possible by playing up a catchphrase that emphasizes a real or invented difference (e.g., DoubleMint gum shows twin sisters smiling and repeats the theme "double your pleasure, double your fun"). No other gum could use this theme without plagiarizing it.
- b. A straight comparison ad is an effective method of differentiation. One method is to list the differences between "our brand" and "brand X" or with a named competitor. A second method is an ad featuring a demonstration that plays up the efficiency of the product's utility. Such ads can differentiate a product because they are an implied challenge to all other competitors to a put-up or shut-up duel.

REVIEW QUESTIONS

1. Why is it good that advertising stimulates competition? (p. 32)

Both the Federal Trade Commission and the Supreme Court have ruled that ads, which encourage competition, actually keep prices down. Consumers benefit with better products and lower prices when companies compete for their business.

2. Describe the two types of social criticisms of advertising. (p. 33)

Style arguments are those that claim that advertising is deceptive or manipulative. *Social* or *environmental* impact arguments focus on the negative effects of that advertising may have on groups or on society.

3. What is puffery? Give some examples. Do you ever feel deceived by puffery in advertising? (p. 34)

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

The degree of deception will vary according to each student's own personal value system.

4. Does advertising affect our value system? In what ways does it do so? (p. 36)

Students' answers will vary. Critics say that advertising promotes hedonistic values, materialism, and harmful habits. Critics believe that advertising encourages us to purchase things that we don't need, and manipulates us into buying things by playing on our emotions and promising greater status, social acceptance, and sex appeal, for example.

5. What is the difference between an advertiser's ethics and its social responsibility? (p. 39)

Ethics in advertising means doing what the advertiser and the advertiser's peers believe is morally right in a given situation. Social responsibility refers to doing what society views as best for the welfare of people in general or for a specific community of people.

6. What are some examples of stereotypes used in advertising? (p. 37)

Women are not represented accurately. For example, the majority of household product-related and beer ads feature only women). There is also under representation of non-white minorities in mainstream ads on a local and national level.

7. How does commercial speech differ from political speech? Do you think advertisers should have the same First Amendment rights as everyone else? Explain. (p. 41)

Students' answers will vary.

As an integral part of our American heritage, political speech enjoys vast protection under the First Amendment to the U.S. Constitution. Commercial speech, on the other hand, enjoys only limited protection. Recent Supreme Court decisions have broadened those protections, since freedom of speech enhances the government interests of many buyers and sellers; but the issue is far from settled. In the effort to reduce externalities, there is heated controversy over issues like tobacco advertising, advertising to children, and consumer privacy.

8. What are privacy rights? What are some ways that privacy rights are perhaps being violated by marketers? (p. 42)

Privacy rights are people's right to protect their personal information. Internet Web sites are increasingly able to capture and store profiles of their visitors, including personal information such as e-mail addresses, surfing habits, and buying behavior.

9. What is the role of the FTC in advertising? Do you think this role should be expanded or restricted? (p. 45)

The FTC regulates all national advertising aimed at promoting products used in interstate commerce. Because these efforts call for highly subjective judgments, FTC regulatory actions against the advertising industry are often controversial. Until recently, the FTC was often criticized for overstepping its bounds. However, its powers were greatly reduced over the past decade, and recent chairpersons have channeled the agency's focus toward the most blatant cases of deception and unfairness. Citing recent examples of FTC actions may require some research unless a major case has been in the news. One possibility is TV ads for the many "miracle" weight-loss programs. Of all advertising reviewed by the FTC in a typical year, 97 percent is found satisfactory.

10. What is the difference between unfair and deceptive advertising? (p. 45)

Unfair advertising occurs when an ad, even if not deceptive, may cause unjustifiable injury or a “violation of public policy.” In other words, unfair advertising occurs in the absence of *complete information* or some other *externality*. Deceptive advertising is any ad that contains a misrepresentation, omission, or any other practice that can mislead a significant number or reasonable consumers to their detriment.

EXPLORING ADVERTISING

1. Find advertising that satisfies the following criteria. Describe the advertising and answer the related questions.

- a. Adds value to the brand. Explain what value is added and how.

L’Oreal’s famous tagline, “Because you’re worth it,” is a good example of adding value to a brand by implying that the brand represents the best that money can buy. This, of course, justifies a higher price for the brand relative to its competition.

- b. Stimulates primary or selective demand (or both). Explain what kind of demand is stimulated and how you determined this.

A great primary demand campaign is the famous “Got Milk” series. Almond and raisin growers also have popular campaigns. There are many selective demand campaigns that students can choose.

- c. Provides an example of puffery. Describe the puffery and explain why you do or don’t consider it deceptive.

Snapple claims it is made “from the best stuff on earth.” This is not likely, but it cannot be proven true or false. Papa John’s Pizza claimed that “Better ingredients, better pizza” was just puffery, but Pizza Hut argued that the claim was misleading and inaccurate.

- d. Tries to manipulate you into buying something you didn’t previously want or need. How is it doing that? Were you effectively manipulated?

This question deals with two interesting points: advertising informing us about things we had not previously wanted, and whether our decision to try the product amounts to manipulation. Should create a great discussion!

- e. Stereotypes a person or group. Do you find the approach offensive or acceptable?

In class one time I asked about stereotypes and an African American pointed out that ads for technology products such as cameras never featured blacks. He went on to say that such ads, when they did feature underrepresented groups, usually featured Asian Americans. That prompted an Asian American student to raise his hand, acknowledge the validity of the comment, and go on to criticize the prevalence of Asian American models in technology ads! It was a great discussion. It is also interesting to hear from Hispanic/Latino students regarding issues such as the use of Spanish in ads and whether or not they enjoy campaigns such as the old “Yo Quiero Taco Bell” ads. I wonder how Indian-Americans feel about the Metro PCS Tech & Talk commercials.

- f. Makes a comparison to a competitive product. Does the comparison seem fair and supportable? Does it influence your attitude?

Students sometimes express surprise that comparative ads are legal. Good examples of implicit (Avis-we try harder) and explicit (Hyundai Sonata is cheaper and better equipped than Honda Accord) can be found.

- g. Tries to deceive you. Is the advertiser being dishonest? How is your opinion of the advertiser or product affected?

Weight loss ads are good ones to scrutinize.

- h. Shows social responsibility. Did it make you feel differently about the company or its products?

Dove's campaign with "real women" can introduce a discussion about beauty standards. The campaign started a lot of discussion among women in England and helped increase sales as well. The results seem to suggest that social responsibility and brand building can indeed go hand in hand.

2. Watch 30 minutes of television during at least one day part or program format (e.g., morning, afternoon, evening, late night, news, sports, soaps). Note the time of day and type of programming you watched. Count the number of commercials during that 30-minute period and bring your results to class.

Example: 8:00 evening programming (primetime) with 16 commercials. Encourage students to try to distinguish local from national ads. For a special insight, ask students to track brand appearances in the shows that they watch. Research suggests that most students do not believe such product placements are paid for; in fact, over 90 percent are.

3. Ad Action: "I know it when I see it."

Where is the socially accepted line between "erotic suggestiveness" and "explicit sexuality" in advertising? Where do the images that you find at the Abercrombie's Web site (<http://abercrombie.com>) fall? How about those at the Victoria's Secret (<http://www.victoriasssecret.com>) Web site? Erotic suggestiveness is certainly possible without nudity, but what about the reverse? Can an ad feature nudity without erotic suggestiveness or explicit sexuality? Are either ever appropriate in an ad? You might want to consider these sites (Note: there is nudity at each) in formulating your answer.

- a. <http://www.americanapparel.net> (provocative slideshows)
- b. <http://www.blingh2o.com> (a Web site for bottled water)
- c. <http://ww5.komen.org/BreastCancer/BreastSelfExam.html> (click on the Breast Self-Awareness (BSA) Interactive Tool link in the middle of the page that helps demonstrate the proper way to do a breast exam for cancer.

Many people would suggest that the BlingH2o Web site is using nudity in a patently offensive manner. Do you agree or disagree? What are the arguments that support your perspective? What are the arguments that someone who disagrees with you would likely put forward?

A critic might argue that the use of nudity in the BlingH2o Web site is offensive because of its complete irrelevance to the product, drinking water. This is in contrast to the breast cancer site (where it is important to demonstrate accurately how to do the exam) or the American Apparel site (where the naked rear ends of the models have at least some relevance to the advertised product).

Those who are not offended by the nudity at any of the sites, including the BlingH2o Web site, might adopt one of two perspectives. A VERY common perspective is: “It doesn’t bother me and anyone who has a problem with it should avoid the product and the ad.” In fact, this “live and let live” philosophy may be so prevalent among your students that it is difficult to get them upset about much of anything! A second, perhaps more interesting perspective, might be an argument that the nudity at the blingh2o site actually does have some relevance; in this case relevance to the image the brand is, rightly or wrongly, attempting to create for itself.

4. Go to the Web site for the Ad Council, <http://www.adcouncil.org>. As you read in this chapter, the Ad Council is an organization dedicated to addressing critical social issues through the creation of public service announcements, or PSAs. Click on the Campaigns link and look over the many different social causes that the Ad Council has tried to address. Select an issue that you care about and examine the work. How effective do you find the ads? Finally, consider whether there is an issue that concerns you greatly that you don’t find at the site. If so, why do you suppose it isn’t there?

Students will have different reactions to the work. Issues are often not present at the site because solutions are controversial or difficult to implement.

IMPORTANT TERMS

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ANCILLARY ACTIVITIES & EXERCISES

1. Have the students go to the library and refer to recent editions of the Business Periodicals Index under the subject headings, “Advertising Laws and Regulations” and “Advertising, Fraudulent.” Ask the students to first find a company that has been charged with violating a regulation or law by a governmental agency and then to answer these questions:
 - a. What company and government agency are involved in the dispute?
 - b. What regulation or law was allegedly violated?
- c. What was the government agency’s position in the case?
 - d. What was the company’s position in the case?
 - e. If the case has been settled, what was the end result—dismissal, imposition of a fine, requirement for corrective advertising, or something else?
 - f. Do you agree with the outcome of the case?
2. Have the students find three advertisements that they feel are socially unacceptable and three that they feel raise the social conscience of consumers. The students should evaluate the social acceptability of an ad based on the *issues discussed in the chapter* and not merely on their personal reactions to a particular product. Students should prepare their reasons for finding an ad unacceptable and, where appropriate, make suggestions as to how the ad could be changed to make it more acceptable. The socially acceptable ads they choose may portray people or products in ways that raise our consciousness. Such ads might, for example, urge consumers to use the product in moderation (e.g., “designated driver” concept).
3. Divide the class into two groups and present them with a controversial advertising issue to be debated during a future class. Possible ethical issues to be debated include:
 - a. Nudity in advertisements
 - b. Advertising products of a sexual nature, such as condoms

- c. Cigarette or alcohol advertisements
4. Have each student find an ad for the same type of product (e.g., toothpastes, detergents, soft drinks) that appears to use puffery to “sell” the product and bring it to class. Break the students into small groups and have them exchange their ads and discuss how they think they could “sell” the products displayed if they were not allowed to use puffery to distinguish their product. When each group has completed its discussion asked them to share with the class any challenges they faced in coming up with an ad that “spoke the truth and nothing but the truth.”

DEBATABLE ISSUE

Should Freedom of Speech Apply to Advertising?

The First Amendment of the Constitution protects the rights of marketers to advertise. However, the Supreme Court has ruled that the absolute prohibition of commercial speech shown to be “false, deceptive and misleading” is not a violation of the First Amendment.

“Section 5 of the Federal Trade Commission Act holds ‘unfair or deceptive actions or practices . . . (to be) unlawful.’ Deception is a term that is susceptible to reasonable definition through case law. Unfortunately for marketers, the FTC has chosen to define ‘unfair’ in ways that are not supported either by law or common experience, but which happen to fit the social views of the policymakers then in power.”¹

Some feel that commercial speech should be entitled to the same First Amendment protection as noncommercial speech, news reporting, and political commentary. Others feel a different standard should be applied to commercial speech.

PRO

Freedom of speech should apply to advertising because:

- Freedom of speech among advertisers would spur greater competition among companies, thereby lowering prices and increasing the variety of goods available. While this may require consumers to become more cautious and knowledgeable, they have more to gain than to lose.
- Advertising is a valuable source of information, persuasion, and new ideas. It acts as a valuable aid to public decision-making. No matter how tasteless and excessive it may be, advertising provides information about who is selling what product, for what reason, and at what price.
- Businesses should have the same rights as individuals. Restricting businesses’ freedom of expression is discriminatory. There are already too many costly government restrictions with which businesses must contend.

CON

Freedom of speech should not apply to advertising because:

- The daily newspaper and television news broadcasts are filled with stories of companies who have made fraudulent claims in their advertising. It is unfair for the business community to place the burden of responsibility on the consumer to know about a product's limitations and effects.
- The government has a responsibility to regulate false, misleading, deceptive, and unfair advertising because it undermines the effective functioning of the marketplace by injuring both consumers and competitors.
- Business should have the right to advertise products in ways that are meaningful to the lives of those it seeks to influence. If consumers find a company's advertising undesirable, they will turn to its competitors, thereby making it in the self-interest of advertisers to be truthful. Even today, consumer groups act as a strong force to check and balance businesses' and advertisers' actions.
- It is too easy for advertisers to run false and deceptive advertising. By the time their practices are exposed, countless consumers may have suffered thousands of dollars worth of damages.
- Most people apparently approve of the distinction made between commercial and noncommercial speech. If people didn't approve, they would let their legislators know so that laws could be enacted for change.

Questions

1. On balance, which side of the issue is strongest? Why?
2. What is your opinion of the Federal Trade Commission's regulation efforts: too little or too much?

Source: 1. Elhanan C. Stone, "Should Freedom of Speech Apply to Advertising? Two Opposing Viewpoints," *Marketing Communications*, September, 1979, p. 42.