

	Rebates/ Refunds/	Gift W/ Purchase	Database Marketing	Product Sampling
Sweeps				
Legal	Legal	Legal	Legal	Legal
Permit sometimes required. All states require compliance with special laws.	Legal	Legal	Legal, but state privacy laws shortly anticipated.	Legal, except therapeutics.
Usually not allowed.	Legal, but with many restrictions and conditions.	Legal, but with many restrictions and conditions.	Legal	Legal
Legal, very popular. If requiring purchase or based on chance, approval from Consumer Defense Dept. required. Legal	Legal, but not popular.	Legal, popular.	Legal, very popular. Mail must be discontinued at receiver's request.	Legal, very popular.
	All consumers must have the same discount based on volume bought.	Legal	Legal, but consumer can request to have names removed from database.	Legal
Legal, but sweeps based on chance or luck require authorization. Subject to compliance with Lotteries & Amusements Act. Free prize draws & instant win must allow free entry.	Legal, but not popular.	Legal	Legal	Legal
Legal, when based on skill, purchase can be required. When based on chance, free method of entry is required.	Legal	Legal	Legal	Legal, but some restrictions on alcohol, tobacco, medicines, solvents, and some food.
Legal, but must be absolutely free and not connected to a purchase.	Legal	Legal, if gift has very small value or there is an evident material connection between the goods or services offered.	Legal, with many restrictions.	Legal, some restrictions.
Legal, should be checked with lawyer.	Legal, only to 3% maximum.	Legal, if gift has a very small value or is identical to the good purchased. Usually not allowed when the premium is free. Usually not allowed. Some small-value giveaways are allowed, lawyers usually can find a way around the law.	Legal	Legal
			Legal, but consumer must consent first.	Usually legal when only samples are used. No regular original retail products.

Country	On-Pack Premiums	On-Pack Coupons	In-Pack Premiums	In-Pack Coupons	Near-Pack Premiums
<b>Argentina</b>	Legal	Not in use.	Legal	Not in use.	Legal
<b>Australia</b>	Legal	Legal, third party trading stamps not a problem.	Legal	Legal	Legal
<b>Belgium</b>	Legal, but with many restrictions.	Legal, but only when offering discount on same product. Cross coupons forbidden.	Legal, but with many restrictions.	Legal, but only when offering discount on same product. Cross coupons forbidden.	Legal, but with many restrictions.
<b>Brazil</b>	Legal, popular.	Legal, but not popular.	Legal, popular.	Legal, but not popular.	Legal, but not popular.
<b>Chile</b>	Legal	Not in use.	Legal	Not in use.	Legal
<b>Colombia</b>	Legal	Legal	Legal	Legal	Legal
<b>England</b>	Legal	Legal	Legal	Legal	Legal
<b>Finland</b>	Legal, if gift has very small value or there is an evident material connection between the goods or services offered. Restriction when directed to children.	Legal, if the good being offered free or at a discount has very small value and there is an evident material connection between the goods or services offered.	Legal, if gift has very small value or there is an evident material connection between the goods or services offered. Restriction when directed to children.	Legal, if the good being offered free or at a discount has very small value and there is an evident material connection between the goods or services offered.	Legal, if gift has very small value or there is an evident material connection between the goods or services offered. Restriction when directed to children.
<b>France</b>	Legal, if gift has a very small value or is identical to the good purchased. Usually not allowed when the premium is free.	Legal, but only when offering discount on same product. Cross coupons forbidden.	Legal, if gift has a very small value or is identical to the good purchased. Usually not allowed when the premium is free.	Legal, but only when offering discount on same product. Cross coupons forbidden.	Legal, if gift has a very small value or is identical to the good purchased. Usually not allowed when the premium is free.
<b>Germany</b>	Usually not allowed.	Retailers cannot make price reductions. Consumers must collect an on-pack code and mail it directly to the manufacturer.	Usually not allowed.	Usually not allowed. Must be checked with lawyer in every case.	Usually not allowed.

Self-Liquid. Premiums	Bonus Packs	Free in the Mail	Continuity/Loyalty	Phone Cards	Freq. Shop. Cards
Legal	Legal	Not in use.	Legal	Not in use.	Legal
Legal, but exact nature of offer must be revealed (closing date, # of proofs required, etc.).	Legal, but some packaging restrictions.	Legal, except therapeutics, alcohol, cigarettes.	Legal, but many restrictions.	Legal	Legal
Legal, but with many restrictions.	Legal, but with many restrictions.	Legal	Legal	Legal	Legal
Legal, popular.	Legal, very popular.	Legal, but not popular.	Legal, popular.	Legal, but not popular.	Legal, popular.
Legal	Legal	Legal	Legal	Legal	Legal
Legal	Legal	Legal	Legal	Legal	Legal
Legal	Legal	Legal	Legal	Legal	Legal
Not in use.	Legal, as long as offer is not connected to a purchase.	Legal, as long as offer is not connected to a purchase.	Legal	Legal, but not in use.	Legal, as long as offer does not contain illegal benefits.
Legal	Legal	Legal, if gift has a very small value or is identical to the good purchased. Usually not allowed when the premium is free.	Legal	Legal, if gift has a very small value or is identical to the good purchased. Usually not allowed when the premium is free.	Legal
Legal	Legal, but many restrictions. Must be checked with lawyer in every case.	Usually not allowed.	No special refunds except a maximum discount of 3% when paying with cash.	Legal, but can't be combined with purchase.	Legal, members can buy exclusive offers. Advantages such as reduced prices only for members are not allowed.

Country	Premiums	Home-Deliv. Coupons	Mail-Deliv. Coupons	Games	Contests
<b>Holland</b>	Legal	Legal	Legal	Prize value not to exceed US\$2,500. Regulations currently under review.	Prize value not to exceed US\$2,500. Regulations currently under review.
<b>Hungary</b>	Legal, but only used between trade companies.	Legal, usually used in connection with fragile or large products.	Legal, must contain information as to where the advertiser's office is located.	Legal, must get approval from Gambling Supervision.	Legal, must get approval from Gambling Supervision.
<b>Ireland</b>	Legal	Legal	Legal	Legal, if based on chance free entry required. If winner is determined by skill, purchase can be required.	Legal, if based on chance free entry required. If winner is determined by skill, purchase can be required.
<b>Israel</b>	Legal	Legal, but not popular.	Legal, but not popular.	Legal, but proof of purchase may be required.	Legal, but proof of purchase may be required.
<b>Italy</b>	Legal, 20% tax on prize value. Government notification required.	Legal	Legal	Legal, 45% tax on prize value. Government notification required.	Legal, 45% tax on prize value. Government notification required.
<b>Japan</b>	Legal, but very strict restrictions apply.	Legal	Legal	Legal, but very strict restrictions apply.	Legal
<b>Malaysia</b>	Legal	Legal	Legal	Legal, but prize promotion must be skill, not chance.	Legal, but prize promotion must be skill, not chance.
<b>Mexico</b>	Legal	Legal	Legal	Legal	Legal
<b>New Zealand</b>	Legal	Legal	Legal	Legal	Legal
<b>Poland</b>	Legal	Legal	Legal	Legal, but games of chance restricted by Law on Games of Chance & Mutual Bets.	Legal, but games of chance restricted by Law on Games of Chance & Mutual Bets.
<b>Singapore</b>	Legal	Legal	Legal	Legal, may require permission from authorities.	Legal, may require permission from authorities.
<b>Spain</b>	Legal, but you must ask for permission.	Legal, but you must ask for permission.	Legal, but you must ask for permission.	Legal, you must register with the government.	Legal, you must register with the government.
<b>Sweden</b>	Legal, but exact details of offer must be revealed (closing date, conditions, value, etc.).	Legal, with some restrictions. Illegal to send to persons under age 16. Restrictions when sending to parent of newborns, relatives of deceased persons.	Legal, with some restrictions. Illegal to send to persons under age 16. Restrictions when sending to parent of newborns, relatives of deceased persons.	Legal, but government permit required.	Legal, but promotion must be skill, not chance. Some restrictions to connect to a purchase. Exact details of offer must be revealed (closing date, conditions, value, etc.).
<b>United States</b>	Legal, but all material terms and conditions must be disclosed.	Legal, with restrictions on alcohol, tobacco, drugs.	Legal, with restrictions on alcohol, tobacco, drugs.	Legal, but on-pack games subject to certain restrictions.	Legal, some states prohibit requiring consideration. Bona fide skill must dominate and control final result. Various state disclosure requirements.
<b>Venezuela</b>	Legal, some restrictions when with food. Must register with the government.	Legal, but only in use by very few retailers.	Legal, but only in use by very few retailers.	Legal, must register with the government.	Legal, must register with the government.

Sweeps	Rebates/ Refunds/	Gift W/ Purchase	Database Marketing	Product Sampling
Prize value not to exceed US\$2,500. Regulations currently under review.	Rebates—Legal. Refunds—price restrictions.	Legal	Legal, with some restrictions. Consumers can request to have name removed from database.	Legal, except for alcohol, drugs and pharmaceuticals.
Legal, must get approval from Gambling Supervision.	Legal, but only used between trade companies.	Legal, as long as gift has a very small value.	Legal, consumers can request to have names removed from database.	Legal, except for pharmaceuticals, tobacco, alcohol, weapons, or explosives.
Legal, but purchase cannot be required.	Legal	Legal	Legal	Legal, but tobacco prohibited.
Legal, 180 days must be between each sweeps from the same company.	Legal, but not popular.	Legal	Legal, but can't use private data such as credit card, bank, healthcare, etc. info.	Legal
Legal, 45% tax on prize value. Government notification required.	Illegal	Legal, 20% tax on prize value. Government notification required.	Legal, but with use of personal data written permission of consumer required.	Legal
Legal, but very strict restrictions apply.	Legal	Legal, but very strict restrictions apply.	Legal	Legal, except medicine.
Illegal	Legal	Legal	Legal	Legal, except alcohol, cigarette to Muslims.
Legal	Legal	Legal	Legal	Legal
Legal	Legal, with restrictions.	Legal	Legal, but protected by consumer privacy act.	Legal
Legal, but restricted by Law on Games of Chance & Mutual Bets.	Legal, but rebates are not in use.	Legal	Legal, but significantly limited by the Law on Protection of Personal Data.	Legal, except pharmaceuticals, alcoholic beverages.
Legal, with many restrictions, and many require permission from authorities.	Legal	Legal	Legal	Legal
Legal, you must register with the government.	Legal, you must register with the government.	Legal, some restrictions.	Legal, you must register database with data protection agency.	Legal
Legal, but promotion must be skill, not chance. Some restrictions to connect to a purchase. Exact details of offer must be revealed (closing date, conditions, value, etc.).	Legal, but exact details of offer must be revealed (closing date, conditions, value, etc.).	Legal, but exact details of offer must be revealed (closing date, conditions, value, etc.).	Legal, with some restrictions and a permit to maintain a list. The marketing offer must state from where the address was obtained.	Legal
Legal, no consideration. Significant disclosure requirements by states. Some states prohibit everybody wins, direct mail sweeps subject to stringent disclosure requirements.	Legal, must not be coupons.	Legal, but cost of gift may not be built into the cost for purchased product.	Legal, consumers may request to have name removed from industry, state and company lists.	Legal, with restrictions on alcohol, tobacco, drugs and some agricultural products.
Legal, must register with the government.	Legal	Legal, some restrictions with food. Must register with the government.	Legal	Legal, except cigarettes and alcohol to minors. Must register with the government. Some restrictions when with food.

Country	On-Pack Premiums	On-Pack Coupons	In-Pack Premiums	In-Pack Coupons	Near-Pack Premiums
<b>Holland</b>	Legal	Legal	Legal	Legal	Legal
<b>Hungary</b>	not in use.	Not in use.	Not in use.	Not in use.	Not in use.
<b>Ireland</b>	Legal	Legal	Legal	Legal	Legal
<b>Israel</b>	Legal	Legal, but not popular.	Legal	Legal, but not popular.	Legal
<b>Italy</b>	Legal, 20% tax on prize value. Government notification required.	Legal	Legal, 20% tax on prize value. Government notification required.	Legal, but cross coupons not permitted; 20% tax on redeemed value.	Legal, 20% tax on prize value. Government notification required.
<b>Japan</b>	Legal, but very strict restrictions apply.	Legal	Legal, but very strict restrictions apply.	Legal	Not in use.
<b>Malaysia</b>	Legal	Legal	Legal, must comply with safety requirements.	Legal	Legal
<b>Mexico</b>	Legal	Legal	Legal	Legal	Legal
<b>New Zealand</b>	Legal	Legal	Legal	Legal	Legal
<b>Poland</b>	Legal	Legal, not in use.	Legal	Legal, not in use.	Legal
<b>Singapore</b>	Legal	Legal	Legal	Legal	Legal
<b>Spain</b>	Legal, some restrictions.	Legal, you need permission from data protection agency.	Legal, some restrictions.	Legal, you need permission from data protection agency.	Legal, some restrictions.
<b>Sweden</b>	Legal	Legal	Legal	Legal	Legal
<b>United States</b>	Legal, with restrictions on alcohol, tobacco, drugs. Premium must be appropriate to targeted age group. Certain restrictions apply to premiums directed to children.	Legal, but all material terms must be disclosed. There must be a minimum six month redemption period.	Legal, with restrictions on alcohol, tobacco, drugs. Premium must be appropriate to targeted age group. Certain restrictions apply to premiums directed to children.	Legal, but all material terms must be disclosed. There must be a minimum six month redemption period.	Legal
<b>Venezuela</b>	Legal, must register with the government.	Not in use.	Legal, some sanitary restrictions with food. Must register with the government.	Not in use.	Legal, some restrictions with food. Must register with the government.

Self-Liquid. Premiums	Bonus Checks	Free in the Mail	Continuity/ Loyalty	Phone Cards	Freq. Shop. Cards
Legal	Legal	Legal	Legal, with some restrictions. Must conform with the Privacy Law.	Legal	Legal
Illegal	Not in use.	Legal, except pharmaceuticals, tobacco, alcohol, weapons or explosives.	Not in use.	Legal for use as a surface for advertising, very popular. If used as a credit card, many restrictions.	Legal, not very popular.
Legal	Legal	Legal	Legal	Legal	Legal
Legal	Legal	Legal	Legal	Legal, but not popular.	Legal
Legal, but price of purchase must be more than price of base product alone.	Legal	Legal	Legal, 20% tax on prize value. Government notification required.	Legal, 20% tax on prize value. Government notification required.	Legal, 20% tax on prize value. Government notification required.
Legal, but very strict restrictions apply.	Legal, but very strict restrictions apply.	Legal	Legal, but very strict restrictions apply.	Legal	Legal, but very strict restrictions apply.
Legal	Legal	Legal	Legal	Legal	Legal
Legal	Legal	Legal	Legal	Legal	Legal
Legal	Legal	Legal	Legal	Legal	Legal
Legal	Legal	Not in use.	Legal	Not in use.	Legal
Legal	Legal	Legal	Legal	Legal	Legal
Legal	Legal, some restrictions.	Legal	Legal, you must register database with data protection agency.	Legal	Legal, you must register database with data protection agency.
Legal	Legal	Legal	Legal	Legal	Legal
Legal	Legal	Legal, unordered merchandise considered free gift.	Legal, but all items and conditions must be clearly disclosed and consumer expressly consents to join plan.	Legal, cannot be used to change customers' long distance service without written authorization.	Legal
Legal, some restrictions with food. Must register with the government.	Legal, some restrictions with food. Must register with the government.	Legal, but not very common. Some restrictions when with food. Must register with the government.	— — — —	— — — —	— — — —

# Regulation of Advertising and Promotion

## 21

### Chapter Objectives

1. To examine how advertising is regulated, including the role and function of various regulatory agencies.
2. To examine self-regulation of advertising and evaluate its effectiveness.
3. To consider how advertising is regulated by federal and state government agencies, including the Federal Trade Commission.
4. To examine rules and regulations that affect sales promotion, direct marketing, and marketing on the Internet.



# Liquor Advertising Almost Makes It to Network Television


For more than five decades, distilled spirits were not advertised on television or radio because of a self-imposed ban by members of the Distilled Spirits Council of the United States (DISCUS). Council members agreed in 1936 to avoid radio

practice of not advertising on TV because DISCUS's voluntary code of good practice placed spirits at a competitive disadvantage to beer and wine, which did not have any such restrictions. Seagram also argued that the ban had become outdated as radio and TV have become more targeted and the company could pinpoint its advertising message to people of legal drinking age.

Initial reactions within the liquor industry were mixed. A number of distillers, eager to turn around the long, slow decline in hard-liquor sales, watched Seagram test the water with its TV ads before rolling out their own commercials. Some held discussions with TV stations but waited for a formal amendment to the DISCUS code of good practice before proceeding. The amendment came on November 7, 1996, when DISCUS members voted unanimously to overturn the self-imposed ban on broadcast ads. The DISCUS president noted that spirits makers wanted to break down the public perception that spirits are stronger or more dangerous than beer and wine and thus deserving of harsher social and political treatment.

After the DISCUS ban was lifted, the four major broadcast TV networks as well as major cable networks such as ESPN and MTV continued to refuse liquor ads, prompting consumer and public interest groups to applaud their actions. In fact, it has been argued that it was really the refusal by TV stations and networks to accept liquor advertising, rather than the DISCUS code, that had kept the ads off the air. However, the major networks cannot control the practices of affiliate stations they do not own, and many affiliates began accepting liquor ads, as did local cable channels and independent broadcast stations. By fall 2001, DISCUS estimated that about

**A Message to Parents from the American Medical Association**



**WARNING: Watching NBC May Be Hazardous To Your Children's Health.**

NBC has let down America's children. And their parents.

By dropping its fifty-year voluntary ban on hard liquor advertising, the network is guaranteeing that our children and teens will be bombarded with such advertising throughout their formative years.

The serious health and safety risks of alcohol consumption by young people – including death – are well established.

And research clearly shows that exposure to alcohol advertising makes kids more likely to start using those products.

Children and teens watch, on average, more than a thousand hours of television per year. About a fourth of American families even have a TV set in a child's bedroom.


No amount of "responsible advertising" can change these facts.

ABC and CBS continue to set an example by refraining from hard liquor advertising. We implore the management of NBC to reconsider its actions and do the same.

Please. Don't trade our kids for cash.

Visit [www.LiquorFreeTV.com](http://www.LiquorFreeTV.com) to learn more and make your feelings known.

**American Medical Association**  
Physicians dedicated to the health of America



advertising and extended the ban to TV in 1948. But Seagram, the second-largest distiller in the world, ended the U.S. spirits industry's long-standing ban on broadcast advertising in June 1996 by airing commercials for its Crown Royal Canadian Whiskey brand on an affiliate in Corpus Christi, Texas.

Seagram issued a statement explaining that it was ending the liquor industry's decades-old

400 local stations and cable channels were permitting or considering spirits ads, although most had restrictions that the ads had to air after 9 P.M.

In December 2001 NBC, which is owned by General Electric Co., made a landmark decision when it announced that it would become the first broadcast network to accept hard-liquor advertising in more than 50 years. NBC decided it was tired of the double standard by which broadcast networks accept beer and wine commercials but not spots for hard liquor and noted that there appeared to be an arbitrary distinction between the ads for the various alcoholic beverage categories. As part of its decision to accept spirits ads, NBC adopted a set of guidelines under which the makers of distilled spirits could advertise in a way similar to beer and wine makers. Under the guidelines, liquor companies had to run four months of so-called social responsibility ads on subjects like designated drivers before general product promotion spots could air. The network would also limit liquor ads to programs for which at least 85 percent of viewers are 21 or older.

NBC was not joined by the three other major broadcast networks—ABC, CBS, and Fox—in its decision to accept liquor commercials. While executives from the other networks stated that they did not think it was the right thing to do, industry experts noted that the networks were also wary of alienating beer companies by accepting ads for hard liquor. While NBC's lead in accepting liquor ads did not generate support from the other networks, it did engender a considerable amount of controversy and criticism from members of Congress, federal regulators, the American Medical Association, and many public advocacy groups. Critics of NBC's decision expressed concern that airing liquor ads on TV would glamorize drinking and encourage children and teenagers to drink.

Facing a widening backlash over its decision, in March 2002 NBC announced that it was dropping its plans to accept liquor advertising. The network's president of standards and practices said: "We promised to do this responsibly and said we would

listen to a variety of voices on this subject and have concluded that it would not be appropriate to go forward at this time." NBC's reversal was applauded by groups such as the National Center on Addiction and Substance Abuse and MADD. However, other advocacy groups such as the Center for Science in the Public Interest noted that there still is a need to look at all alcoholic beverage advertising. The center's director expressed concern over the recent introduction of flavored malt beverages known as "alco-pops," which carry the names of liquor brands like Smirnoff, Bacardi, and Jack Daniel's but follow the rules for advertising beer, which are far less restrictive than those for distilled spirits.

The Distilled Spirits Council categorized NBC's reversal as a temporary setback, noting that a few misguided critics, through their attacks on NBC, had been successful in undercutting the effort to bring distilled spirits ads to the major networks. DISCUS chief executive Peter Cressey stated: "Policies on alcohol advertising need to be based on facts, not preconceived notions or misperceptions. There would have been more social responsibility messages about drinking on television than ever before."

NBC's retreat is indicative of the sensitivities that still exist over the issue of airing liquor ads on the major networks. It appears that there are still some advertising frontiers that will be extremely hard to cross, and it may still be some time before hard-liquor commercials appear in TV shows on the major networks. However, industry experts note that liquor ads are becoming more prevalent on broadcast affiliate and independent stations as well as local cable and now reach over two-thirds of U.S. households. They predict that it is only a matter of time before such ads appear on the major networks as well.

Sources: Kate Fitzgerald, "Cable Wrestles with Liquor Ads," *Advertising Age*, June 10, 2002, p. S-16; Stuart Elliott, "Facing Outcry, NBC Ends Plan to Run Liquor Ads," *The New York Times*, Mar. 21, 2002, p. C1; Joe Flint and Shelly Branch, "In Face of Widening Backlash, NBC Gives Up Plan to Run Liquor Ads," *The Wall Street Journal*, Mar. 21, 2002, pp. B1, 3.

Suppose you are the advertising manager for a consumer-product company and have just reviewed a new commercial your agency created. You are very excited about the ad. It presents new claims about your brand's superiority that should help differentiate it from the competition. However, before you approve the commercial you need answers. Are the claims verifiable? Did researchers use proper procedures to collect and analyze the data and present the findings? Do research results support the claims? Were the right people used in the study? Could any conditions have biased the results?

Before approving the commercial, you have it reviewed by your company's legal department and by your agency's attorneys. If both reviews are acceptable, you send the ad to the major networks, which have their censors examine it. They may ask for more information or send the ad back for modification. (No commercial can run without approval from a network's Standards and Practices Department.)

Even after approval and airing, your commercial is still subject to scrutiny from such state and federal regulatory agencies as the state attorney general's office and the Federal Trade Commission. Individual consumers or competitors who find the ad misleading or have other concerns may file a complaint with the National Advertising Division of the Council of Better Business Bureaus. Finally, disparaged competitors may sue if they believe your ad distorts the facts and misleads consumers. If you lose the litigation, your company may have to retract the claims and pay the competitor damages, sometimes running into millions of dollars.

After considering all these regulatory issues, you must ask yourself if the new ad can meet all these challenges and is worth the risk. Maybe you ought to continue with the old approach that made no specific claims and simply said your brand was great.

Regulatory concerns can play a major role in the advertising decision-making process. Advertisers operate in a complex environment of local, state, and federal rules and regulations. Additionally, a number of advertising and business-sponsored associations, consumer groups and organizations, and the media attempt to promote honest, truthful, and tasteful advertising through their own self-regulatory programs and guidelines. The legal and regulatory aspects of advertising are very complex. Many parties are concerned about the nature and content of advertising and its potential to offend, exploit, mislead, and/or deceive consumers.

Advertising has also become increasingly important in product liability litigation involving products that are associated with consumer injuries. In many of these cases the courts have been willing to consider the impact of advertising on behavior of consumers that leads to injury-causing situations. Thus advertisers must avoid certain practices and proactively engage in others to ensure that their ads are comprehended correctly and do not misrepresent their products or services.<sup>1</sup>

Numerous guidelines, rules, regulations, and laws constrain and restrict advertising. These regulations primarily influence individual advertisers, but they can also affect advertising for an entire industry. For example, cigarette advertising was banned from the broadcast media in 1970, and many groups are pushing for a total ban on the advertising of tobacco products.<sup>2</sup> Legislation now being considered would further restrict the advertising of alcoholic beverages, including beer and wine.<sup>3</sup> Advertising is controlled by internal self-regulation and by external state and federal regulatory agencies such as the Federal Trade Commission (FTC), the Federal Communications Commission (FCC), the Food and Drug Administration (FDA), and the U.S. Postal Service. And recently state attorneys general have become more active in advertising regulation. While only government agencies (federal, state, and local) have the force of law, most advertisers also abide by the guidelines and decisions of internal regulatory bodies. In fact, internal regulation from such groups as the media and the National Advertising Review Board probably has more influence on advertisers' day-to-day operations and decision making than government rules and regulations.

Decision makers on both the client and agency side must be knowledgeable about these regulatory groups, including the intent of their efforts, how they operate, and how they influence and affect advertising and other promotional mix elements. In this chapter, we examine the major sources of advertising regulation, including efforts by the industry at voluntary self-regulation and external regulation by government agencies. We also examine regulations involving sales promotion, direct marketing, and marketing on the Internet.

## Self-Regulation

For many years, the advertising industry has practiced and promoted voluntary **self-regulation**. Most advertisers, their agencies, and the media recognize the importance of maintaining consumer trust and confidence. Advertisers also see self-regulation as a way to limit government interference, which, they believe, results in more stringent and troublesome regulations. Self-regulation and control of advertising emanate from all segments of the advertising industry, including individual advertisers and their agencies, business and advertising associations, and the media.

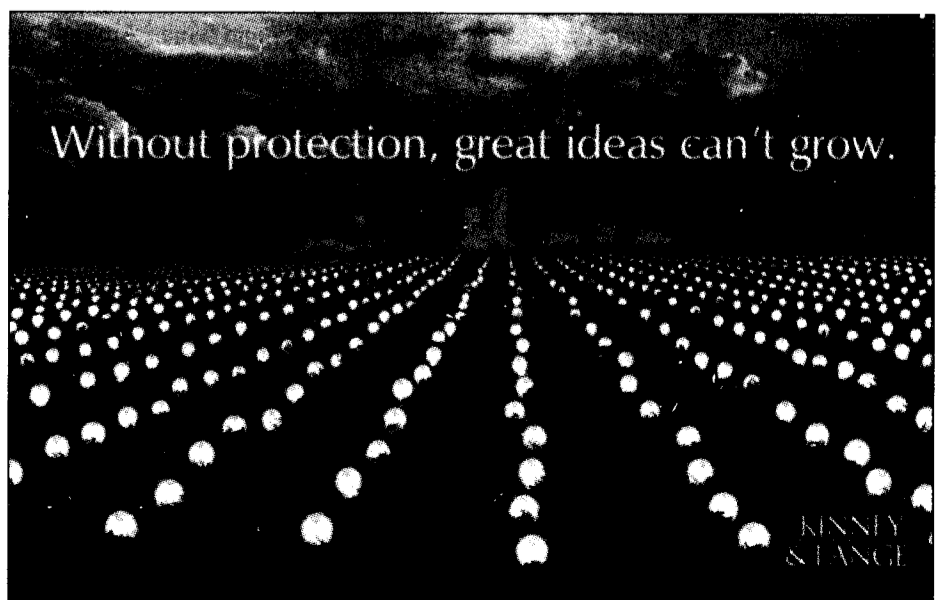
### Self-Regulation by Advertisers and Agencies

Self-regulation begins with the interaction of client and agency when creative ideas are generated and submitted for consideration. Most companies have specific guidelines, standards, and policies to which their ads must adhere. Recognizing that their ads reflect on the company, advertisers carefully scrutinize all messages to ensure they are consistent with the image the firm wishes to project. Companies also review their ads to be sure any claims made are reasonable and verifiable and do not mislead or deceive consumers. Ads are usually examined by corporate attorneys to avoid potential legal problems and their accompanying time, expense, negative publicity, and embarrassment.

Internal control and regulation also come from advertising agencies. Most have standards regarding the type of advertising they either want or are willing to produce, and they try to avoid ads that might be offensive or misleading. Most agencies will ask their clients to provide verification or support for claims the clients might want to make in their advertising and will make sure that adequate documentation or substantiation is available. However, agencies will also take formal steps to protect themselves from legal and ethical perils through agency-client contracts. For example, many liability issues are handled in these contracts. Agencies generally use information provided by clients for advertising claims, and in standard contracts the agency is protected from suits involving the accuracy of those claims. Contracts will also absolve the agency of responsibility if something goes wrong with the advertised product and consumers suffer damages or injury or other product liability claims arise.<sup>4</sup> However, agencies have been held legally responsible for fraudulent or deceptive claims and in some cases have been fined when their clients were found guilty of engaging in deceptive advertising.<sup>5</sup> Many agencies have a creative review board or panel composed of experienced personnel who examine ads for content and execution as well as for their potential to be perceived as offensive, misleading, and/or deceptive. Most agencies also employ or retain lawyers who review the ads for potential legal problems. Exhibit 21-1 shows an ad for a legal firm specializing in advertising law and intellectual property.

Most marketers and their agencies work closely with one another to develop advertising that adheres to legal and ethical standards. IMC Perspective 21-1 discusses how the former owner of the Just For Feet athletic-shoe chain filed a lawsuit against its

**Exhibit 21-1** The Kinney & Lange firm specializes in Intellectual Property Law



## Just For Feet Sues Its Ad Agency for Malpractice

During the 1999 Super Bowl athletic-shoe retailer Just For Feet ran a commercial that showed a barefoot Kenyan runner fleeing from hunters in a Humvee, who capture and drug him. When he awakes, he finds a pair of running shoes on his feet. The ad was supposed to be part of a brand-building campaign for the retailer that would help move the company away from its "Where the 13th pair is free" positioning theme. However, rather than change the image of the company, the ad created a controversy that resulted in a lawsuit that could have drastically changed the relationships between advertisers and their agencies.

Following the Super Bowl, critics lashed out at the commercial for its racial insensitivity. As a result of the fallout and criticism surrounding the ad, Just For Feet filed a lawsuit against its agency, Saatchi & Saatchi Business Communications, asking for more than \$10 million in damages for advertising malpractice. In its lawsuit Just For Feet claimed that the finished spot, called "Kenya," was entirely different from the concept the agency first presented. Moreover, the retailer's CEO claimed in news reports that he was forced into running the spot even though he personally disliked it.

According to the company, the original concept called for a Just For Feet team coming up to a runner whose shoelace had become untied. The team would tie the runner's shoelace and give him water and a towel, the company said. The commercial was one of two that Saatchi had been considering using until immediately before the Super Bowl. A second spot showed a geeky boy playing dodge ball in a school gymnasium when the Just For Feet team comes in and rescues the boy by giving him better shoes. Just For Feet preferred this spot, the lawsuit claims, but one network rejected it, saying it was "mean-spirited and promotes antisocial behavior."

As the Super Bowl approached, Saatchi presented the final "Kenya" spot to its client. Just For Feet said it "expressed strong misgivings and dissatisfaction over the spot," according to the lawsuit, but the agency "then reassured Just For Feet that the commercial would be well received based on Saatchi's expertise and experience with national advertising and marketing, and that having committed to advertise in the Super Bowl it was too late to develop and produce another commercial or to reshoot the dodge ball commercial." Since it had already spent \$900,000 on production costs and \$2 mil-



lion for the Super Bowl time slot, Just For Feet said it had no choice but to run the "Kenya" spot.

In addition to its concerns over the creative work, Just For Feet ran into another major problem. The company planned a sweepstakes promotion, the "Just For Feet Third Quarter Super Bowl Win a Hummer Contest." In the weeks leading up to the game, Just For Feet spent \$800,000 on promotional teaser spots during the National Football League conference championship games. These spots told viewers to watch the third quarter of the Super Bowl and find out how many times the Just For Feet name was mentioned. Viewers who wanted to participate in the contest could telephone or go to the company's website to enter their answers. However, the spot ran in the fourth quarter of the big game, making the contest's correct answer zero. The website would not accept zero as the answer, so "customers were left with the mistaken impression that Just For Feet was attempting to trick or deceive them," according to the lawsuit. The Super Bowl spot was bought by Zenith media, which is a sibling of Saatchi & Saatchi.

The litigation actually began just as the controversy from the spot was settling down, when Saatchi sued Just For Feet in late February 1999 for failing to pay its \$3 million media bill. On March 1, Just For Feet filed its own suit against Saatchi and Fox Broadcasting. The retailer charged Saatchi with breach of guaranty and warranty, misrepresentation, breach of contract, and "professional negligence and malpractice." In the lawsuit the retailer claimed that its favorable reputation had come under attack and that it had been subjected to the entirely unfounded and

unintended public perception that it was a racist or racially insensitive company.

The lawsuit raised a troubling question for the advertising community as to whether ad agencies can be held liable for the ads they produce. In its legal papers Saatchi claimed advertising is a business that has no explicit guidelines and standards and therefore that it cannot have committed malpractice. The agency also noted that the “Kenya” spot was presented to the networks and was not rejected. Many advertising executives have argued that while Saatchi may have used bad judgment in developing the idea for the commercial and carrying it forward, Just For Feet was ultimately responsible because the company approved the spot and should have taken responsibility for it.

In January 2000 Just For Feet declared bankruptcy, and two months later its assets were purchased by

Footstar, one of the largest footwear retailers in the United States. Footstar now operates over 90 athletic-footwear superstores under the Just For Feet name. The company hired a new agency, which has developed a campaign to rebuild the image of the stores. However, the former owner of Just For Feet is still pursuing legal action against Saatchi & Saatchi. A ruling in his favor in the landmark case could yet create problems for advertising agencies and have a major impact on their creative limits, as they would have to be careful to avoid making ads that might result in their becoming involved in lawsuits. The outcome of this case could still be very important to the advertising industry.

Sources: Lisa van der Pool, “Just For Feet Makes TV Return,” *Adweek*, Feb. 19, 2001, p. 2; Alice Z. Cuneo, “Can an Agency Be Guilty of Malpractice?” *Advertising Age*, Jan. 31, 2000, pp. 24, 25; “Bad Ad Breeds Worse Lawsuit,” *Advertising Age*, June 28, 1999, p. 30.

agency for advertising malpractice. If successful, this lawsuit could have redefined the relationships between advertisers and their agencies regarding responsibility for self-regulation of advertising.<sup>6</sup>

## Self-Regulation by Trade Associations

Like advertisers and their agencies, many industries have also developed self-regulatory programs. This is particularly true in industries whose advertising is prone to controversy, such as liquor and alcoholic beverages, drugs, and various products marketed to children. Many trade and industry associations develop their own advertising guidelines or codes that member companies are expected to abide by.

The Wine Institute, the U.S. Brewers Association, and the Distilled Spirits Council of the United States all have guidelines that member companies are supposed to follow in advertising alcoholic beverages.<sup>7</sup> Other industry trade associations with advertising guidelines and programs include the Toy Manufacturers Association, the Motion Picture Association of America, the Pharmaceutical Manufacturers Association, and the Proprietary Association (the trade association for nonprescription-drug makers).<sup>8</sup>

Many professions also maintain advertising guidelines through local, state, and national organizations. For years professional associations like the American Medical Association (AMA) and the American Bar Association (ABA) restricted advertising by their members on the basis that such promotional activities lowered members’ professional status and led to unethical and fraudulent claims. However, such restrictive codes have been attacked by both government regulatory agencies and consumer groups. They argue that the public has a right to be informed about a professional’s services, qualifications, and background and that advertising will improve professional services as consumers become better informed and are better able to shop around.<sup>9</sup>

In 1977, the Supreme Court held that state bar associations’ restrictions on advertising are unconstitutional and that attorneys have First Amendment freedom of speech rights to advertise.<sup>10</sup> Many professional associations subsequently removed their restrictions, and advertising by lawyers and other professionals is now common (Exhibit 21-2).<sup>11</sup> In 1982, the Supreme Court upheld an FTC order permitting advertising by dentists and physicians.<sup>12</sup>

Research shows that consumers generally favor increased use of professional advertising. However, professionals continue to have reservations. They worry that advertising has a negative impact on their image, credibility, and dignity and see benefits to consumers as unlikely.<sup>13</sup> Still, advertising by professionals is increasing, particularly among newcomers to medicine, dentistry, and law. Associations such as the AMA and the ABA developed guidelines for members’ advertising to help maintain standards and guard against misleading, deceptive, or offensive ads.

The issue of professional advertising, particularly by attorneys, is still hotly debated. Some traditional law firms resist using advertising, particularly on TV, due to concern that it might hurt the profession's image. Many in the legal profession worry that ads soliciting personal injury victims only worsen the public's perception of attorneys. A sizable faction within the American Bar Association blames the legal profession's image problem on sleazy ads. The ABA's Commission on Advertising recently held a series of public hearings on what, if any, restrictive measures to recommend to state ethics panels. Some states, such as Iowa and Florida, already restrict the content of attorney ads and the way they can be delivered. For example, Iowa lawyers are limited to "tombstone" print ads that merely list their name, location, and objective qualifications. And all ads require a disclaimer urging consumers not to base their attorney selection on an advertisement. Florida attorneys cannot use testimonials or endorsements, dramatizations, self-laudatory statements, illustrations, or photos.<sup>14</sup>

Many attorneys are incensed over efforts to restrict their rights to promote themselves because they use advertising to help build their practices. Several cases are currently being litigated, but ultimately the Supreme Court may have to decide just how far states can go in curtailing advertising.

Although industry associations are concerned with the impact and consequences of members' advertising, they have no legal way to enforce their guidelines. They can only rely on peer pressure from members or other nonbinding sanctions to get advertisers to comply.

### Self-Regulation by Businesses

A number of self-regulatory mechanisms have been established by the business community in an effort to control advertising practices. The largest and best known is the **Better Business Bureau (BBB)**, which promotes fair advertising and selling practices across all industries. The BBB was established in 1916 to handle consumer complaints about local business practices and particularly advertising. Local BBBs are located in most large cities throughout the United States and supported entirely by dues of the more than 100,000 member firms.

Local BBBs receive and investigate complaints from consumers and other companies regarding the advertising and selling tactics of businesses in their area. Each local office has its own operating procedures for handling complaints; generally, the office contacts the violator and, if the complaint proves true, requests that the practice be stopped or changed. If the violator does not respond, negative publicity may be used against the firm or the case may be referred to appropriate government agencies for further action.

While BBBs provide effective control over advertising practices at the local level, the parent organization, the **Council of Better Business Bureaus**, plays a major role at the national level. The council assists new industries in developing advertising codes and standards, and it provides information about advertising regulations and

legal rulings to advertisers, agencies, and the media. The council also plays an important self-regulatory role through its National Advertising Division (NAD) and Children's Advertising Review Unit (CARU). The NAD works closely with the **National Advertising Review Board** (NARB) to sustain truth, accuracy, and decency in national advertising.

### The National Advertising Review Council and the NAD/NARB

In 1971 four associations—the American Advertising Federation (AAF), the American Association of Advertising Agencies (AAAA), the Association of National Advertisers (ANA), and the Council of Better Business Bureaus—joined forces to establish the **National Advertising Review Council** (NARC). The NARC's mission is to sustain high standards of truth, accuracy, and social responsibility in national advertising. The council has two operating arms, the National Advertising Division of the Council of Better Business Bureaus and the National Advertising Review Board. The NAD is the first level that investigates the truthfulness and accuracy of an ad. The NAD reviews only national advertisements, those disseminated on a nationwide or broadly regional basis. Product performance claims, superiority claims against competitive products, and all kinds of scientific and technical claims made in national advertising are the types of cases accepted by the NAD. When an advertiser or a challenger disagrees with the NAD's findings, the decision can be appealed to the NARB for additional review. The NAD/NARB has become the advertising industry's primary self-regulatory mechanism.

The NAD's advertising monitoring program is the source of many of the cases it reviews (Figure 21-1). It also reviews complaints from consumers and consumer groups, local BBBs, and competitors. For example, in 2002 the NAD received a complaint from the Center for Science in the Public Interest, a consumer advocacy group, over an ad run by Campbell Soup for the company's V8 vegetable juice that suggested a link between the tomato-based product and a reduced risk of cancer. Though the NAD decided that Campbell provided competent and reliable evidence to support certain claims, it recommended that the company modify language stating "for prostate cancer, a lower risk is apparent when five or more servings (of tomato products) are consumed per week." Campbell agreed to change the wording of the ad.<sup>15</sup> During the 1970s and 80s, many of the complaints to the NAD came from consumers. However, with the increased use of comparative advertising, the majority of the complaints are now coming from marketers that are challenging competitors' comparisons with their brands.<sup>16</sup> For example, BMW filed a complaint with the NAD over a Volvo commercial claiming the Volvo 850 Turbo Sportswagon accelerates faster than a BMW 328i.<sup>17</sup> Procter & Gamble recently filed a challenge with the NAD over a TV commercial from Fort James Corp. that claimed Brawny paper towels were stronger than P&G's Bounty brand. The commercial in question was the popular "Grannies" spot that showed two grandmothers pushing over a refrigerator to make a mess that was more easily cleaned with Brawny paper towels than with Bounty.<sup>18</sup>

The NAD acts as the investigative arm of the NARC. After initiating or receiving a complaint, it determines the issue, collects and evaluates data, and makes the initial decision on whether the advertiser's claims are substantiated. The NAD may ask the

Figure 21-1 Sources of NAD cases and decisions, 2001

Sources	Number	Percent	Decisions	Number	Percent
Competitor challenges	77	66%	Modified/discontinued	71	60%
NAD monitoring	18	15	Administratively closed	13	11
Local BBB challenges	6	5	Substantiated	17	15
Consumer challenges	16	14	Compliance	8	7
Total	117	100%	Referred to government	8	7
			Total	117	100%



advertiser to supply substantiation for the claim in question. If the information provided is considered adequate to support the claim, the case is deemed substantiated. In the Volvo case, the NAD ruled that the company did have test results to support its superior-acceleration claim and the case was considered substantiated. If the substantiation is unsatisfactory, the NAD negotiates with the advertiser to modify or discontinue the advertising. For example, in the case involving Brawny and Bounty paper towels, the NAD found that several performance claims in the Brawny ads were substantiated. However, the NAD also found that the Brawny ads conveyed an overall-superiority claim that could not be supported, and it recommended that Fort James modify the spot or discontinue using it.

If the NAD and the advertiser fail to resolve the controversy, either can appeal to a five-person panel from the National Advertising Review Board. For example, Fort James Corp. chose to appeal the NAD decision regarding its overall-superiority claim for Brawny versus Bounty paper towels to the NARB rather than modify its ad. The NARB is composed of 85 advertising professionals and prominent public-interest/academia members. If the NARB panel agrees with the NAD and rules against the advertiser, the advertiser must discontinue the advertising. If the advertiser refuses to comply, the NARB refers the matter to the appropriate government agency and indicates the fact in its public record. NAD/NARB decisions are released to the press and also are published in its monthly publication, *NAD Case Reports*.

Although the NARB has no power to order an advertiser to modify or stop running an ad and no sanctions it can impose, advertisers who participate in an NAD investigation and NARB appeal rarely refuse to abide by the panel's decision. Most cases do not even make it to the NARB panel. For example, in 2001, of the 117 NAD investigations, 17 ad claims were substantiated, 5 were referred to the government, and 71 were modified or discontinued (Figure 21-1). Of the 71 cases where the advertising claims were modified or discontinued, in only 2 did the advertiser appeal to the NARB for resolution.<sup>19</sup>

The National Advertising Review Council is also involved in the self-regulation of children's advertising through the Children's Advertising Review Unit (CARU) of the Council of Better Business Bureaus. The NARC board sets policy for CARU's self-regulatory program, which is administered by the Council of Better Business Bureaus and funded directly by members of the children's advertising industry. The CARU's activities include the review and evaluation of child-directed advertising in all media, as well as online privacy issues that affect children. The CARU also provides a general advisory service for advertisers and agencies and has developed self-regulatory guidelines for children's advertising (Exhibit 21-3).

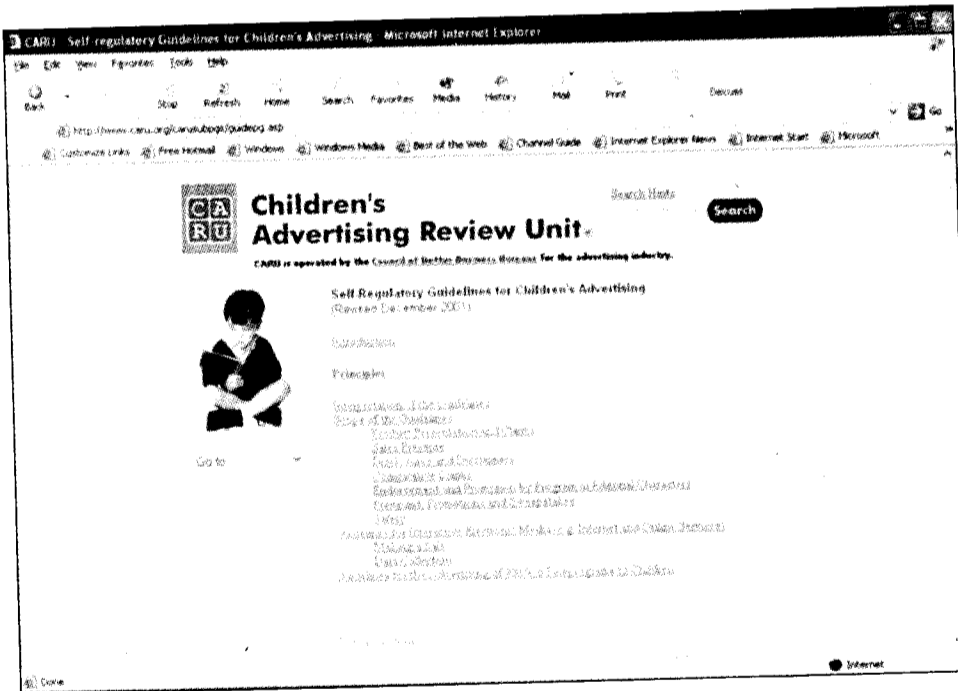


Exhibit 21-3 The Children's Advertising Review Unit provides self-regulatory guidelines for children's advertising

The National Advertising Review Council, working through the NAD/NARB and CARU, has become a valuable and effective self-regulatory body. Cases brought to it are handled at a fraction of the cost (and with much less publicity) than those brought to court and are expedited more quickly than those reviewed by a government agency such as the FTC. The system also works because judgments are made by the advertiser's peers, and most companies feel compelled to comply. Firms may prefer self-regulation rather than government intervention in part because they can challenge competitors' unsubstantiated claims through groups like the NARB.<sup>20</sup>

**Advertising Associations** Various groups in the advertising industry also favor self-regulation. The two major national organizations, the American Association of Advertising Agencies and the American Advertising Federation, actively monitor and police industry wide advertising practices. The AAAA, which is the major trade association of the ad agency business in the United States, has established standards of practice and its own creative code. It also issues guidelines for specific types of advertising such as comparative messages (Figure 21-2). The AAF consists of advertisers, agencies, media, and numerous advertising clubs. The association has standards for truthful and responsible advertising, is involved in advertising legislation, and actively influences agencies to abide by its code and principles.

## Self-Regulation by Media

The media are another important self-regulatory mechanism in the advertising industry. Most media maintain some form of advertising review process and, except for

**Figure 21-2** AAAA policy statement and guidelines for comparative advertising

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.

political ads, may reject any they regard as objectionable. Some media exclude advertising for an entire product class; others ban individual ads they think offensive or objectionable. For example, *Reader's Digest* does not accept advertising for tobacco or liquor products. A number of magazines in the United States and other countries refused to run some of Benetton's shock ads on the grounds that their readers would find them offensive or disturbing (Exhibit 21-4).<sup>21</sup>

Newspapers and magazines have their own advertising requirements and restrictions, which often vary depending on the size and nature of the publication. Large, established publications, such as major newspapers or magazines, often have strict standards regarding the type of advertising they accept. Some magazines, such as *Parents* and *Good Housekeeping*, regularly test the products they advertise and offer a "seal of approval" and refunds if the products are later found to be defective. Such policies are designed to enhance the credibility of the publication and increase the reader's confidence in the products it advertises.

Advertising on television and radio has been regulated for years through codes developed by the industry trade association, the National Association of Broadcasters (NAB). Both the radio code (established in 1937) and the television code (1952) provided standards for broadcast advertising for many years. Both codes prohibited the advertising of certain products, such as hard liquor. They also affected the manner in which products could be advertised. However, in 1982, the NAB suspended all of its code provisions after the courts found that portions (dealing with time standards and required length of commercials in the TV code) were in restraint of trade. While the NAB codes are no longer in force, many individual broadcasters, such as the major TV networks, have incorporated major portions of the code provisions into their own standards.<sup>22</sup>

The four major television networks have the most stringent review process of any media. All four networks maintain standards and practices divisions, which carefully review all commercials submitted to the network or individual affiliate stations. Advertisers must submit for review all commercials intended for airing on the network or an affiliate.

A commercial may be submitted for review in the form of a script, storyboard, animatic, or finished commercial (when the advertiser believes there is little chance of objection). A very frustrating, and often expensive, scenario for both an agency and its client occurs when a commercial is approved at the storyboard stage but then is rejected after it is produced. Commercials are rejected for a variety of reasons, including violence, morbid humor, sex, politics, and religion. Network reviewers also consider whether the proposed commercial meets acceptable standards and is appropriate for certain audiences. For example, different standards are used for ads designated for



**Exhibit 21-4** A number of magazines refused to run this Benetton ad

**Figure 21-3** A sampling of the TV networks' guidelines for children's advertising

Each of the major TV networks has its own set of guidelines for children's advertising, although the basics are very similar. A few rules, such as the requirement of a static "island" shot at the end, are written in stone; others, however, can sometimes be negotiated. Many of the rules below apply specifically to toys. The networks also have special guidelines for kids' food commercials and for kids' commercials that offer premiums.

- Must not overglamorize product
- No exhortative language, such as "Ask Mom to buy . . ."
- No realistic war settings
- Generally no celebrity endorsements
- Can't use "only" or "just" in regard to price
- Show only two toys per child or maximum of six per commercial
- Five-second "island" showing product against plain background at end of spot
- Animation restricted to one-third of a commercial
- Generally no comparative or superiority claims
- No costumes or props not available with the toy
- No child or toy can appear in animated segments
- Three-second establishing shot of toy in relation to child
- No shots under one second in length
- Must show distance a toy can travel before stopping on its own

prime-time versus late-night spots or for children's versus adults' programs (see Figure 21-3). Although most of these guidelines remain in effect, ABC and NBC loosened their rules on celebrity endorsements.<sup>23</sup>

The four major networks receive nearly 50,000 commercials a year for review; nearly two-thirds are accepted, and only 3 percent are rejected. Most problems with the remaining 30 percent are resolved through negotiation, and the ads are revised and resubmitted.<sup>24</sup> Most commercials run after changes are made. For example, censors initially rejected a humorous "Got milk?" spot that showed children watching an elderly neighbor push a wheelbarrow. Suddenly, the man's arms rip off, presumably because he doesn't drink milk. The spot was eventually approved after it was modified so that the man appears unhurt after losing his limbs and there was no expression of pain (Exhibit 21-5).<sup>25</sup>

Network standards regarding acceptable advertising change constantly. The networks first allowed lingerie advertisers to use live models rather than mannequins in 1987. Advertising for contraceptives is now appearing on some stations. The networks also loosened long-standing restrictions on endorsements and competitive advertising claims.<sup>26</sup> Network standards will continue to change as society's values and attitudes

**Exhibit 21-5** This humorous "Got milk?" commercial had to be modified slightly to satisfy network censors



toward certain issues and products change. Also, many advertising people believe these changes are a response to competition from independent and cable stations, which tend to be much less stringent in their standards and practices. However, since television is probably the most carefully scrutinized and frequently criticized of all forms of advertising, the networks must be careful not to offend their viewers and detract from advertising's credibility.

## Appraising Self-Regulation

The three major participants in the advertising process—advertisers, agencies, and the media—work individually and collectively to encourage truthful, ethical, and responsible advertising. The advertising industry views self-regulation as an effective mechanism for controlling advertising abuses and avoiding the use of offensive, misleading, or deceptive practices, and it prefers this form of regulation to government intervention. Self-regulation of advertising has been effective and in many instances probably led to the development of more stringent standards and practices than those imposed by or beyond the scope of legislation.

A senior vice president and general counsel at Kraft Foods, while praising the NAD, summarized the feelings of many advertisers toward self-regulation. In his testimonial he stated: "NAD is superior to its competition, which is regulation by the government or regulation by the courts. Accurate, prompt, and inexpensive decisions year in and year out have earned NAD its well-deserved credibility with the industry and with regulators." Federal Trade Commission chairman Timothy Murriss has described the NAD as a "model of self-regulation" (Exhibit 21-6).

There are, however, limitations to self-regulation, and the process has been criticized in a number of areas. For example, the NAD may take six months to a year to resolve a complaint, during which time a company often stops using the commercial anyway. Budgeting and staffing constraints may limit the number of cases the NAD/NARB system investigates and the speed with which it resolves them.<sup>27</sup> And some critics believe that self-regulation is self-serving to the advertisers and advertising industry and lacks the power or authority to be a viable alternative to federal or state regulation.

Many do not believe advertising can or should be controlled solely by self-regulation. They argue that regulation by government agencies is necessary to ensure that consumers get accurate information and are not misled or deceived. Moreover, since advertisers do not have to comply with the decisions and recommendations of self-regulatory groups, it is sometimes necessary to turn to the federal and/or state government.

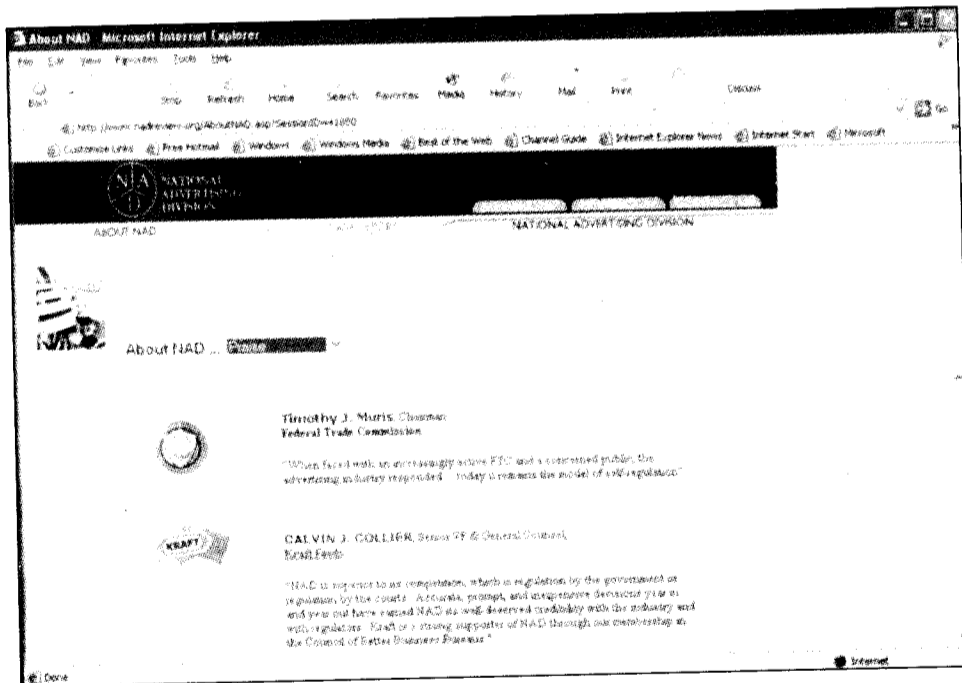


Exhibit 21-6 Praise for the NAD is noted on its website

## Federal Regulation of Advertising

Advertising is controlled and regulated through federal, state, and local laws and regulations enforced by various government agencies. The federal government is the most important source of external regulation since many advertising practices come under the jurisdiction of the **Federal Trade Commission**. In addition, depending on the advertiser's industry and product or service, other federal agencies such as the Federal Communications Commission, the Food and Drug Administration, the U.S. Postal Service, and the Bureau of Alcohol, Tobacco, and Firearms may have regulations that affect advertising. We will begin our discussion of federal regulation of advertising by considering the basic rights of marketers to advertise their products and services under the First Amendment.

### Advertising and the First Amendment

Freedom of speech or expression, as defined by the First Amendment to the U.S. Constitution, is the most basic federal law governing advertising in the United States. For many years, freedom of speech protection did not include advertising and other forms of speech that promote a commercial transaction. However, the courts have extended First Amendment protection to **commercial speech**, which is speech that promotes a commercial transaction. There have been a number of landmark cases over the past three decades where the federal courts have issued rulings supporting the coverage of commercial speech by the First Amendment.

In a 1976 case, *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council*, the U.S. Supreme Court ruled that states cannot prohibit pharmacists from advertising the prices of prescription drugs, because such advertising contains information that helps the consumer choose between products and because the free flow of information is indispensable.<sup>28</sup> As noted earlier, in 1977 the Supreme Court ruled that state bar associations' restrictions on advertising are unconstitutional and attorneys have a First Amendment right to advertise their services and prices.<sup>29</sup> In another landmark case in 1980, *Central Hudson Gas & Electric Corp. v. New York Public Service Commission*, the Supreme Court ruled that commercial speech was entitled to First Amendment protection in some cases. However, the Court ruled that the U.S. Constitution affords less protection to commercial speech than to other constitutionally guaranteed forms of expression. In this case the Court established a four-part test, known as the **Central Hudson Test**, for determining restrictions on commercial speech.<sup>30</sup> In a more recent case, the Supreme Court's 1996 decision in *44 Liquormart, Inc. v. Rhode Island* struck down two state statutes designed to support the state's interest in temperance. The first prohibited the advertising of alcoholic beverage prices in Rhode Island except on signs within a store, while the second prohibited the publication or broadcast of alcohol price ads. The Court ruled that the Rhode Island statutes were unlawful because they restricted the constitutional guarantee of freedom of speech, and the decision signaled strong protection for advertisers under the First Amendment.<sup>31</sup>

In the cases regarding advertising, the U.S. Supreme Court has ruled that freedom of expression must be balanced against competing interests. For example, the courts have upheld bans on the advertising of products that are considered harmful, such as tobacco. The Court has also ruled that only truthful commercial speech is protected, not advertising or other forms of promotion that are false, misleading, or deceptive.

In a very recent case involving Nike, the California Supreme Court issued a ruling that is likely to impact corporate image advertising campaigns and the way companies engage in public debate regarding issues that affect them.<sup>32</sup> The California high court ruled that corporations are not protected by the First Amendment when they present as fact statements about their labor policies or company operations in advertisements, press releases, letters to the editor, or public statements. The court ruled that corporations can be found liable for deceptive advertising if they make misleading statements about their operations and conduct. Nike had argued that statements the company made to defend itself against charges involving its labor practices were protected by

constitutional guarantees of free speech. In this case the court did not find Nike guilty of misleading advertising. However, the court did rule that the statements made by the company to defend itself against charges regarding its labor practices in Third World countries were commercial in nature and thus subject to government regulation. This ruling also affects other aspects of marketing communications, such as public relations, since the court ruled that speech can be considered commercial even if it is not in the form of an advertisement. It is expected that Nike will appeal the ruling to the U.S. Supreme Court.<sup>33</sup>

The job of regulating advertising at the federal level and determining whether advertising is truthful or deceptive is a major focus of the Federal Trade Commission. We now turn our attention to federal regulation of advertising and the FTC.

## Background on Federal Regulation of Advertising

Federal regulation of advertising originated in 1914 with the passage of the **Federal Trade Commission Act** (FTC Act), which created the FTC, the agency that is today the most active in, and has primary responsibility for, controlling and regulating advertising. The FTC Act was originally intended to help enforce antitrust laws, such as the Sherman and Clayton acts, by helping to restrain unfair methods of competition. The main focus of the first five-member commission was to protect competitors from one another; the issue of false or misleading advertising was not even mentioned. In 1922, the Supreme Court upheld an FTC interpretation that false advertising was an unfair method of competition, but in the 1931 case *FTC v. Raladam Co.*, the Court ruled the commission could not prohibit false advertising unless there was evidence of injury to a competitor.<sup>34</sup> This ruling limited the power of the FTC to protect consumers from false or deceptive advertising and led to a consumer movement that resulted in an important amendment to the FTC Act.

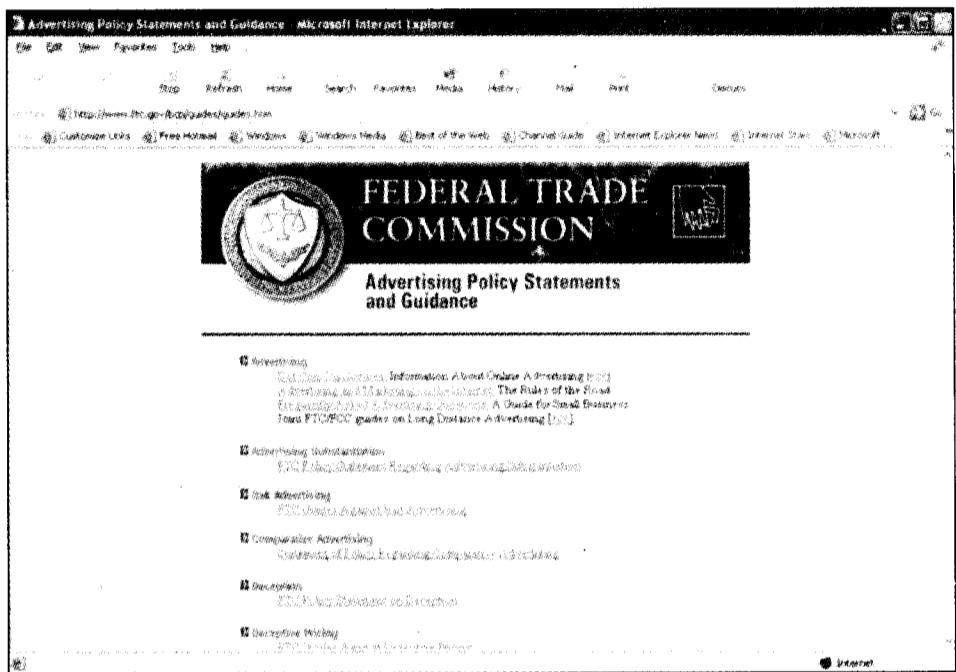
In 1938, Congress passed the **Wheeler-Lea Amendment**. It amended section 5 of the FTC Act to read: "Unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce are hereby declared to be unlawful." The amendment empowered the FTC to act if there was evidence of injury to the public; proof of injury to a competitor was not necessary. The Wheeler-Lea Amendment also gave the FTC the power to issue cease-and-desist orders and levy fines on violators. It extended the FTC's jurisdiction over false advertising of foods, drugs, cosmetics, and therapeutic devices. And it gave the FTC access to the injunctive power of the federal courts, initially only for food and drug products but expanded in 1972 to include all products in the event of a threat to the public's health and safety.

In addition to the FTC, numerous other federal agencies are responsible for, or involved in, advertising regulation. The authority of these agencies is limited, however, to a particular product area or service, and they often rely on the FTC to assist in handling false or deceptive advertising cases.

## The Federal Trade Commission

The FTC is responsible for protecting both consumers and businesses from anticompetitive behavior and unfair and deceptive practices. The major divisions of the FTC include the bureaus of competition, economics, and consumer protection. The Bureau of Competition seeks to prevent business practices that restrain competition and is responsible for enforcing antitrust laws. The Bureau of Economics helps the FTC evaluate the impact of its actions and provides economic analysis and support to antitrust and consumer protection investigations and rule makings. It also analyzes the impact of government regulation on competition and consumers. The Bureau of Consumer Protection's mandate is to protect consumers against unfair, deceptive, or fraudulent practices. This bureau also investigates and litigates cases involving acts or practices alleged to be deceptive or unfair to consumers. The Division of Advertising Practices of the Bureau of Competition protects consumers from deceptive and unsubstantiated advertising and enforces the provisions of the FTC Act that forbid misrepresentation, unfairness, and deception in general advertising at the national and regional

**Exhibit 21-7** The Division of Advertising Practices protects consumers from deceptive and unsubstantiated advertising claims



level (Exhibit 21-7). The Division of Marketing Practices of the Bureau of Competition engages in activities that are related to various marketing and warranty practices such as fraudulent telemarketing schemes, 900-number programs, and disclosures relating to franchise and business opportunities.

The FTC has had the power to regulate advertising since passage of the Wheeler-Lea Amendment. However, not until the early 1970s—following criticism of the commission in a book by “Nader’s Raiders” and a special report by the American Bar Association citing its lack of action against deceptive promotional practices—did the FTC become active in regulating advertising.<sup>35</sup> The authority of the FTC was increased considerably throughout the 1970s. The Magnuson-Moss Act of 1975, an important piece of legislation, dramatically broadened the FTC’s powers and substantially increased its budget. The first section of the act dealt with consumers’ rights regarding product warranties; it allowed the commission to require restitution for deceptively written warranties where the consumer lost more than \$5. The second section, the FTC Improvements Act, empowered the FTC to establish **trade regulation rules** (TRRs), industrywide rules that define unfair practices before they occur.

During the 1970s, the FTC made enforcement of laws regarding false and misleading advertising a top priority. Several new programs were instituted, budgets were increased, and the commission became a very powerful regulatory agency. However, many of these programs, as well as the expanded powers of the FTC to develop regulations on the basis of “unfairness,” became controversial. At the root of this controversy is the fundamental issue of what constitutes unfair advertising.

## The Concept of Unfairness

Under section 5 of the FTC Act, the Federal Trade Commission has a mandate to act against unfair or deceptive advertising practices. However, this statute does not define the terms *unfair* and *deceptive*, and the FTC has been criticized for not doing so itself. While the FTC has taken steps to clarify the meaning of *deception*, people have been concerned for years about the vagueness of the term *unfair*.

Controversy over the FTC’s authority to regulate unfair advertising practices began in 1978, when the agency relied on this mandate to formulate its controversial “kid vid” rule restricting advertising to children.<sup>36</sup> This interpretation caused widespread concern in the business community that the term *unfair* could be used to encompass anything FTC commissioners might find objectionable. For example, in a 1980 policy statement the FTC noted that “the precise concept of consumer unfairness is one whose precise meaning is not immediately obvious.” Consequently, in 1980 Congress



responded by suspending the children's advertising rule and banning the FTC from using unfairness as a legal basis for advertising rulemaking.

The FTC responded to these criticisms in December 1980 by sending Congress a statement containing an interpretation of unfairness. According to FTC policy, the basis for determining **unfairness** is that a trade practice (1) causes substantial physical or economic injury to consumers, (2) could not reasonably be avoided by consumers, and (3) must not be outweighed by countervailing benefits to consumers or competition. The agency also stated that a violation of public policy (such as of other government statutes) could, by itself, constitute an unfair practice or could be used to prove substantial consumer injury. Practices considered unfair are claims made without prior substantiation, claims that might exploit such vulnerable groups as children and the elderly, and instances where consumers cannot make a valid choice because the advertiser omits important information about the product or competing products mentioned in the ad.<sup>37</sup>

The FTC's statement was intended to clarify its interpretation of unfairness and reduce ambiguity over what might constitute unfair practices. However, efforts by the FTC to develop industrywide trade regulation rules that would define unfair practices and have the force and effect of law were limited by Congress in 1980 with the passage of the FTC Improvements Act. Amidst calls to end the stalemate over the FTC's regulation of unfair advertising by having the agency work with Congress to define its advertising authority, in 1994 Congress and the advertising industry agreed on a definition of unfair advertising that is very similar to the FTC's 1980 policy statement discussed earlier. However, the new agreement requires that before the FTC can initiate any industrywide rule, it has to have reason to believe that the unfair or deceptive acts or practices are prevalent.<sup>38</sup>

The FTC does have specific regulatory authority in cases involving deceptive, misleading, or untruthful advertising. The vast majority of advertising cases that the FTC handles concern deception and advertising fraud, which usually involve knowledge of a false claim.

## Deceptive Advertising

In most economies, advertising provides consumers with information they can use to make consumption decisions. However, if this information is untrue or misleads the consumer, advertising is not fulfilling its basic function. But what constitutes an untruthful or deceptive ad? Deceptive advertising can take a number of forms, ranging from intentionally false or misleading claims to ads that, although true, leave some consumers with a false or misleading impression.

The issue of deception, including its definition and measurement, receives considerable attention from the FTC and other regulatory agencies. One of the problems regulatory agencies deal with in determining deception is distinguishing between false or misleading messages and those that, rather than relying on verifiable or substantiated objective information about a product, make subjective claims or statements, a practice known as puffery. **Puffery** has been legally defined as "advertising or other sales presentations which praise the item to be sold with subjective opinions, superlatives, or exaggerations, vaguely and generally, stating no specific facts."<sup>39</sup> The use of puffery in advertising is common. For example, Bayer aspirin calls itself the "wonder drug that works wonders," Nestlé claims "Nestlé makes the very best chocolate," Snapple advertises that its beverages are "made from the best stuff on Earth," and BMW uses the tagline "The Ultimate Driving Machine." Superlatives such as *greatest*, *best*, and *finest* are puffs that are often used.

Puffery has generally been viewed as a form of poetic license or allowable exaggeration. The FTC takes the position that because consumers expect exaggeration or inflated claims in advertising, they recognize puffery and don't believe it. But some studies show that consumers may believe puffery and perceive such claims as true.<sup>40</sup> One study found that consumers could not distinguish between a verifiable fact-based claim and puffery and were just as likely to believe both types of claims.<sup>41</sup> Ivan Preston argues that puffery has a detrimental effect on consumers' purchase decisions by burdening them with untrue beliefs and refers to it as "soft-core deception" that should be illegal.<sup>42</sup>

Advertisers' battle to retain the right to use puffery was supported in the latest revision of the Uniform Commercial Code in 1996. The revision switches the burden of proof to consumers from advertisers in cases pertaining to whether certain claims were meant to be taken as promises. The revision states that the buyer must prove that an affirmation of fact (as opposed to puffery) was made, that the buyer was aware of the advertisement, and that the affirmation of fact became part of the agreement with the seller.<sup>43</sup>

The use of puffery as a defense for advertising claims is periodically challenged in court. IMC Perspective 21-2 discusses a recent legal battle involving Pizza Hut and Papa John's in which the U.S. Supreme Court issued a decision in support of the use of puffery as the basis for a comparative advertising claim.

Since unfair and deceptive acts or practices have never been precisely defined, the FTC is continually developing and refining a working definition in its attempts to regulate advertising. The traditional standard used to determine deception was whether a claim had the "tendency or capacity to deceive." However, this standard was criticized for being vague and all-encompassing.

In 1983 the FTC, under Chair James Miller III, put forth a new working definition of **deception**: "The commission will find deception if there is a misrepresentation, omission, or practice that is likely to mislead the consumer acting reasonably in the circumstances to the consumer's detriment."<sup>44</sup> There are three essential elements to this definition of deception.<sup>45</sup> The first element is that the representation, omission, or practice must be *likely to mislead* the consumer. The FTC defines *misrepresentation* as an express or implied statement contrary to fact, whereas a *misleading omission* occurs when qualifying information necessary to prevent a practice, claim, representation, or reasonable belief from being misleading is not disclosed.

The second element is that the act or practice must be considered from the perspective of *the reasonable consumer*. In determining reasonableness, the FTC considers the group to which the advertising is targeted and whether their interpretation of or reaction to the message is reasonable in light of the circumstances. The standard is flexible and allows the FTC to consider factors such as the age, education level, intellectual capacity, and frame of mind of the particular group to which the message or practice is targeted. For example, advertisements targeted to a particular group, such as children or the elderly, are evaluated with respect to their effect on a reasonable member of that group.

The third key element to the FTC's definition of deception is *materiality*. According to the FTC a "material" misrepresentation or practice is one that is likely to affect a consumer's choice or conduct with regard to a product or service. What this means is that the information, claim, or practice in question is important to consumers and, if acted upon, would be likely to influence their purchase decisions. In some cases the information or claims made in an ad may be false or misleading but would not be regarded as material since reasonable consumers would not make a purchase decision on the basis of this information.

Miller's goal was to help the commission determine which cases were worth pursuing and which were trivial. Miller argued that for an ad to be considered worthy of FTC challenge, it should be seen by a substantial number of consumers, it should lead to significant injury, and the problem should be one that market forces are not likely to remedy. However, the revised definition may put a greater burden on the FTC to prove that deception occurred and that the deception influenced the consumers' decision-making process in a detrimental way.

Determining what constitutes deception is still a gray area. Two of the factors the FTC considers in evaluating an ad for deception are (1) whether there are significant omissions of important information and (2) whether advertisers can substantiate the claims made for the product or service. The FTC has developed several programs to address these issues.

**Affirmative Disclosure** An ad can be literally true yet leave the consumer with a false or misleading impression if the claim is true only under certain conditions or circumstances or if there are limitations to what the product can or cannot do. Thus, under its **affirmative disclosure** requirement, the FTC may require advertisers to

## The Pizza Wars Legal Battle Upholds the Use of Puffery

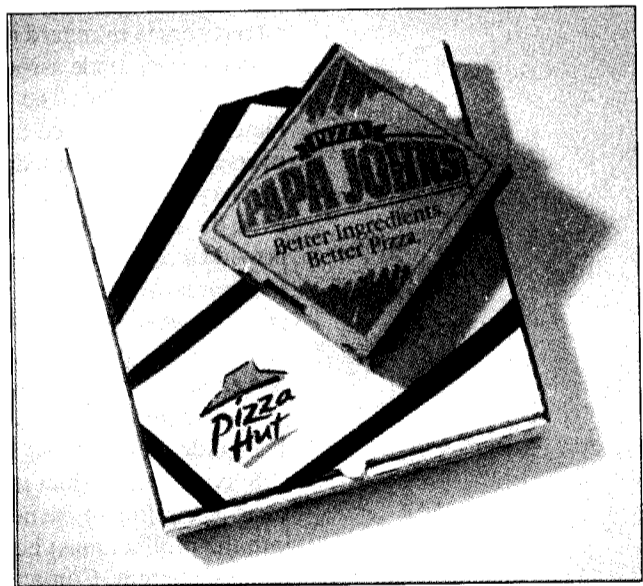
The use of unsubstantiated superlatives such as *good*, *better*, and *best* have long been a staple of American advertising. The Federal Trade Commission views the use of these terms, as well as other forms of marketing bravado, as puffery. The FTC defines puffery as “clear hyperbole” and takes the position that consumers would not expect these claims to be documented and would not take them seriously. However, a recent legal battle between Pizza Hut and Papa John’s over the latter’s use of puffery nearly resulted in a redefining of the limits of advertising claims that would have opened a large can of worms for the entire industry.

In 1997 Papa John’s began running ads comparing its product to market leader Pizza Hut and using the tagline “Better ingredients. Better pizza.” The battle heated up in 1998 when Papa John’s ran a series of ads designed to show just why it believed that better ingredients do indeed make a better pizza. One spot featured Papa John’s brash founder, John Schnatter, claiming consumers preferred his chain’s tomato sauce because Papa John’s uses fresh tomatoes picked from the vine while Pizza Hut uses “remanufactured paste.” Another spot explained that Papa John’s dough is made with clear filtered water and yeast given several days to work its magic while the “biggest chain” (Pizza Hut) uses whatever comes out of the tap to make frozen dough or dough made the same day.

Pizza Hut responded with what it called a “corrective ad” on the dough issue and, after getting no sympathy from the National Advertising Division of the Council of Better Business Bureaus, filed a lawsuit against Papa John’s in 1998 claiming that much of its advertising was false and misleading. The suit was heard in November 1999 and after weeks of testimony in federal court, which included dough experts and sauce demonstrations, a jury sided with Pizza Hut, ruling that Papa John’s “Better ingredients. Better pizza” slogan was false and misleading because the chain had failed to prove its sauce and dough were superior. The judge in the case upheld the jury’s decision and ruled that the slogan was acceptable puffery until Papa John’s began running ads touting its tomato sauce and pizza dough as superior. He held that the slogan then became tainted to the extent that its continued use should be stopped. The judge admonished both sides for the dubious nature of their advertising, but ordered Papa John’s to pay Pizza Hut \$468,000 in damages and also issued an injunction against the entire “Better ingredients. Better pizza” integrated marketing blitz, including use of the slogan on store signage, pizza boxes, car toppers, menus, napkins, and hats as well as in advertisements.

In January 2000 Papa John’s appealed the decision, arguing that the judge had misinterpreted the law as use of the “Better ingredients. Better pizza” slogan was legally acceptable puffery. The court of appeals handed down a complicated ruling that sided with Papa John’s on the puffery issue and lifted the injunction. The appellate judges ruled that Papa John’s ads were misleading but argued that Pizza Hut had not provided enough evidence that the misrepresentation was “material” and had a negative effect on consumers’ purchase behavior. Pizza Hut was outraged by the ruling, arguing that as “evidence” it had produced three different consumer surveys at the original trial, all of which indicated that consumers were wrongly influenced by the Papa John’s campaign. However, all three surveys were ignored by the courts on technicalities.

Pizza Hut continued to believe that if the judges felt the advertising was misleading, and their ruling said they did, they should have punished Papa John’s. So, in December 2000, Pizza Hut’s lawyers decided to appeal the case to the U.S. Supreme Court on the basis that the appeals judges had required an unusually high standard of evidence to prove that consumers had been misled by Papa John’s. An attorney for Pizza Hut who argued the case before the Supreme Court stated: “There is no social value in false advertising, and the concept that you turn a blind eye to false advertising simply because of the inability to prove very precise purchasing decisions strikes me as a standard of proof that is extremely high and completely unwarranted.” However, in March 2001 the Supreme Court handed down its two-word decision: “Petition



denied.” The court of appeals ruling favoring Papa John’s was allowed to stand.

Despite being disappointed at losing the case, Pizza Hut’s general counsel was philosophical about the ruling, noting that it trapped Papa John’s in a curious catch 22: If Pizza Hut won, it could describe Papa John’s advertising as false; but if Papa John’s won, it would be only because it had successfully argued that its advertising was mere puffery—not to be believed—which is exactly what happened. Papa John’s expressed satisfaction with the case and indicated that it was glad the matter was over—and for good reason. The company’s financial reports indicated that it had spent at least \$7 million to cover the legal costs of the case. Experts noted that it is reasonable to assume that Pizza Hut incurred similar costs.

The advertising industry was also relieved that the Supreme Court had ruled in favor of Papa John’s. The case had put many executives on edge, as a ruling against the puffery defense could have prompted other challenges and a redrawing of the blurry line separating so-called puffery and outright false advertising. With this ruling, advertisers are still free to use words such as *good*, *better*, and *best* and let consumers determine what they really mean.

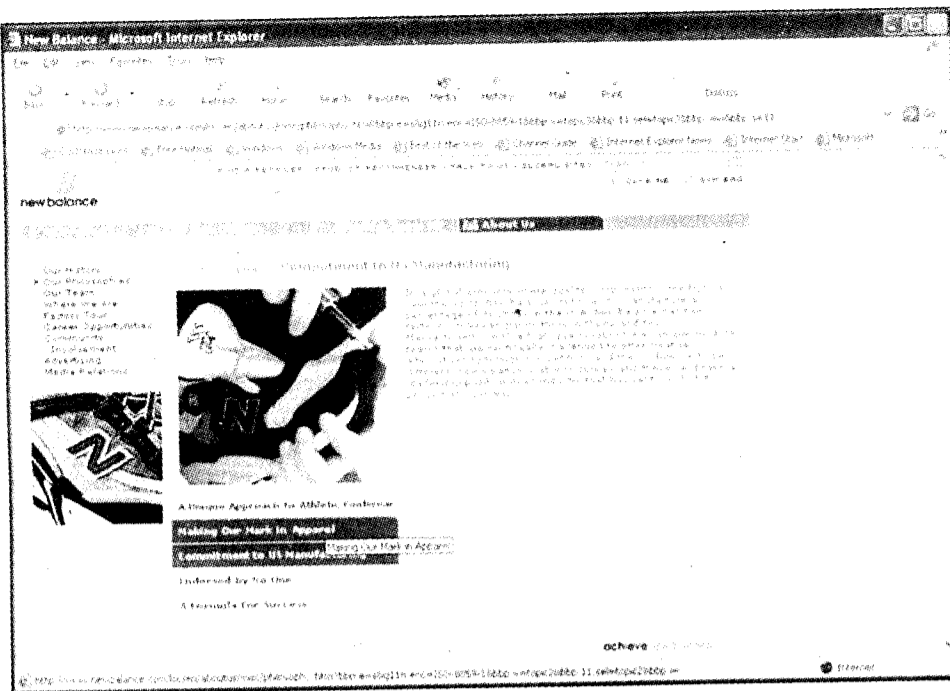
Sources: Jim Edwards, “Sour Dough: Pizza Hut v. Papa John’s,” *Brandweek*, May 21, 2001, pp. 26–30; Davan Maharaj and Greg Johnson, “Battle over Pizza Puffery Could Reshape Ad Landscape,” *Los Angeles Times*, Apr. 2, 2000, pp. C1, 4; Michael Fumento, “Free-a-the Papal” *Forbes*, Feb. 21, 2000, p. 53; Louise Kramer, “Jury Finds Papa John’s Ads Mised,” *Advertising Age*, Nov. 22, 1999, p. 46.

include certain types of information in their ads so that consumers will be aware of all the consequences, conditions, and limitations associated with the use of a product or service. The goal of affirmative disclosure is to give consumers sufficient information to make an informed decision. An ad may be required to define the testing situation, conditions, or criteria used in making a claim. For example, fuel mileage claims in car ads are based on Environmental Protection Agency (EPA) ratings since they offer a uniform standard for making comparisons. Cigarette ads must contain a warning about the health risks associated with smoking.

An example of an affirmative disclosure ruling is the FTC’s case against Campbell Soup for making deceptive and unsubstantiated claims. Campbell’s ads, run as part of its “Soup is good food” campaign, linked the low-fat and -cholesterol content of its soup with a reduced risk of heart disease. However, the advertising failed to disclose that the soups are high in sodium, which may increase the risk of heart disease. In a consent agreement accepted in 1991, Campbell agreed that, for any soup containing more than 500 milligrams of sodium in an 8-ounce serving, it will disclose the sodium content in any advertising that directly or by implication mentions heart disease in connection with the soup. Campbell also agreed it would not imply a connection between soup and a reduction in heart disease in future advertising.<sup>46</sup>

Another area where the Federal Trade Commission is seeking more specificity from advertisers is in regard to country of origin claims. The FTC has been working with marketers and trade associations to develop a better definition of what the “Made in the USA” label means. The 50-year-old definition used until recently required full manufacturing in the United States, using U.S. labor and parts, with only raw materials from overseas.<sup>47</sup> Many companies argue that in an increasingly global economy, it is becoming very difficult to have 100 percent U.S. content and remain price-competitive. However, the FTC argues that advertising or labeling a product as “Made in the USA” can provide a company with a competitive advantage. For many products some consumers do respond to the claim, as they trust the quality of domestic-made products and/or feel patriotic when they buy American. For example, athletic-shoe maker New Balance is a company that promotes its commitment to domestic manufacturing and the fact that a percentage of its products are made in the United States (Exhibit 21-8).

In December 1998 the FTC issued new guidelines for American-made products. The guidelines spell out what it means by “all or virtually all” in mandating how much U.S. content a product must have to wear a “Made in USA” label or be advertised as such. According to the new FTC guidelines, all significant parts and processing that go into the product must be of U.S. origin and the product should have no or very little foreign content. Companies do not have to receive the approval of the FTC before making a “Made in USA” claim. However, the commission does have the authority to take action against false and unsubstantiated “Made in USA” claims just as it does with other advertising claims.<sup>48</sup>



**Advertising Substantiation** A major area of concern to regulatory agencies is whether advertisers can support or substantiate their claims. For many years, there were no formal requirements concerning substantiation of advertising claims. Many companies made claims without any documentation or support such as laboratory tests and clinical studies. In 1971, the FTC's **advertising substantiation** program required advertisers to have supporting documentation for their claims and to prove the claims are truthful.<sup>49</sup> Broadened in 1972, this program now requires advertisers to substantiate their claims before an ad appears. Substantiation is required for all express or implied claims involving safety, performance, efficacy, quality, or comparative price.

The FTC's substantiation program has had a major effect on the advertising industry, because it shifted the burden of proof from the commission to the advertiser. Before the substantiation program, the FTC had to prove that an advertiser's claims were unfair or deceptive.

Ad substantiation seeks to provide a basis for believing advertising claims so consumers can make rational and informed decisions and companies are deterred from making claims they cannot adequately support. The FTC takes the perspective that it is illegal and unfair to consumers for a firm to make a claim for a product without having a "reasonable basis" for the claim. In their decision to require advertising substantiation, the commissioners made the following statement:

Given the imbalance of knowledge and resources between a business enterprise and each of its customers, economically it is more rational and imposes far less cost on society, to require a manufacturer to confirm his affirmative product claims rather than impose a burden on each individual consumer to test, investigate, or experiment for himself. The manufacturer has the ability, the know-how, the equipment, the time and resources to undertake such information, by testing or otherwise, . . . the consumer usually does not.<sup>50</sup>

Many advertisers respond negatively to the FTC's advertising substantiation program. They argue it is too expensive to document all their claims and most consumers either won't understand or aren't interested in the technical data. Some advertisers threaten to avoid the substantiation issue by using puffery claims, which do not require substantiation.

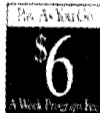
Generally, advertisers making claims covered by the substantiation program must have available prior substantiation of all claims. However, in 1984, the FTC issued a new policy statement that suggested after-the-fact substantiation might be acceptable in some cases and it would solicit documentation of claims only from advertisers that are under investigation for deceptive practices.

In a number of cases, the FTC has ordered advertisers to cease making inadequately substantiated claims. In 1993, the FTC took on the weight-loss industry when it filed a

9 Out Of 10 Clients  
Would Recommend Jenny Craig.  
Who Did They Tell?



When we asked our clients if they would recommend our program to their friends they gave us an overwhelming "Yes!" And we think that's the best advertising we could ever have. The best people to know something about Jenny Craig are the Jenny Craig program. Call now and find out how they did it.



CALL NOW 1-800-92-JENNY

**JENNY CRAIG**  
A Weight Watchers Company

complaint charging that none of five large, well-known diet program marketers had sufficient evidence to back up claims that their customers achieved their weight-loss goals or maintained the loss (Exhibit 21-9). Three of the companies agreed to publicize the fact that most weight loss is temporary and to disclose how long their customers kept off the weight they lost. The agreement required the companies to substantiate their weight-loss claims with scientific data and to document claims that their customers keep off the weight by monitoring a group of them for two years.<sup>51</sup>

In 1997 the FTC challenged advertising claims made by Abbott Laboratories for its Ensure brand nutritional beverage. The FTC charged that Abbott made false and unsubstantiated claims that many doctors recommend Ensure as a meal supplement and replacement for healthy adults, including those in their 30s and 40s. The agency complaint said Abbott relied on a survey of doctors that wasn't designed to determine *whether* many doctors actually recommended Ensure as a meal replacement for healthy adults. Rather, according to the FTC complaint, the survey asked doctors to assume that they would recommend a supplement for adults who were not ill and then merely select which brand they would suggest. The FTC ruled that Abbott went too far when it suggested that doctors recommend Ensure for healthy, active people, like those pictured in its ads, in order to stay healthy and active. Abbott agreed to settle the charges and stop using endorsements from medical professionals unless it could produce reliable scientific evidence to substantiate the claims.<sup>52</sup>

Recently the FTC has stepped up its action against false and unsubstantiated claims in ads and infomercials. A few years ago, the commission fined the Home Shopping Network \$1.1 million for making unsubstantiated advertising claims for two weight-loss products, an acne treatment, and a dietary supplement for menopause and premenstrual syndrome. Under the settlement Home Shopping is enjoined from making product claims about curing and treating diseases without "reliable scientific evidence."

**Exhibit 21-9** Weight-loss program marketers are now required to substantiate their claims as a result of an FTC ruling

supplement for menopause and premenstrual syndrome. Under the settlement Home Shopping is enjoined from making product claims about curing and treating diseases without "reliable scientific evidence."

### The FTC's Handling of Deceptive Advertising Cases

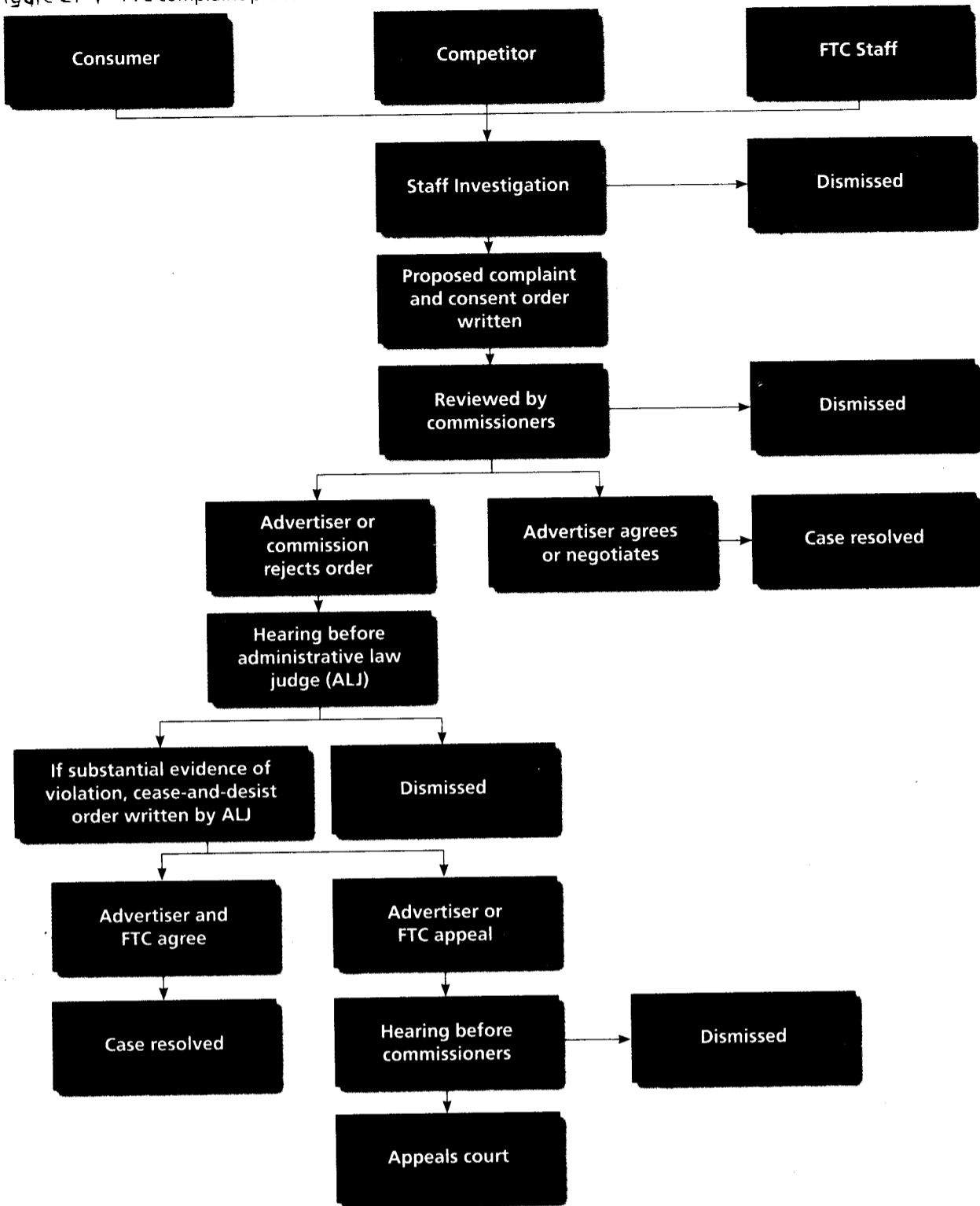
**Consent and Cease-and-Desist Orders** Allegations of unfair or deceptive advertising come to the FTC's attention from a variety of sources, including competitors, consumers, other government agencies, or the commission's own monitoring and investigations. Once the FTC decides a complaint is justified and warrants further action, it notifies the offender, who then has 30 days to respond. The advertiser can agree to negotiate a settlement with the FTC by signing a **consent order**, which is an agreement to stop the practice or advertising in question. This agreement is for settlement purposes only and does not constitute an admission of guilt by the advertiser. Most FTC inquiries are settled by consent orders because they save the advertiser the cost and possible adverse publicity that might result if the case went further.

If the advertiser chooses not to sign the consent decree and contests the complaint, a hearing can be requested before an administrative law judge employed by the FTC but not under its influence. The judge's decision may be appealed to the full five-member commission by either side. The commission either affirms or modifies the order or dismisses the case. If the complaint has been upheld by the administrative law judge and the commission, the advertiser can appeal the case to the federal courts.

The appeal process may take some time, during which the FTC may want to stop the advertiser from engaging in the deceptive practice. The Wheeler-Lea Amendment empowers the FTC to issue a **cease-and-desist order**, which requires that the advertiser stop the specified advertising claim within 30 days and prohibits the advertiser from engaging in the objectionable practice until after the hearing is held. Violation of a cease-and-desist order is punishable by a fine of up to \$10,000 a day. Figure 21-4 summarizes the FTC complaint procedure.

**Corrective Advertising** By using consent and cease-and-desist orders, the FTC can usually stop a particular advertising practice it believes is unfair or deceptive. However, even if an advertiser ceases using a deceptive ad, consumers may still

Figure 21-4 FTC complaint procedure



remember some or all of the claim. To address the problem of residual effects, in the 1970s the FTC developed a program known as **corrective advertising**. An advertiser found guilty of deceptive advertising can be required to run additional advertising designed to remedy the deception or misinformation contained in previous ads.

The impetus for corrective advertising was another case involving Campbell Soup, which placed marbles in the bottom of a bowl of vegetable soup to force the solid ingredients to the surface, creating a false impression that the soup contained more vegetables than it really did. (Campbell Soup argued that if the marbles were not used, all the ingredients would settle to the bottom, leaving an impression of





ever, involving Listerine mouthwash, Warner-Lambert tested the FTC's legal power to order corrective messages.<sup>55</sup> For more than 50 years Warner-Lambert had advertised that gargling with Listerine helped prevent colds and sore throats or lessened their severity because it killed the germs that caused these illnesses. In 1975, the FTC ruled these claims could not be substantiated and ordered Warner-Lambert to stop making them. In addition, the FTC argued that corrective advertising was needed to rectify the erroneous beliefs that had been created by Warner-Lambert as a result of the large amount of advertising it had run for Listerine over the prior 50 years.

Warner-Lambert argued that the advertising was not misleading and, further, that the FTC did not have the power to order corrective advertising. Warner-Lambert appealed the FTC decision all the way to the Supreme Court, which rejected the argument that corrective advertising violates advertisers' First Amendment rights. The powers of the FTC in the areas of both claim substantiation and corrective advertising were upheld. Warner-Lambert was required to run \$10 million worth of corrective ads over a 16-month period stating, "Listerine does not help prevent colds or sore throats or lessen their severity."

Since the Supreme Court ruling in the Listerine case, there have been several other situations where the FTC has ordered corrective advertising on the basis of the "Warner-Lambert test," which considers whether consumers are left with a latent impression that would continue to affect buying decisions and whether corrective ads are needed to remedy the situation.

In a recent case involving Novartis Consumer Health Corp.'s Doan's Pills, the FTC sent a strong message to advertisers and agencies that it will require marketers to run corrective ads to remedy any misleading impressions that were created through unsubstantiated advertising claims.<sup>56</sup> In this case, Novartis was ordered to spend \$8 million, or the equivalent of the average annual ad budget for Doan's Pills over an eight-year period, on corrective ads to remedy any impressions that might exist from previous advertising that the brand is more effective than other analgesics for relieving back pain. Novartis is appealing the decision, and this may, like the landmark Listerine mouthwash case, be a major test of the FTC's legal power to order corrective advertising. At issue in the appeal will be not only the FTC's standard for determining whether a latent impression exists but also the question of whether the commission has to prove that advertising created a lingering false impression or whether it can assume that years of advertising would have created the misapprehension.

The Doan's case will have very important implications for the FTC as well as advertisers. A win by the FTC would reaffirm the agency's authority to order corrective advertising and give it greater freedom to use the remedy, but a loss could limit its ability to do so. The case will also have lasting repercussions for advertisers, who are concerned over an FTC commissioner's contention that "corrective advertising is not a drastic remedy" and is an appropriate method for restoring the status quo. Advertisers fear that this may indicate that the FTC will be more willing to apply the punishment in future cases. There is obviously a lot at stake in this case for advertisers. However, the case is also very important to the FTC in the ongoing battle over its authority to require corrective advertising.<sup>57</sup>

## Current Status of Federal Regulation by the FTC

By the end of the 1970s, the FTC had become a very powerful and active regulator of advertising. However, Congress was concerned about the FTC's broad interpretation of unfairness, which led to the restrictive legislation of the 1980 FTC Improvements Act. During the 1980s, the FTC became less active and cut back its regulatory efforts, due in large part to the Reagan administration's laissez-faire attitude toward the regulation of business in general. Some feared that the FTC had become too narrow in its regulation of national advertising, forcing companies and consumer groups to seek relief from other sources such as state and federal courts or through self-regulatory groups such as the NAD/NARB.<sup>58</sup>

In 1988–89, an 18-member panel chosen by the American Bar Association undertook a study of the FTC as a 20-year follow-up to the 1969 report used by President Richard Nixon to overhaul the commission. The panel's report expressed strong concern over the FTC's lack of sufficient resources and staff to regulate national advertising effectively and called for more funding.

After more than a decade of relative inactivity, the Federal Trade Commission has once again become active in the regulation of advertising. The commission has shown particular interest in cracking down on misleading advertising in areas such as health, nutrition, weight loss, and environmental claims as well as advertising directed to children and the elderly.<sup>59</sup> The FTC has also become more involved with potential fraud and deception through various other promotional methods such as telemarketing, 900 numbers, infomercials, and the Internet. In addition to monitoring deceptive claims made over the Internet, the FTC has become very involved in privacy issues and the collection of personal information on websites.

Robert Pitofsky, who served as FTC chairman during the Clinton administration, focused the commission's attention on developing new policies, particularly as the growth of the Internet created the need for laws and regulations regarding online privacy and ways of protecting children online. However, under the Bush administration the FTC is focusing its attention on the enforcement of existing regulations, particularly in areas such as telemarketing and Internet privacy.<sup>60</sup> Tim Murriss, who took over as FTC chairman in 2001, has expressed concern about marketers that significantly alter privacy policies after consumers log on to their websites. The FTC also plans to eliminate false e-mail advertising and has stepped up its enforcement against senders of deceptive or misleading claims via e-mail.<sup>61</sup> The commission also is scrutinizing the use of testimonial ads more carefully, particularly with respect to the use of a "results not typical" disclosure in situations where the outcomes are more likely to vary substantially than be typical for most consumers.<sup>62</sup>

While the FTC is the major regulator of advertising for products sold in interstate commerce, several other federal agencies and departments also regulate advertising and promotion.

## Additional Federal Regulatory Agencies

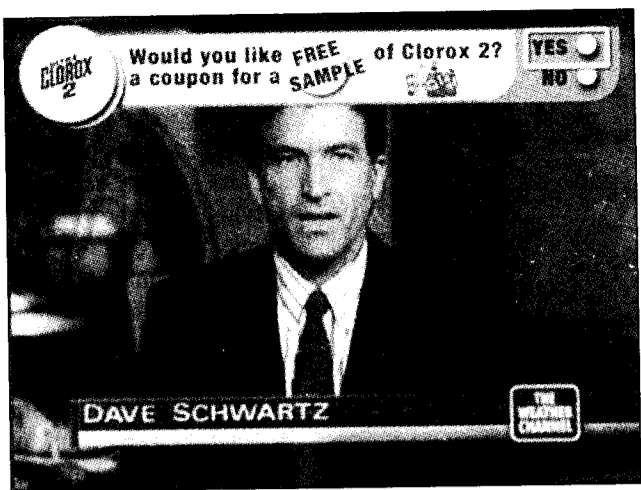
**The Federal Communications Commission** The FCC, founded in 1934 to regulate broadcast communication, has jurisdiction over the radio, television, telephone, and telegraph industries. The FCC has the authority to license broadcast stations as well as to remove a license or deny renewal to stations not operating in the public's interest. The FCC's authority over the airways gives it the power to control advertising content and to restrict what products and services can be advertised on radio and TV. The FCC can eliminate obscene and profane programs and/or messages and those it finds in poor taste. While the FCC can purge ads that are deceptive or misleading, it generally works closely with the FTC in the regulation of advertising. For example, in 1999 the Federal Communications Commission and the FTC held a joint workshop and publicly accused long-distance phone marketers of deceiving consumers in their advertising. Officials of both commissions expressed concern over per-minute ads for long distance and so-called dial-around long-distance services. They also warned long-distance marketers that they would take action if steps were not taken to clean up their advertising.<sup>63</sup>

Many of the FCC's rules and regulations for TV and radio stations have been eliminated or modified. The FCC no longer limits the amount of television time that can be devoted to commercials. (But in 1991 the Children's Television Act went into effect. The act limits advertising during children's programming to 10.5 minutes an hour on weekends and 12 minutes an hour on weekdays.)

Under the Reagan administration, the controversial *Fairness Doctrine*, which required broadcasters to provide time for opposing viewpoints on important issues, was repealed on the grounds that it was counterproductive. It was argued that the Fairness Doctrine actually reduced discussion of important issues because a broadcaster might be afraid to take on a paid controversial message in case it might be required to provide equal free exposure for opposing viewpoints. It was under this doctrine that the FCC required stations to run commercials about the harmful effects of smoking before passage of the Public Health Cigarette Smoking Act of 1970, which banned broadcast advertising of cigarettes. Many stations still provide time for opposing viewpoints on controversial issues as part of their public service requirement, not necessarily directly related to fairness.

Several pieces of legislation passed in recent years involve the FCC and have an impact on advertising and promotion. The Cable Television Consumer Protection and Competition Act, passed in 1992, allows the FCC and local governments to regulate basic cable TV rates and forces cable operators to pay licensing fees for local broadcast programming they retransmit for free. One purpose of this bill is to improve the balance between cable rates and rapidly escalating advertising revenue. FCC rules affecting telemarketing will be discussed toward the end of this chapter.

Important issues now facing the FCC are the growth of broadband Internet access and interactive television (ITV), both of which offer new communications opportunities for marketers. Under the Bush administration, the FCC is giving the free markets more rein to expand these new telecommunication technologies.<sup>64</sup> The FCC plans to open more doors for small businesses to get involved in the broadband arena, which is now dominated by large companies. The FCC is also looking for new ways to expand ITV services, which are expected to reach over 18 million U.S. households by 2003 (Exhibit 21-10). ITV enables consumers to request product information or make a purchase without having to dial an 800 number or write down a mail-order address.<sup>65</sup> A major hurdle to the growth of ITV is incompatibility among different service providers' technologies. The FCC plans to develop standard criteria for ITV services that will address the problem of incompatible platforms and help facilitate the growth of this technology.



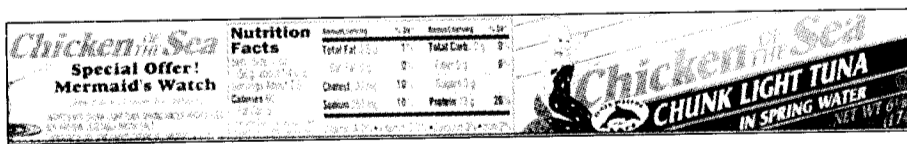
**Exhibit 21-10** The Federal Communications Commission plans to develop standards to encourage the growth of interactive television

**The Food and Drug Administration** Now under the jurisdiction of the Department of Health and Human Services, the FDA has authority over the labeling, packaging, branding, ingredient listing, and advertising of packaged foods and drug products. The FDA is authorized to require caution and warning labels on potentially hazardous products and also has limited authority over nutritional claims made in food advertising. This agency has the authority to set rules for promoting these products and the power to seize food and drugs on charges of false and misleading advertising.

Like the FTC, the Food and Drug Administration has become a very aggressive regulatory agency in recent years. The FDA has cracked down on a number of commonly used descriptive terms it believes are often abused in the labeling and advertising of food products—for example, *natural*, *light*, *no cholesterol*, and *fat free*. The FDA has also become tougher on nutritional claims implied by brand names that might send a misleading message to consumers. For example, Great Foods of America was not permitted to continue using the HeartBeat trademark under which it sold most of its foods. The FDA argued the trademark went too far in implying the foods have special advantages for the heart and overall health.

Many changes in food labeling are a result of the Nutritional Labeling and Education Act, which Congress passed in 1990. Under this law the FDA established legal definitions for a wide range of terms (such as *low fat*, *light*, and *reduced calories*) and required straightforward labels for all foods beginning in early 1994 (Exhibit 21-11). In its current form the act applies only to food labels, but it may soon affect food advertising as well. The FTC would be asked to ensure that food ads comply with the new FDA standards.

Another regulatory area where the FDA has been heavily involved is the advertising and promotion of tobacco products. In 1996 President Bill Clinton signed an executive order declaring that nicotine is an addictive drug and giving the FDA board jurisdiction to regulate cigarettes and smokeless tobacco. Many of the regulations



**Exhibit 21-11** The Nutritional Labeling and Education Act requires that labels be easy for consumers to understand

**Exhibit 21-12** The American Legacy Foundation was established as part of the Tobacco Settlement Agreement and is dedicated to reducing tobacco use in the United States

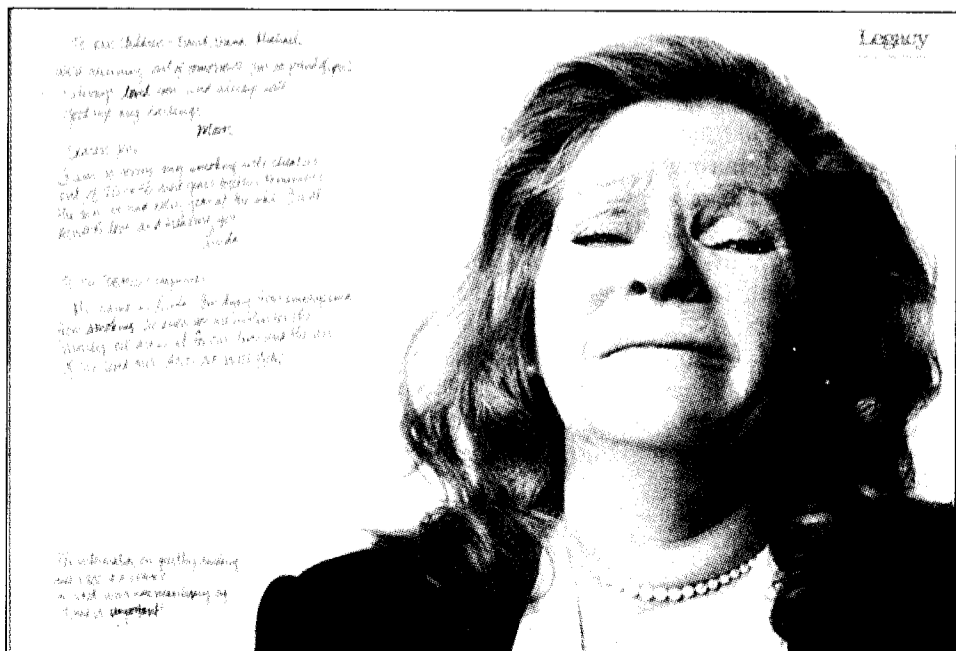
resulting from this order were designed to keep teenagers from smoking.<sup>66</sup> However, the tobacco industry immediately appealed the order. While continuing to fight its legal battle with the federal government over the FDA regulations, the tobacco makers did agree to settle lawsuits brought by 46 states against the industry in late 1998 by signing the Master Settlement Agreement. This settlement was considered a better deal for the tobacco industry, as many of the onerous cigarette marketing restrictions contained in the original FDA proposal settlement were missing. The agreement allows large outdoor signs at retailers, whereas the original proposal banned all outdoor ads. The original deal banned all use of humans and cartoons in ads, while the current settlement bans only cartoons and even permits their use on cigarette packs. And while the original proposal eliminated sports sponsorships, the current agreement allows each company to continue one national sponsorship.<sup>67</sup>

An important provision of the Master Settlement Agreement was that the tobacco companies agreed not to target youth (those under the age of 18) in the advertising, promotion, and marketing of tobacco products either directly or indirectly. However, over the past several years there has been considerable debate over whether tobacco companies are complying with the agreement. Much of this debate centers on what is called the 15 percent rule, under which the tobacco companies voluntarily pledged not to advertise in magazines that have more than 15 percent of their readers under the age of 18. Some major tobacco companies such as Philip Morris have stopped advertising in magazines that have a substantial number of youth readers, such as *People*, *Sports Illustrated*, *Spin*, and *Rolling Stone*. However, other tobacco companies still advertise in these publications, and it appears that there are still a number of battles to fight in the war over the marketing and advertising of cigarettes.<sup>68</sup>

A number of consumer advocacy groups as well as health departments in many states run ads warning consumers against the dangers of smoking and tobacco-related diseases. For example, the American Legacy Foundation, which was established as part of the 1998 tobacco settlement and is dedicated to reducing tobacco use, has run a number of hard-hitting ads warning consumers of the risk of smoking (Exhibit 21-12).

Another area where the Food and Drug Administration is being asked to become more involved is the advertising of prescription drugs. IMC Perspective 21-3 discusses the tremendous growth in direct-to-consumer drug advertising that has occurred since the FDA issued new guidelines making it easier for pharmaceutical companies to advertise prescription drugs to consumers.

**The U.S. Postal Service** Many marketers use the U.S. mail to deliver advertising and promotional messages. The U.S. Postal Service has control over advertising



# The Debate over Direct-to-Consumer Drug Advertising

For years, pharmaceutical companies did most of their prescription-drug marketing directly to physicians, either through their sales forces or by advertising in medical journals. However, in 1997 the Food and Drug Administration (FDA) issued new guidelines making it easier for pharmaceutical companies to advertise prescription drugs on television as well as in print media. With the change in guidelines, direct-to-consumer drug advertising has exploded, and pharmaceutical companies are some of the largest consumer advertisers. Brand name prescription drugs such as Prozac, Viagra, and Claritin have become as well known to consumers as brands of soft drinks.

Direct-to-consumer drug advertising spending soared from \$859 million in 1997 to \$2.8 billion in \$2001. In recent years there has been a flurry of ads hawking prescription drugs for a variety of medical problems and conditions, including allergies, heartburn, arthritis, depression, and impotence. Drug companies use celebrities to pitch their products just as effectively as other marketers do. A television commercial for cholesterol drug Zocor features National Football League coach Dan Reeves stating, "Taking care of my cholesterol; it has become an important part of my game plan." Former figure skating champion and Olympic gold medalist Dorothy Hammill talks about experiencing the pain of osteoarthritis in a commercial for Vioxx. Pfizer used former vice president Bob Dole as an advertising spokesperson when it launched Viagra in 1998 and now spends nearly \$100 million a year to advertise the male impotence drug. Texas Ranger's baseball star Rafiel Palmeiro appears in ads for the product, stating, "I take batting practice. I take infield practice. I take Viagra."

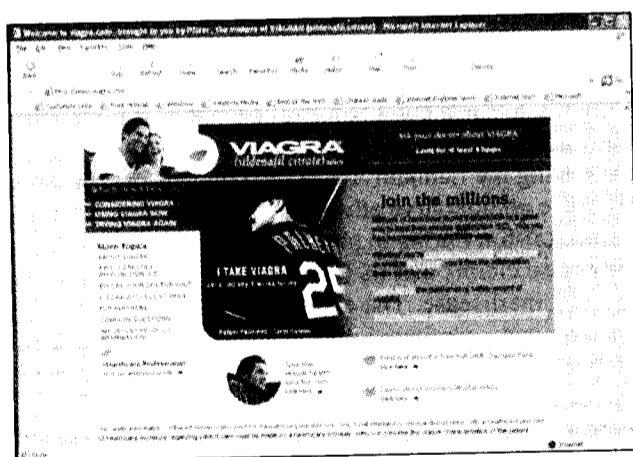
The pharmaceutical companies note that the increased spending on drug advertising has helped

educate consumers about their options and has caused people to see doctors about medications who might not have done so otherwise. However, a number of physician, consumer, and health care groups have expressed concern over the increase in drug advertising for several reasons. A major concern of these groups is whether the ads are accurate and whether they inform consumers of all the risks associated with taking the drugs. Consumer groups have asked the Food and Drug Administration to develop a process for enforcement of the "fair balance" provision, an FDA regulation governing broadcast commercials that requires drug ads to give both the benefits and the risks of taking a medication.

The FDA is charged with the responsibility of ensuring that drug advertising is fair, balanced, and truthful. However, the number of ads submitted annually for FDA scrutiny, including TV spots, magazine ads, Internet sites, and even pamphlets used by sales representatives, has jumped nearly 35 percent over the past five years, from just over 25,000 to more than 34,000. The number of citation letters issue by the FDA to drug companies for ads that might be false, misleading, or otherwise out of compliance has been steadily declining, as only 71 were sent out in 2001. The pharmaceutical companies say that the drop in citations shows that their advertisements are cleaner than before and that the companies are much more knowledgeable about the FDA guidelines than they were in 1997. However, the FDA's director of the Division of Drug Marketing, Advertising and Communication notes that with its limited resources the division cannot investigate all of the ads so it focuses on ads deemed most critical—those that appear on television, make unusual claims, or raise a major public health issue.

Many watchdog organizations such as the Public Citizen's Health Research Group feel that the drug companies' advertising and marketing pitches are not more honest or balanced than they were in the past. They argue that the FDA citations are little more than slaps on the wrist to the powerful drug companies and that the FDA has to be given the authority to levy stiff fines against companies that repeatedly violate its guidelines. Consumer advocates have also argued for stricter regulations on drug ads, noting that while advertisers must include statements about negative side effects or toxicity, it is the dancing couples and happy images that people remember—not the cautionary voiceover.

Another concern over the increase in prescription-drug advertising has been raised by insurance companies as well as employers, who feel that the ads are driving up the costs of health care. These companies



argue that drug advertising is expensive, thus adding to the costs of drugs, and that it also encourages consumers to request the higher-cost brand names rather than less expensive generic alternatives. General Motors, which spent \$1.3 billion in 2001 on drugs for employees, has launched a "Generics First" campaign promoting the less expensive alternatives in e-mails, on paycheck stubs, and in corporate newsletters. Health insurer Blue Cross has fired back at the drug companies with its own direct-to-consumer ads promoting generics.

Many experts feel that drug companies will have to pay more attention to the concerns being raised over

their rapid increase in advertising spending. However, most drug companies say they have no plans to cut back on their direct-to-consumer advertising as they feel they need to educate consumers on how their products can help them. It may only be a matter of time before Pfizer develops a "Got Viagra?" campaign.

Sources: Christine Bittar, "Creating an Rx Monster," *Brandweek*, July 29, 2002, pp. 22-29; "Reining in Drug Advertising," *The Wall Street Journal*, Mar. 13, 2002, pp. B1, 4; Chris Adams, "FDA Inundated Trying to Assess Drug Ad Pitches," *The Wall Street Journal*, Mar. 14, 2002, pp. B1, 6.

involving the use of the mail and ads that involve lotteries, obscenity, or fraud. The regulation against fraudulent use of the mail has been used to control deceptive advertising by numerous direct-response advertisers. These firms advertise on TV or radio or in magazines and newspapers and use the U.S. mail to receive orders and payment. Many have been prosecuted by the Post Office Department for use of the mail in conjunction with a fraudulent or deceptive offer.

**Bureau of Alcohol, Tobacco, and Firearms** The Bureau of Alcohol, Tobacco, and Firearms (BATF) is an agency within the Treasury Department that enforces laws, develops regulations, and is responsible for tax collection for the liquor industry. The BATF regulates and controls the advertising of alcoholic beverages. The agency determines what information can be provided in ads as well as what constitutes false and misleading advertising. It is also responsible for including warning labels on alcohol advertising and banning the use of active athletes in beer commercials. The BATF can impose strong sanctions for violators. As was discussed at the beginning of this chapter, the advertising of alcoholic beverages has become a very controversial issue, with many consumer and public-interest groups calling for a total ban on the advertising of beer, wine, and liquor.

## The Lanham Act

While most advertisers rely on self-regulatory mechanisms and the FTC to deal with deceptive or misleading advertising by their competitors, many companies are filing lawsuits against competitors they believe are making false claims. One piece of federal legislation that has become increasingly important in this regard is the Lanham Act. This act was originally written in 1947 as the Lanham Trade-Mark Act to protect words, names, symbols, or other devices adopted to identify and distinguish a manufacturer's products. The **Lanham Act** was amended to encompass false advertising by prohibiting "any false description or representation including words or other symbols tending falsely to describe or represent the same." While the FTC Act did not give individual advertisers the opportunity to sue a competitor for deceptive advertising, civil suits are permitted under the Lanham Act.

More and more companies are using the Lanham Act to sue competitors for their advertising claims, particularly since comparative advertising has become so common. For example, a court ordered Ralston Purina to pay Alpo Petfoods \$12 million for damages it caused by making false claims that its Purina Puppy Chow dog food could ameliorate and help prevent joint disease. The court ruled that the claim was based on faulty data and that the company continued the campaign after learning its research was in error. Alpo was awarded the money as compensation for lost revenue and for the costs of advertising it ran in response to the Puppy Chow campaign.<sup>69</sup>

Wilkinson Sword and its advertising agency were found guilty of false advertising and ordered to pay \$953,000 in damages to the Gillette Co. Wilkinson had run TV and print ads claiming its Ultra Glide razor and blades produced shaves "six times

smoother” than Gillette’s Atra Plus blades. This case marked the first time an agency was held liable for damages in connection with false claims made in a client’s advertising.<sup>70</sup> Although the agency was later found not liable, the case served as a sobering reminder to agencies that they can be drawn into litigation over advertising they create for their clients. To deal with this problem, many agencies insist on indemnification clauses in contracts with their clients.

Suing competitors for false claims was made even easier with passage of the Trademark Law Revision Act of 1988. According to this law, anyone is vulnerable to civil action who “misrepresents the nature, characteristics, qualities, or geographical origin of his or her or another person’s goods, services, or commercial activities.” This wording closed a loophole in the Lanham Act, which prohibited only false claims about one’s own goods or services. While many disputes over comparative claims are never contested or are resolved through the NAD, more companies are turning to lawsuits for several reasons: the broad information discovery powers available under federal civil procedure rules, the speed with which a competitor can stop the offending ad through a preliminary injunction, and the possibility of collecting damages.<sup>71</sup> However, companies do not always win their lawsuits. Under the Lanham Act you are required to prove five elements to win a false advertising lawsuit containing a comparative claim.<sup>72</sup> You must prove that:

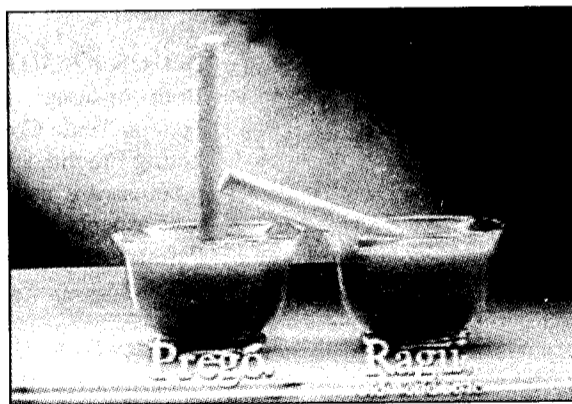
- False statements have been made about the advertiser’s product or your product.
- The ads actually deceived or had the tendency to deceive a substantial segment of the audience.
- The deception was “material” or meaningful and is likely to influence purchasing decisions.
- The falsely advertised products or services are sold in interstate commerce.
- You have been or likely will be injured as a result of the false statements, either by loss of sales or loss of goodwill.

In recent years there has been a significant increase in the use of comparative advertising, and it has resulted in more and more companies’ suing one another under the Lanham Act. In the mid-90s the Campbell Soup Co. advertised that its Prego brand of spaghetti sauce was thicker than Van Den Bergh Food’s Ragu brand. Van Den Bergh sued to have Campbell’s comparative ads for Prego halted but lost the case in district court as well as appeals court. Campbell capitalized on its victory by creating an ad based on it. The ad tweaked Ragu by showing snippets of the comparison ads and then a shot of Prego with a breadstick standing up in the sauce (Exhibit 21-13). The tagline was, “Ragu took us to court. We made our case stand. Just like our breadstick.” The two companies finally declared a truce in the spaghetti sauce wars in late 1999.<sup>73</sup>

In 2002 Energizer Holdings filed a suit against Duracell, which is a division of the Gillette Company, over a commercial touting the endurance superiority of the Duracell Coppertop brand over “heavy-duty” competitors. While the ad claim was technically correct, it failed to note that all alkaline batteries outlast so-called heavy-duty batteries, which in industry parlance refers to inexpensive, old-fashioned zinc batteries. Energizer claimed that consumer confusion resulted from the advertisement because consumers thought the commercial was comparing Duracell Coppertop to Energizer alkaline batteries. Gillette agreed to modify the commercial by adding a disclaimer stating “excluding alkaline batteries.” However, Energizer plans to pursue the lawsuit and is seeking damages for confusion resulting from the Duracell commercial.<sup>74</sup>

Marketers using comparative ads have to carefully consider whether their messages have the potential to mislead consumers or may overstate their brand’s performance relative to that of competitors. A recent study by Michael J. Barone and his colleagues provides a framework for developing measures to assess the misleading effects that may arise from various types of comparative advertising.<sup>75</sup>

**Exhibit 21-13**  
Comparative claims involving the Prego and Ragu brands of spaghetti sauce resulted in a lawsuit



## State Regulation

In addition to the various federal rules and regulations, advertisers must also concern themselves with numerous state and local controls. An important early development in state regulation of advertising was the adoption in 44 states of the *Printers Ink* model statutes as a basis for advertising regulation. These statutes were drawn up in 1911 by *Printers Ink*, for many years the major trade publication of the advertising industry. Many states have since modified the original statutes and adopted laws similar to those of the Federal Trade Commission Act for dealing with false and misleading advertising. For example, in California, the Business and Professional Code prohibits “unlawful, unfair, or fraudulent” business practices and “unfair, deceptive, untrue, or misleading advertising.”

In addition to recognizing decisions by the federal courts regarding false or deceptive practices, many states have special controls and regulations governing the advertising of specific industries or practices. As the federal government became less involved in the regulation of national advertising during the 1980s, many state attorneys general (AGs) began to enforce state laws regarding false or deceptive advertising. For example, the attorneys general in New York and Texas initiated investigations of Kraft ads claiming the pasteurized cheese used in Cheez Whiz was real cheese.<sup>76</sup> The well-publicized “monster truck” deceptive advertising case involving Volvo and its advertising agency that occurred in the early 90s was initiated by the attorney general’s office in the state of Texas.<sup>77</sup>

The **National Association of Attorneys General** (NAAG) moved against a number of national advertisers as a result of inactivity by the FTC during the Reagan administration. In 1987, the NAAG developed enforcement guidelines on airfare advertising that were adopted by more than 40 states. The NAAG has also been involved in other regulatory areas, including car-rental price advertising as well as advertising dealing with nutrition and health claims in food ads. The NAAG’s foray into regulating national advertising raises the issue of whether the states working together can create and implement uniform national advertising standards that will, in effect, supersede federal authority. An American Bar Association panel concluded that the Federal Trade Commission is the proper regulator of national advertising and recommended the state AGs focus on practices that harm consumers within a single state.<sup>78</sup> This report also called for cooperation between the FTC and the state attorneys general.

Advertisers are concerned about the trend toward increased regulation of advertising at the state and local levels because it could mean that national advertising campaigns would have to be modified for every state or municipality. Yet the FTC takes the position that businesses that advertise and sell nationwide need a national advertising policy. While the FTC recognizes the need for greater cooperation with the states, the agency believes regulation of national advertising should be its responsibility.<sup>79</sup> Just in case, the advertising industry is still keeping a watchful eye on changes in advertising rules, regulations, and policies at the state and local levels.

## Regulation of Other Promotional Areas

So far we’ve focused on the regulation of advertising. However, other elements of the promotional mix also come under the surveillance of federal, state, and local laws and various self-regulatory bodies. This section examines some of the rules, regulations, and guidelines that affect sales promotion, direct marketing, and marketing on the Internet.

### Sales Promotion

Both consumer- and trade-oriented promotions are subject to various regulations. The Federal Trade Commission regulates many areas of sales promotion through the Marketing Practices Division of the Bureau of Consumer Protection. Many promotional practices are also policed by state attorneys general and local regulatory agencies. Various aspects of trade promotion, such as allowances, are regulated by the Robinson-Patman Act, which gives the FTC broad powers to control discriminatory pricing practices.

**Contests and Sweepstakes** As noted in Chapter 16, numerous legal considerations affect the design and administration of contests and sweepstakes, and these promotions are regulated by a number of federal and state agencies. There are two





“winner” or that his or her name “has been selected” when no prize has been won. The law carries a fine of \$1,000 per incident, which could be \$1,000 per letter received by New York residents.<sup>82</sup> Some of the most ambitious legal actions are taking place in individual states, where prosecutors are taking sweepstakes and contest companies to court for misleading and deceptive practices.<sup>83</sup>

**Premiums** Another sales promotion area subject to various regulations is the use of premiums. A common problem associated with premiums is misrepresentation of their value. Marketers that make a premium offer should list its value as the price at which the merchandise is usually sold on its own. Marketers must also be careful in making premium offers to special audiences such as children. While premium offers for children are legal, their use is controversial; many critics argue that they encourage children to request a product for the premium rather than for its value. The Children’s Advertising Review Unit has voluntary guidelines concerning the use of premium offers. These guidelines note that children have difficulty distinguishing a product from a premium. If product advertising contains a premium message, care should be taken that the child’s attention is focused primarily on the product. The premium message should be clearly secondary. Conditions of a premium offer should be stated simply and clearly. “Mandatory” statements and disclosures should be stated in terms that can be understood by the child audience.<sup>84</sup> However, a recent study of children’s advertising commissioned by CARU found the single most prevalent violation involved devoting virtually an entire commercial message to information about a premium. CARU guidelines state that advertising targeted to children must emphasize the product rather than the premium offer.<sup>85</sup>

**Trade Allowances** Marketers using various types of trade allowances must be careful not to violate any stipulations of the Robinson-Patman Act, which prohibits price discrimination. Certain sections of the Robinson-Patman Act prohibit a manufacturer from granting wholesalers and retailers various types of promotional allowances and/or payments unless they are made available to all customers on proportionally equal terms.<sup>86</sup> Another form of trade promotion regulated by the Robinson-Patman Act is vertical cooperative advertising. The FTC monitors cooperative advertising programs to ensure that co-op funds are made available to retailers on a proportionally equal basis and that the payments are not used as a disguised form of price discrimination.

As noted in Chapter 16, another trade promotion area where the FTC is becoming involved is the use of slotting fees or allowances paid to retailers for agreeing to handle a new product. In 1999 the Senate Committee on Small Business charged retailers in the grocery, drugstore, and computer software industries with illegally using slotting fees to lock out competitors and prevent consumers from having their choice of the best products. Packaged-goods marketers and retailers have argued that examining slotting fees alone is unfair since they are just part of a wide variety of inducements marketers use to secure the best shelf space. The FTC is investigating the use of slotting fees as anticompetitive weapons that make it difficult for small-size companies to secure retail shelf space.<sup>87</sup> In 2000 the FTC launched its first direct attack on slotting fees when it accused McCormick & Co., the leading spice maker, of offering discriminatory discounts on its products to several grocery chains. McCormick agreed to settle a complaint that the discounts were a way of paying some retailers disproportionately more in slotting fees than others. The FTC charged that the slotting fees were a way for McCormick to gain more shelf space at the expense of smaller rivals. The practice that was deemed illegal by the FTC is a standard way of doing business in the grocery trade as well as other industries, and some legal experts have argued that this case could impact the use of slotting fees in the future.<sup>88</sup>

**Direct Marketing** As we saw in Chapter 14, direct marketing is growing rapidly. Many consumers now purchase products directly from companies in response to TV and print advertising or direct selling. The Federal Trade Commission enforces laws related to direct marketing, including mail-order offers, the use of 900

telephone numbers, and direct-response TV advertising. The U.S. Postal Service enforces laws dealing with the use of the mail to deliver advertising and promotional messages or receive payments and orders for items advertised in print or broadcast media.

A number of laws govern the use of mail-order selling. The FTC and the Postal Service police direct-response advertising closely to ensure the ads are not deceptive or misleading and do not misrepresent the product or service being offered. Laws also forbid mailing unordered merchandise to consumers, and rules govern the use of “negative option” plans whereby a company proposes to send merchandise to consumers and expects payment unless the consumer sends a notice of rejection or cancellation.<sup>89</sup> FTC rules also encourage direct marketers to ship ordered merchandise promptly. Companies that cannot ship merchandise within the time period stated in the solicitation (or 30 days if no time is stated) must give buyers the option to cancel the order and receive a full refund.<sup>90</sup>

Another area of direct marketing facing increased regulation is telemarketing. With the passage of the Telephone Consumer Protection Act of 1991, marketers who use telephones to contact consumers must follow a complex set of rules developed by the Federal Communications Commission. These rules require telemarketers to maintain an in-house list of residential telephone subscribers who do not want to be called. Consumers who continue to receive unwanted calls can take the telemarketer to state court for damages of up to \$500. The rules also ban telemarketing calls to homes before 8:00 A.M. and after 9:00 P.M., automatic dialer calls, and recorded messages to emergency phones, health care facilities, and numbers for which the call recipient may be charged. They also ban unsolicited junk fax ads and require that fax transmissions clearly indicate the sender’s name and fax number.<sup>91</sup>

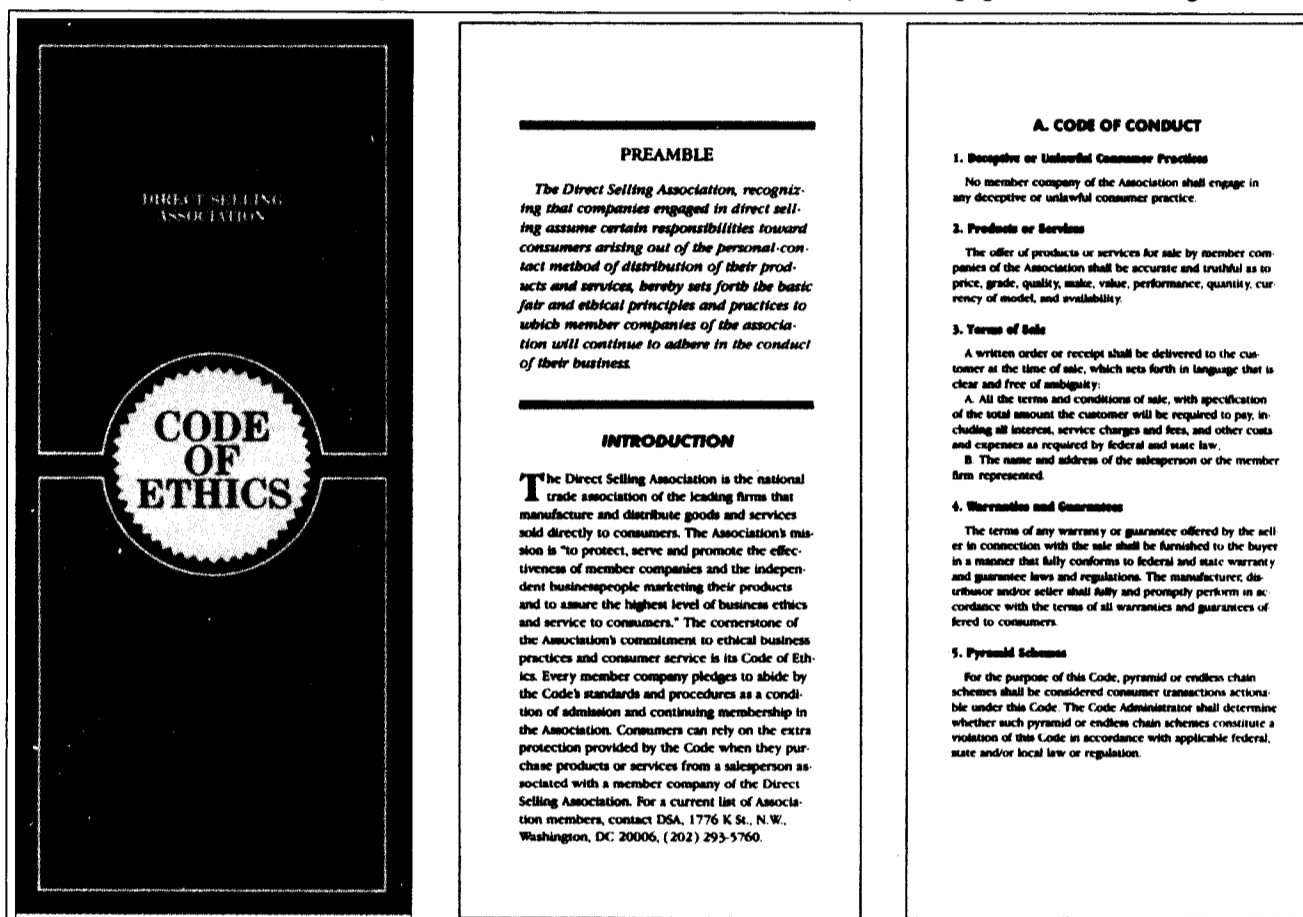
The Federal Trade Commission has also been actively involved with the regulation of advertising that encourages consumers to call telephone numbers with a 900 prefix, whereupon they are automatically billed for the call. While there are many legitimate uses for 900-number technology, it has also been heavily used for sleazy sex operations, contest scams, and other unscrupulous activities.<sup>92</sup> One area of particular concern to the FTC has been ads targeting children and encouraging them to call 900 numbers. In 1993 the FTC issued its 900-Number Rule for advertising directed at children. The rule restricts advertisers from targeting children under the age of 12 with ads containing 900 numbers unless they provide a bona fide educational service. The rule also requires that 900-number ads directed at those under the age of 18 must contain a “clear and conspicuous” disclosure statement that requires the caller to have parental/guardian permission to complete the call. The rule also obligates advertisers to disclose the cost of the call and give the caller the opportunity to hang up without incurring any costs.<sup>93</sup>

The FTC enacted the 900-Number Rule under the provision that it would be reviewed within four years to consider its costs and benefits.<sup>94</sup> This review was undertaken and the rule was retained and revised, although under a new name. The name was changed to the Pay-Per-Call Rule, and in 1998 the rule was revised to give the FTC the authority to broaden its scope and add new provisions. Among other things, the new provisions combat telephone bill cramming, which is the placing of unauthorized charges on consumers’ phone bills.<sup>95</sup>

Recently there has been another significant development that has major implications for the telemarketing industry. In mid-2002 the FTC began taking comments on a proposal to develop a national “do-not-call” registry.<sup>96</sup> Under this proposal, consumers could pay a small fee to sign up on a registry that would bar calls from telemarketers. While the Direct Marketing Association has its own do-not-call registry, as do several states, the FTC’s registry would be easier to join and would cover a much broader spectrum of telemarketing calls. The development of such a registry is likely to receive strong opposition from the direct-marketing industry. Opponents argue that a do-not-call list would hurt nonprofit organizations as well as have a negative impact on the economy.

The direct-marketing industry is also scrutinized by various self-regulatory groups, such as the Direct Marketing Association and the Direct Selling Association, that have

Exhibit 21-15 The Direct Selling Association has a Code of Ethics for companies engaged in direct selling



specific guidelines and standards member firms are expected to adhere to and abide by. Exhibit 21-15 shows part of the Code of Ethics of the Direct Selling Association.

## Marketing on the Internet

The rapid growth of the Internet as a marketing tool is creating a new area of concern for regulators. Currently marketing on the Internet is subject to only limited government regulation, and many consumer and industry groups are concerned that some marketers will use the new medium to get around regulations and restrictions on other promotional areas. Following a Federal Trade Commission hearing in 1996, then chairman Robert Pitofsky issued a plea for voluntary industry codes rather than FTC rules and regulations.<sup>97</sup> He argued that the FTC's legal authority is limited to the areas of unfair or deceptive advertising and promotional practices and that many potential abuses of the Internet may not fall into these categories. Extending the FTC's legal authority would require congressional action. However, the results of the FTC's call for self-regulation of the Internet have been mixed. Two major areas of concern with regard to marketing on the Internet are privacy issues and online marketing to children.

With regard to privacy, several consumer and industry groups have proposed significant restrictions in the way marketers use the World Wide Web to get information from consumers, the types of information they can get, and what they do with this information.<sup>98</sup> The restrictions that have been proposed include:

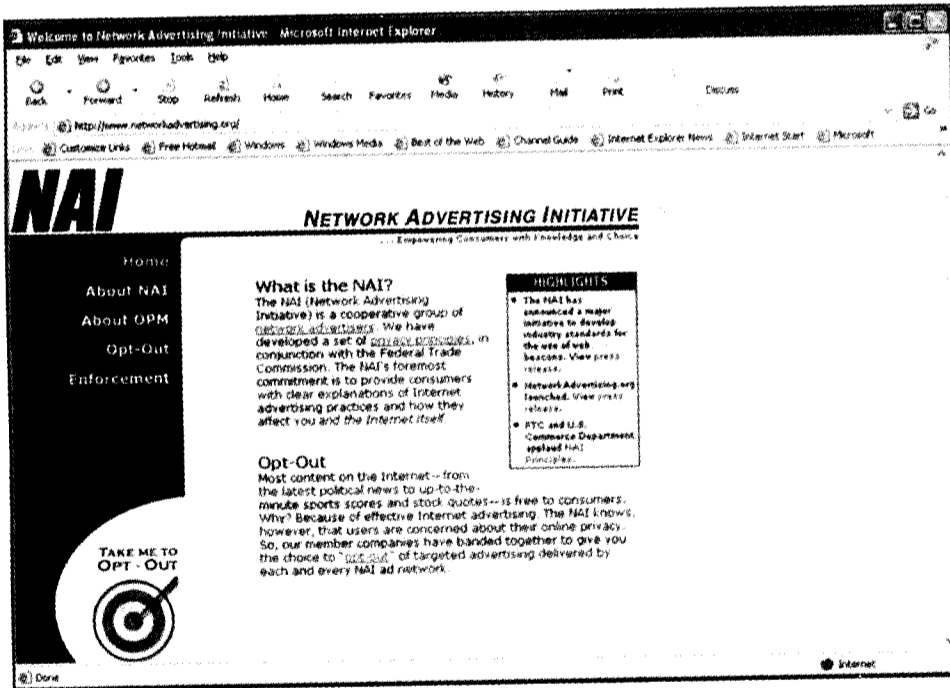
- Banning unsolicited e-mail that cannot be automatically screened out. The Direct Marketing Association and the Interactive Services Association propose requiring marketers who send unsolicited e-mail messages to use coding that will allow mail systems to automatically remove such messages.

- Disclosing fully and prominently both the marketer's identity and the use for which information is being gathered in every communication.
- Giving consumers the right to bar marketers from selling or sharing any information collected from them as well as to review the personal information collected.

Recently the major privacy issue regarding the Internet that has emerged involves undisclosed profiling whereby Web marketers can profile a user on the basis of name, address, demographics, and online/offline purchasing data. Marketers have suggested that profiling offers them an opportunity to target specific niches and reach consumers with custom-tailored messages. However, the FTC has stated that Internet sites that claim they don't collect information but permit advertisers to surreptitiously profile viewer sites are violating consumer protection laws and are open to a charge of deception.<sup>99</sup> In 1999 DoubleClick, the company that is the leader in selling and managing online advertising as well as tracking Web users, set off a controversy by connecting consumers' names, addresses, and other personal information with information it collects about where consumers go on the Internet. The controversy resulted in the company being investigated by the Federal Trade Commission and lawsuits being filed in some states.<sup>100</sup>

In response to the profiling controversy, companies that collect Internet usage data and information joined together under the banner of the Network Advertising Initiative (NAI) to develop a self-regulatory code.<sup>101</sup> The NAI has developed a set of privacy principles in conjunction with the Federal Trade Commission that provides consumers with explanations of Internet advertising practices and how the practices affect both consumers and the Internet itself. The NAI has also launched a website ([www.networkadvertising.org](http://www.networkadvertising.org)) that provides consumers with information about online advertising practices and gives them the choice to "opt out" of targeted advertising delivered by NAI member companies (Exhibit 21-16). Another industry-driven initiative is the Platform for Privacy Preferences (P3P), which is a new technology that lets consumers screen out websites via operating system software. This technology gives consumers greater control over the collection of information by allowing them to specify their privacy preferences electronically and screen out websites that do not meet these preferences. The privacy debate is likely to escalate, and it is expected that legislation will be introduced to force companies to seek consumers' approval before sharing personal information captured from their websites.

While these proposals are aimed at protecting the privacy rights of adults, one of the biggest concerns is over restricting marketers whose activities or websites are targeted



**Exhibit 21-16** The Network Advertising Initiative website provides consumers with information about online advertising practices

at children. These concerns over online marketing to children led to the passage of the **Children's Online Privacy Protection Act** of 1998 (COPPA), which the FTC began enforcing in April 2000.<sup>102</sup> This act places tight restrictions on collecting information from children via the Internet and requires that websites directed at children and young teens have a privacy policy posted on their home page and areas of the site where information is collected.

Concerns over consumer privacy have become a major issue among the government and various regulatory agencies such as the FTC.<sup>103</sup> The federal government is currently considering a number of privacy-related laws, many of which would have an impact on marketing and advertising over the Internet. The proposed laws include the Online Privacy Protection Act, which requires the FTC to prescribe regulations to protect the privacy of individuals not covered by COPPA and to provide greater individual control over the collection and use of information.<sup>104</sup>

Another Internet-related area that is receiving more regulatory attention is the use of spam, or unsolicited e-mail.<sup>105</sup> More than 20 states have enacted some type of anti-spam laws, although they vary in content. For example, California's antispam law prohibits sending unsolicited e-mail unless it includes opt-out instructions and the sender's contact information. Antispam legislation is at the top of the list of the regulatory issues currently being considered by Congress and passage of legislation at the federal level is likely. The Anti-Spamming Act will make it unlawful for anyone to intentionally, and without authorization, transmit bulk unsolicited e-mail without a valid return e-mail address. Laws are also being considered that would outlaw sending unsolicited e-mail after a consumer has sent an unsubscribe message.<sup>106</sup>

As the use of the Internet as a commercial medium increases, the need for ethical standards by marketers and voluntary industry codes and guidelines will become greater. If they fail to respond, stronger intervention by the FTC or other regulatory agencies is likely.

## Summary

Regulation and control of advertising stem from internal regulation or self-regulation as well as from external control by federal, state, and local regulatory agencies. For many years the advertising industry has promoted the use of voluntary self-regulation to regulate advertising and limit government interference with and control over advertising. Self-regulation of advertising emanates from all segments of the advertising industry, including advertisers and their agencies, business and advertising associations, and the media.

The NAD/NARB, the primary self-regulatory mechanism for national advertising, has been very effective in achieving its goal of voluntary regulation of advertising. Various media also have their own advertising guidelines. The major television networks main-

tain the most stringent review process and restrictions.

Traditionally, the federal government has been the most important source of external regulation, with the Federal Trade Commission serving as the major watchdog of advertising in the United States. The FTC protects both consumers and businesses from unfair and deceptive practices and anticompetitive behavior. The FTC became very active in the regulation of advertising during the 1970s when it began several new programs and policies, including affirmative disclosure, advertising substantiation, and corrective advertising. Since 1980 the FTC has not been allowed to implement industry-wide rules that would define unfair advertising practices. However, the advertising industry and Congress are nearing agreement on a defini-

tion of unfairness, and this power may be restored to the FTC.

In 1983 the FTC developed a new working definition of deceptive advertising. Recently the FTC has become more active in policing false and deceptive advertising. Under the Lanham Act, many companies are taking the initiative by suing competitors that make false claims. Many states, as well as the National Association of Attorneys General, are also active in exercising their jurisdiction over false and misleading advertising.

A number of laws also govern the use of other promotional mix elements, such as sales promotion and direct marketing. The Federal Trade Commission regulates many areas of sales promotion as well as direct marketing. Various consumer-oriented sales promotion tools such as contests, games, sweepstakes,

and premiums are subject to regulation. Recently many states have become very active in the regulation of contests and sweepstakes. Trade promotion practices, such as the use of promotional allowances and vertical cooperative advertising, are regulated by the Federal Trade Commission under the Robinson-Patman Act. The FTC also

enforces laws in a variety of areas that relate to direct marketing and mail-order selling, while the FCC has rules governing telemarketing companies.

Currently there are few specific laws governing marketing practices on the Internet. However, two major areas of concern with regard to marketing on the Internet are

privacy and online marketing to children. The Federal Trade Commission has called for voluntary industry codes rather than FTC rules to govern marketers' use of the Internet. Concerns over online marketing to children have led to the passage of the Children's Online Privacy Protection Act, which the FTC began enforcing in early 2000.

## Key Terms

self-regulation, 712  
 Better Business Bureau, 715  
 Council of Better Business Bureaus, 715  
 National Advertising Review Board, 716  
 National Advertising Review Council, 716  
 Federal Trade Commission, 722

commercial speech, 722  
 Central Hudson Test, 722  
 Federal Trade Commission Act, 723  
 Wheeler-Lea Amendment, 723  
 trade regulation rules, 724  
 unfairness, 725

puffery, 725  
 deception, 726  
 affirmative disclosure, 726  
 advertising substantiation, 729  
 consent order, 730  
 cease-and-desist order, 730

corrective advertising, 731  
 Lanham Act, 738  
 National Association of Attorneys General, 740  
 Children's Online Privacy Protection Act, 746

## Discussion Questions

1. Do you agree with the DISCUS argument that hard liquor is at a competitive advantage against wine and beer if it cannot advertise on television? Evaluate the decisions by NBC to become the first broadcast network to accept liquor advertising and then dropping its plans to do so.

2. Evaluate the controversy discussed in IMC Perspective 21-2 over the "Kenya" commercial from the perspective of both Just For Feet and the Saatchi & Saatchi advertising agency. With whom does the ultimate responsibility for the airing of this commercial lie, the client or the agency?

3. Discuss the role the media play in the self-regulation of advertising. Do you think media self-regulation is an effective way of protecting consumers from offensive or misleading advertising?

4. Do you agree with the decision by the California Supreme Court to

view statements about a company's labor policies or operations in ads or press releases as commercial in nature and thus subject to government regulation? Discuss how this ruling might affect various forms of integrated marketing communications used by companies such as Nike.

5. IMC Perspective 21-2 discusses the legal battle between Pizza Hut and Papa John's over the latter's use of the tagline "Better Ingredients. Better Pizza." Which company do you side with in this controversy and why?

6. What is meant by advertising substantiation? Should advertisers be required to substantiate their claims before running an ad or should they be required to provide documentation only if their advertising claims are challenged?

7. Discuss the Lanham Act and how it affects advertising. What elements are necessary to win a

false advertising claim under the Lanham Act?

8. IMC Perspective 21-3 discusses the debate over direct-to-consumer advertising. Do you agree with the decision by the Food and Drug Administration to issue new guidelines making it easier for pharmaceutical companies to advertise prescription drugs on television as well as in print media?

9. The Federal Trade Commission is in the process of developing a national "do-not-call" registry. Discuss how this registry will impact the direct marketing industry. What arguments might direct marketers use in trying to prevent the implementation of such a program?

10. What are the major areas of concern with regard to marketing on the Internet? Evaluate the steps being taken to address these concerns.

# Evaluating the Social, Ethical, and Economic Aspects of Advertising and Promotion

## 22

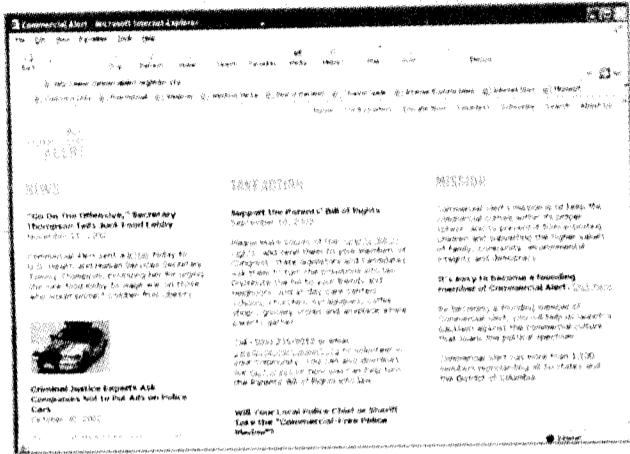
### Chapter Objectives

1. To consider various perspectives concerning the social, ethical, and economic aspects of advertising and promotion.
2. To evaluate the social criticisms of advertising.
3. To examine the economic role of advertising and its effects on consumer choice, competition, and product costs and prices.



# The Brave New World of Advertainment

In 1957 social critic Vance Packard wrote his classic best-seller *The Hidden Persuaders*, in which he purported to reveal all of the secret techniques used by advertisers to dig deeply into the psyches of consumers and manipulate them. When interviewed 40 years later, Packard was still fuming over what he saw coming out of Madison



Avenue. Packard was angry not because advertisers had sharpened their brainwashing skills; rather, he was puzzled by modern-day advertising because it seemed to be unrelated to selling anything at all. He noticed that a change had taken place in the way marketers advertise their products, as there is now an obsession with images and feelings and a lack of concrete claims about a product and why anyone should buy it.

Packard was indeed correct in his observation that advertising has changed. However, what he failed to notice was that marketers have actually become less dependent on the traditional forms of mass-media advertising that he felt could be used to manipulate consumers. In the modern-day world of marketing, the debate is less over the ads that consumers see and hear and more about the persuasive messages they receive

unknowingly. In recent years marketers have recognized that consumers are tired of the myriad of advertisements and other forms of promotion they are exposed to every day and are becoming very cynical about the sales pitches. To get around this problem, many companies are obliterating the line between marketing communications and entertainment by creating and delivering ads and other messages that appear to be part of popular culture. New-age marketers are redefining the notion of what advertising and other forms of marketing communications are and how they can be used. "Stealth messages" are being woven into our everyday lives, and as consumers we are often unaware of their persuasive intent.

Product placements have been around for years, and branded products are now commonplace in many movies and TV shows. However, the concept of paying to have a product or service promoted covertly has moved into other arenas, often without consumer awareness. Celebrities such as Lauren Bacall, Kathleen Turner, and Rob Lowe have appeared on talk shows and praised prescription drugs without revealing that the drug companies were paying them or making donations to their favorite charities in return for the endorsement. Producers of soap operas and sitcoms and even authors of best-selling books take money to build plots around certain brands of products such as makeup or jewelry. And of course marketers are hiring trendsetters to generate "buzz" for their products on college campuses and in trendy bars and nightclubs as well as other places. Many of the people who recommend products to us are actually pitchpersons in disguise who are being paid to deliver subtle promotional messages.

Critics of these stealth marketing techniques say they are tinkering with our minds. The executive director of the Center for Digital Democracy has called the phenomenon the “brand washing of America.” Many advertising industry executives are worried that it could all too easily backfire, making consumers even more wary. Keith Reinhard, chairman of DDB Worldwide, has spoken out against the covert techniques, noting: “I’m against any form of deception. In the end, it’s bad business.” Consumer advocate Ralph Nader has accused marketers of creating “prime-time infomercials” with no line between entertainment and ads. He notes, “What these people on Madison Avenue don’t understand is, consumers will reach a saturation point. They’ll reach a point where they just tip over and go, ‘Yuck.’”

While many marketers realize that they may be alienating consumers with all of these stealth techniques, they argue that they really have no choice. That’s because the old approach of relying on 30-second TV spots and other forms of mass-media advertising is becoming less effective. They note that digital video recorders such as TiVo will soon become as common as VCRs and give TV viewers the ability to banish commercials. Some media experts argue that commercial-supported free TV is an endangered species and marketers have to find new ways to reach consumers with their messages. Thus, like it or not, consumers are probably going to see more and more unexpected, and undercover, messages.

Many advertising experts argue that “branded content” is the wave of the future, and there is a growing clamor to reinvent advertising and other forms of marketing communications to be something more akin to entertainment. However, advertising and marketing watchdog groups such as Commercial Alert note that the memories of the movies and TV shows Hollywood is making today are being corrupted by commercialization that has mushroomed beyond mere product placement to include script doctoring and related sins. Gary Ruskin, executive director of Commercial Alert, argues that artistic concerns take a back seat when advertising is integrated into films and TV shows. He has also expressed concern over the effect “advertainment” will have on children who cannot identify or properly process the barrage of advertising messages directed at them, particularly when they are embedded in movies and TV shows.

Many argue that the Brave New World of advertainment and branded content will be exciting and cool. However, critics argue that people would like to have some places in their lives where they are free from ads and efforts to sell them something. Unfortunately, these places are becoming more difficult to find.

Sources: Daniel Eisenberg, “It’s an Ad, Ad, Ad, World,” *Time*, Sept. 2, 2002, pp. 38–41; Jennifer Davies, “Where Do Films Start, Ads Stop?” *San Diego Union Tribune*, Aug. 8, 2002, pp. C1, 3; Michael McCarthy, “Ads Are Here, There, Everywhere,” *USA Today*, June 19, 2001, pp. 1, 2B.

If I were to name the deadliest subversive force within capitalism, the single greatest source of its waning morality—I would without hesitation name advertising. How else should one identify a force that debases language, drains thought, and undoes dignity?<sup>1</sup>

The primary focus of this text has been on the role of advertising and other promotional variables as marketing activities used to convey information to, and influence the behavior of, consumers. We have been concerned with examining the advertising and promotion function in the context of a business and marketing environment and from a perspective that assumes these activities are appropriate. However, as you can see in this quote from economist Robert Heilbroner, not everyone shares this viewpoint. Advertising and promotion are the most visible of all business activities and are prone to scrutiny by those who are concerned about the methods marketers use to sell their products and services.

Proponents of advertising argue that it is the lifeblood of business—it provides consumers with information about products and services and encourages them to

improve their standard of living. They say advertising produces jobs and helps new firms enter the marketplace. Companies employ people who make the products and provide the services that advertising sells. Free market economic systems are based on competition, which revolves around information, and nothing delivers information better and at less cost than advertising.

Not everyone, however, is sold on the value of advertising. Critics argue that most advertising is more propaganda than information; it creates needs and faults consumers never knew they had. Ads suggest that children won't succeed without a computer, that our bodies should be leaner, our faces younger, and our houses cleaner. They point to the sultry, scantily clad bodies used in ads to sell everything from perfume to beer to power tools and argue that advertising promotes materialism, insecurity, and greed.

One of the reasons advertising and other forms of integrated marketing communications are becoming increasingly criticized is because they are so prevalent. Not only are there more magazine, newspaper, outdoor, TV, and radio ads than ever, but more and more public space is becoming commercialized. Advertising professor David Helm notes: "Between the stickered bananas and the ads over the urinals and the ones on the floor of the supermarkets, we're exposed to 3,000 commercial messages a day. That's one every 15 seconds, assuming we sleep for 8 hours, and I'd guess right now there's someone figuring out how to get us while our eyes are closed."<sup>2</sup>

As marketers intensify their efforts to get the attention of consumers, resentment against their integrated marketing communications efforts is likely to increase. As discussed in the opening vignette, concern is growing that there will be a consumer backlash as integrated marketing efforts move to new heights and marketers become increasingly aggressive. Diane Cook, a former advertising executive who founded the AdCenter at Virginia Commonwealth, says: "The growing practice of placing ads and logos everywhere seems a desperate last attempt to make branding work according to the old rules. As telemarketing, advertising, promotions and the rest continue at a frenzied pace, the value of the messages decrease. The system seems headed for a large implosion."<sup>3</sup>

Because of its high visibility and pervasiveness, along with its persuasive character, advertising has been the subject of a great deal of controversy and criticism. Numerous books are critical of not only advertising's methods and techniques but also its social consequences. Various parties—including scholars, economists, politicians, sociologists, government agencies, social critics, special-interest groups, and consumers—have attacked advertising and other forms of marketing communications for a variety of reasons, including their excessiveness, the way they influence society, the methods they use, their exploitation of consumers, and their effect on our economic system.

Advertising is a very powerful force, and this text would not be complete without a look at the criticisms regarding its social and economic effects as well as some defenses against these charges. We consider the various criticisms of advertising and promotion from an ethical and societal perspective and then appraise the economic effects of advertising.

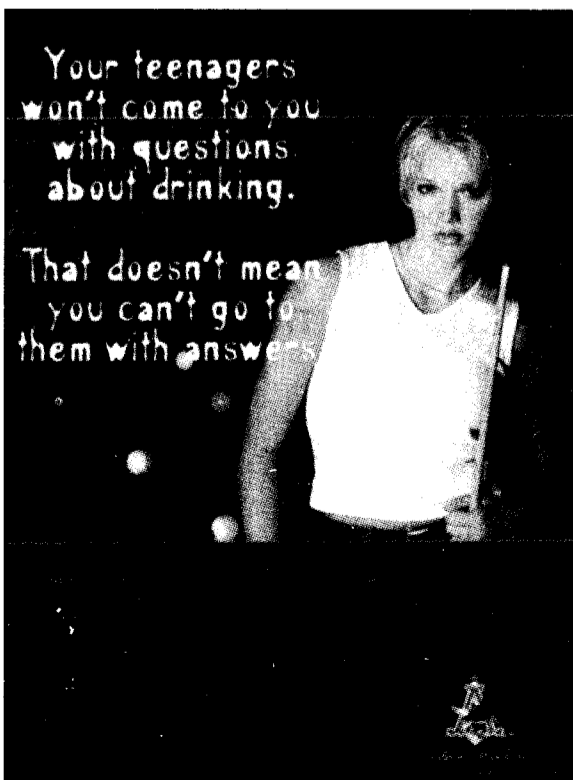
In the previous chapter, we examined the regulatory environment in which advertising and promotion operate. While many laws and regulations determine what advertisers can and cannot do, not every issue is covered by a rule. Marketers must often make decisions regarding appropriate and responsible actions on the basis of ethical considerations rather than on what is legal or within industry guidelines. **Ethics** are moral principles and values that govern the actions and decisions of an individual or group.<sup>4</sup>

A particular action may be within the law and still not be ethical. A good example of this involves target marketing. No laws restrict tobacco companies from targeting advertising and promotion for new brands to African-Americans. However, given the high levels of lung cancer and smoking-related illnesses among the black population, many people would consider this an unethical business practice.

Throughout this text we have presented a number of ethical perspectives to show how various aspects of advertising and promotion often involve ethical considerations.

## Advertising and Promotion Ethics

**Exhibit 22-1** This ad is part of a campaign by Anheuser-Busch to encourage parents to talk to their teenagers about the risks of underage drinking



Ethical issues must be considered in integrated marketing communications decisions. And advertising and promotion are areas where a lapse in ethical standards or judgment can result in actions that are highly visible and often very damaging to a company.

The role of advertising in society is controversial and has sometimes resulted in attempts to restrict or ban advertising and other forms of promotion to certain groups or for certain products. College students are one such group. The level of alcohol consumption and binge drinking by college students has become a serious problem. Alcohol-related problems have proliferated on college campuses in recent years and have resulted in many negative consequences, including death.<sup>5</sup> Several studies have shown that there has been a significant increase in binge drinking among college students and have advocated a ban on alcohol-related advertising and promotion.<sup>6</sup> Many colleges and universities have imposed restrictions on the marketing of alcoholic beverages to their students. These restrictions include banning sponsorships or support of athletic, musical, cultural, or social events by alcoholic-beverage companies and limiting college newspaper advertising to price and product information ads.

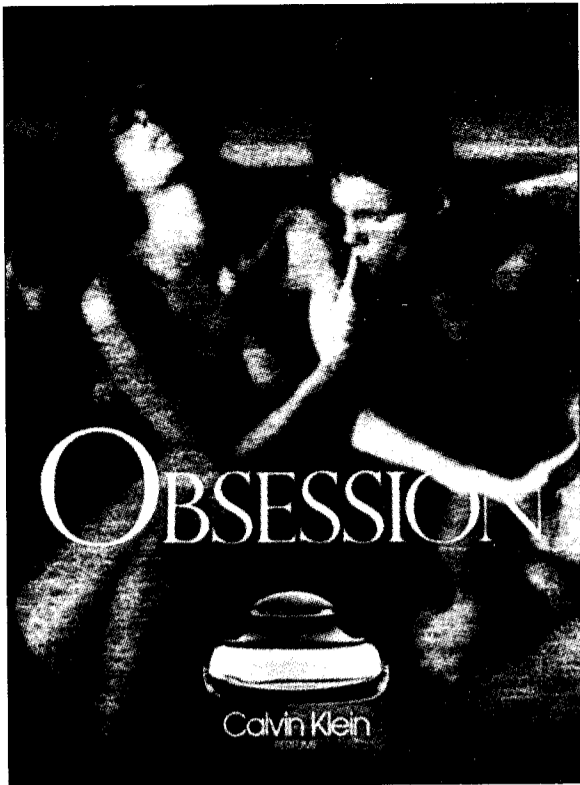
A great deal of attention is being focused on the issue of whether alcoholic-beverage companies target not only college students but underage drinkers as well. As noted in Chapter 21, the actions of beer, wine, and liquor marketers are being closely scrutinized in the wake of the distilled-spirits industry's decisions to reverse its long-standing ban on television and radio advertising. Many people feel the industry's push to join beer and wine advertisers on television is testing the public's attitudes and may lead to support for more government restrictions and regulations on alcohol advertising.<sup>7</sup>

A recent study by the Center on Alcohol Marketing and Youth at Georgetown University concluded that underage drinkers are increasingly being targeted by magazine ads for beer and hard liquor.<sup>8</sup> According to the study, magazines that have a significant number of readers under the age of 21, such as *Spin*, *Vibe*, *Allure*, *Maxim*, and *Sports Illustrated*, accounted for nearly one-third of all alcohol advertising in magazines in 2001. The study concluded that despite the Federal Trade Commission's recommendation that the alcohol industry avoid marketing to youth audiences, the advertising practices of the beer and liquor companies fail to follow the commission's guidelines. The study called on the FTC to conduct a new and more rigorous review of the advertising practices of the alcoholic beverage companies.<sup>9</sup>

Companies marketing alcoholic beverages such as beer and liquor recognize the need to reduce alcohol abuse and drunken driving, particularly among young people. Many of these companies have developed programs and ads designed to address this problem. For example, Anheuser-Busch has been running a campaign that uses provocative ads such as the one shown in Exhibit 22-1 to encourage parents to talk to their kids about the risks of underage drinking. The company has also teamed up with parents, teachers, community organizations, law enforcement officials, and others to ensure progress in the fight against alcohol abuse.

Criticism often focuses on the actions of specific advertisers. Groups like the National Organization for Women and Women Against Pornography have been critical of advertisers such as Calvin Klein for promoting sexual permissiveness and objectifying women in their ads (Exhibit 22-2). The company was heavily criticized and even boycotted over the controversial "kiddie porn" ads it ran a few years ago featuring intimate snapshots of teenagers in provocative states of undress.<sup>10</sup>

Another company that has received a great deal of criticism for its advertising over the years is Benetton. For nearly two decades the Italian-based clothing company ran numerous "shock" ads containing controversial images such as a black woman nursing a white baby, an AIDS patient and his family moments before his death, and a priest kissing a nun (see Exhibit 21-4). Oliviero Toscani, Benetton's former creative

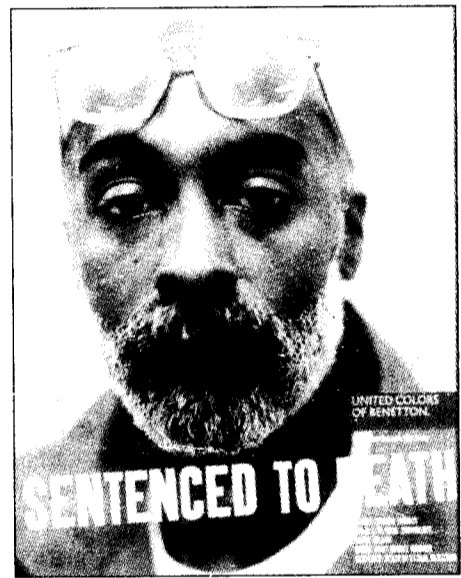


**Exhibit 22-2** Ads by Calvin Klein have been the target of criticism by women's groups and others

director who developed most of these ads, noted that the controversial images were designed to raise public awareness of social issues and position the company as a cutting-edge, socially conscious marketer.<sup>11</sup> The company's most controversial ads, at least in the United States, were those used in its "Death Row" campaign that ran in 2000. The campaign, aimed at drawing attention to the use of capital punishment in the United States, featured ads showing piercing portraits of death-row inmates (Exhibit 22-3).

The campaign created a storm of controversy; the state of Missouri sued Toscani and Benetton for misrepresenting themselves while interviewing four death-row inmates featured in the campaign. Protests from the families of the inmates' victims and threatened boycotts from enraged consumers resulted in Sears Roebuck and Co. dropping the Benetton line. A year later the lawsuit was settled when Benetton agreed to write letters of apology to the four Missouri families whose relatives were murdered by the inmates featured in the ads and to make a donation to the Missouri Crime Victims Compensation Fund.<sup>12</sup>

As you read this chapter, remember that the various perspectives presented reflect judgments of people with different backgrounds, values, and interests. You may see nothing wrong with the ads for cigarettes or beer or sexually suggestive ads. Other students, however, may oppose these actions on moral and ethical grounds. While we attempt to present the arguments on both sides of these controversial issues, you will have to draw your own conclusions as to who is right or wrong.



**Exhibit 22-3** Benetton's "Death Row" ads created a major controversy

## Social and Ethical Criticisms of Advertising

Much of the controversy over advertising stems from the ways many companies use it as a selling tool and from its impact on society's tastes, values, and lifestyles. Specific techniques used by advertisers are criticized as deceptive or untruthful, offensive or in bad taste, and exploitative of certain groups, such as children. We discuss each of these criticisms, along with advertisers' responses. We then turn our attention to criticisms concerning the influence of advertising on values and lifestyles, as well as charges that it perpetuates stereotyping and that advertisers exert control over the media.

## Advertising as Untruthful or Deceptive

One of the major complaints against advertising is that many ads are misleading or untruthful and deceive consumers. A number of studies have shown a general mistrust of advertising among consumers.<sup>13</sup> A study by Banwari Mittal found that consumers felt that less than one-quarter of TV commercials are honest and believable.<sup>14</sup> Sharon Shavitt, Pamela Lowery, and James Haefner conducted a major national survey of over 1,000 adult consumers to determine the general public's current attitudes toward and confidence in advertising. They found that Americans generally do not trust advertising, although they tend to feel more confidence in advertising claims when focused on their actual purchase decisions.<sup>15</sup>

Attempts by industry and government to regulate and control deceptive advertising were discussed in Chapter 21. We noted that advertisers should have a reasonable basis for making a claim about product performance and may be required to provide evidence to support their claims. However, deception can occur more subtly as a result of how consumers perceive the ad and its impact on their beliefs.<sup>16</sup> The difficulty of determining just what constitutes deception, along with the fact that advertisers have the right to use puffery and make subjective claims about their products, tends to complicate the issue. But a concern of many critics is the extent to which advertisers are *deliberately* untruthful or misleading.

Sometimes advertisers have made overtly false or misleading claims or failed to award prizes promoted in a contest or sweepstakes. However, these cases usually involve smaller companies and a tiny portion of the hundreds of billions of dollars spent on advertising and promotion each year. Most advertisers do not design their messages with the intention to mislead or deceive consumers or run sweepstakes with no intention of awarding prizes. Not only are such practices unethical, but the culprits would damage their reputation and risk prosecution by regulatory groups or government agencies. National advertisers in particular invest large sums of money to develop loyalty to, and enhance the image of, their brands. These companies are not likely to risk hard-won consumer trust and confidence by intentionally deceiving consumers.

The problem of untruthful or fraudulent advertising and promotion exists more at the local level and in specific areas such as mail order, telemarketing, and other forms of direct marketing. Yet there have been many cases where large companies were accused of misleading consumers with their ads or promotions. Some companies test the limits of industry and government rules and regulations to make claims that will give their brands an advantage in highly competitive markets.

While many critics of advertising would probably agree that most advertisers are not out to deceive consumers deliberately, they are still concerned that consumers may not be receiving enough information to make an informed choice. They say advertisers usually present only information that is favorable to their position and do not always tell consumers the whole truth about a product or service.

Many believe advertising should be primarily informative in nature and should not be permitted to use puffery or embellished messages. Others argue that advertisers have the right to present the most favorable case for their products and services and should not be restricted to just objective, verifiable information.<sup>17</sup> They note that consumers can protect themselves from being persuaded against their will and that the various industry and government regulations suffice to keep advertisers from misleading consumers. Figure 22-1 shows the advertising principles of the American Advertising Federation, which many advertisers use as a guideline in preparing and evaluating their ads.

## Advertising as Offensive or in Bad Taste

Another common criticism of advertising, particularly by consumers, is that ads are offensive, tasteless, irritating, boring, obnoxious, and so on. In the recent study by Shavitt and her colleagues, about half of the respondents reported feeling offended by advertising at least sometimes. A number of other studies have found that consumers feel most advertising insults their intelligence and that many ads are in poor taste.<sup>18</sup>

**Sources of Distaste** Consumers can be offended or irritated by advertising in a number of ways. Some object when a product or service like contraceptives or personal hygiene products is advertised at all. Most media did not accept ads for condoms until

1. *Truth.* Advertising shall reveal 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 service.
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.

the AIDS crisis forced them to reconsider their restrictions (Exhibit 22-4). The major TV networks gave their affiliates permission to accept condom advertising in 1987, but the first condom ad did not appear on network TV until 1991, when Fox broadcast a spot.

In 1994 the U.S. Department of Health's Centers for Disease Control and Prevention (CDC) began a new HIV prevention campaign that includes radio and TV commercials urging sexually active people to use latex condoms. The commercials prompted strong protests from conservative and religious groups, which argue that the government should stress abstinence in preventing the spread of AIDS among young people. NBC and ABC agreed to broadcast all the commercials, while CBS said it would air certain spots.<sup>19</sup>

A study of prime-time TV commercials found a strong product class effect with respect to the types of ads consumers perceived as distasteful or irritating. The most irritating commercials were for feminine hygiene products; ads for women's undergarments and hemorrhoid products were close behind.<sup>20</sup> Another study found that consumers are more likely to dislike ads for products they do not use and for brands they would not buy.<sup>21</sup> Ads for personal products have become more common on television and in print, and the public is more accepting of them.<sup>22</sup> However, advertisers must still be careful of how these products are presented and the language and terminology used. There are still many rules, regulations, and taboos advertisers must deal with to have their TV commercials approved by the networks.<sup>23</sup>

Another way advertising can offend consumers is by the type of appeal or the manner of presentation. For example, many people object to appeals that exploit consumer anxieties. Fear appeal ads, especially for products such as deodorants, mouthwash, and dandruff shampoos, are criticized for attempting to create anxiety and using a fear of social rejection to sell these products. Some ads for home computers were also criticized for attempting to make parents think that if their young children couldn't use a computer, they would fail in school.

**Sexual Appeals** The advertising appeals that have received the most criticism for being in poor taste are those using sexual appeals and/or nudity. These techniques are often used to gain consumers' attention and may not even be appropriate to the product being advertised. Even if the sexual appeal relates to the product, people may be offended by it. Many people object to both nudity in advertising and sexually suggestive ads.

**Exhibit 22-4** Many magazines and TV stations now accept ads for condoms



**You'd be amazed at what I used to go through to buy condoms.**

While it lives through it, the whole embarrassment thing when it comes to buying condoms. There was me, facing a sea of condom boxes, when someone walks by. You quickly pick up someplace, mindlessly searching to avoid people knowing what you really came to for. Well, thanks to LifeStyles, the trouble just disappears in the driver's seat.

**LifeStyles makes your choices easier.**

LifeStyles make the choices an important part of my life a lot easier by making a condom I can feel good about. They make it a breeze to select the box of LifeStyles that's right for me by color-coding all their packages. And make sure you call for their great service on sex in the 90's. You'll love it, and so will we.

Win a fabulous getaway for two! Just enter LifeStyles Sweepstakes and you and a friend could win a 3-day pass from reality to some *Living in the 90's* super destinations. *Good Luck!*

LifeStyles. Finally someone seems to understand the guys' life.

For a FREE LifeStyles sample, our booklet on "Choices, Condoms of Sex in the 90's" and details on how you can win an exciting getaway for two, call **1-800-405-0080**

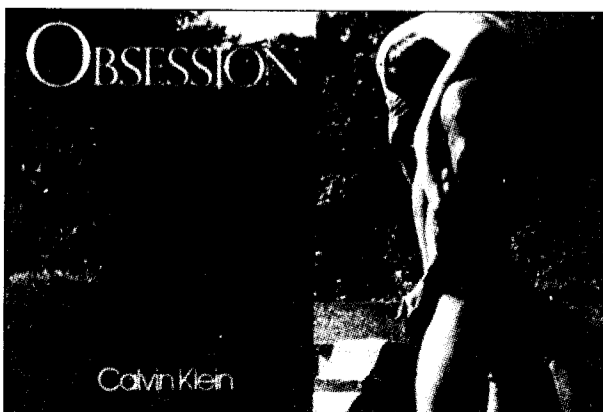
**LifeStyles**  
CONDOMS  
Making your choices easier.

A common criticism of sexual appeals is that they can demean women (or men) by depicting them as sex objects. Ads for cosmetics and lingerie are among the most criticized for their portrayal of women as sex objects (Exhibit 22-5). Some ads have even been criticized for being implicitly suggestive. For example, some women's groups criticized the Airwalk ad shown in Exhibit 22-6, arguing that it showed a submissive and sexually available woman. A critic argued that the ad contained a number of symbolic cues that are sexually suggestive and combine to reinforce an image of the woman's sexual submission to the man.<sup>24</sup>

Critics have been particularly concerned about the use of sexual appeals in the advertising of products such as cigarette, liquor, and beer. Sexual appeals and risqué images have long been used in advertising for alcoholic beverages. In the early 90s an advertising campaign for Old Milwaukee beer featuring the "Swedish Bikini Team," a group of Scandinavian-looking women wearing blue bikinis who appeared out of nowhere in front of groups of beer-drinking men, ignited a major controversy. A number of consumer groups were very critical of the ads, and female employees even sued the Stroh Brewing Co., arguing that the ads contributed to an atmosphere that was conducive to sexual harassment in the workplace.<sup>25</sup>

A number of alcoholic-beverage companies have been criticized more recently for using what many consider raunchy advertising.<sup>26</sup> For example, the Phillips Beverage Co. used several controversial ads to introduce Revelstoke, a spiced Canadian liquor product. One of the ads showed a

**Exhibit 22-5** Sexual appeals are often criticized for portraying women as sex objects





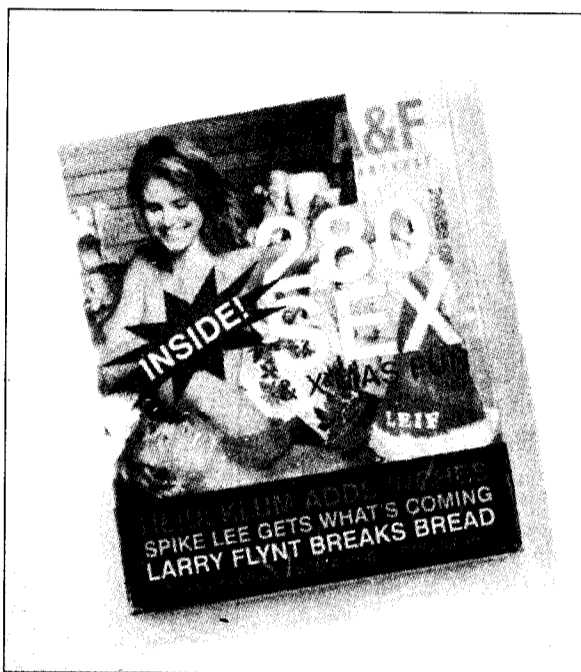


G-stringed lap dancer straddling a seated man in a nightclub. The tagline of the ad read "In Canada, the average paycheck rarely lasts two weeks. It's more like 20 songs." The president of the company noted that he was taking a page from the beer companies that made swimsuits and stilettos standard marketing fare: "It's hard to be in this business and not look at the success of beer advertisers and argue that it doesn't work."<sup>27</sup>

Liquor companies are often criticized not only for their advertising but for some of their other promotional methods as well. For example, in 2002 the Boston Beer Co., which markets the popular Samuel Adams Boston Lager brand, was criticized for its involvement with a "Sex for Sam" radio promotion that encouraged people to have sex in various public places to win a trip to the company's brewery. The promotion was run in conjunction with a talk-radio station whose shock-jocks provided listeners with detailed reports of couples' sexual activity. The controversy resulted in a boycott of the company's products in some bars in Boston, where the company is headquartered. Although the company denied that it was aware of the exact nature of the radio promotion, the chairman of Boston Beer issued a public apology for his company's participation.<sup>28</sup>

**Shock Advertising** With the increasing clutter in the advertising environment, advertisers continue to use sexual appeals and other techniques that offend many people but catch the attention of consumers and may even generate publicity for their companies. In recent years there has been an increase in what is often referred to as **shock advertising**, in which marketers use nudity, sexual suggestiveness, or other startling images to get consumers' attention. As discussed earlier in the chapter, shock advertising is nothing new; companies such as Benetton and Calvin Klein have been using this tactic in their ads since the 1980s. However, a number of other marketers have been criticized for using shock techniques in their ads as well as in other promotional materials.<sup>29</sup> For example, clothing retailer Abercrombie & Fitch has been criticized numerous times for the content and images used in its quarterly catalogs, which have included sex tips from porn star Jenna Jameson, a spoof interview

**Exhibit 22-7** Abercrombie & Fitch's catalogs have been criticized over the use of sex and nudity



with a shopping mall Santa portrayed as a pedophile, and nude photos. The retailer promoted its 2002 Christmas catalog with an advertisement across the plastic covering stating, "Two-hundred and eighty pages of sex and Xmas fun" (Exhibit 22-7).<sup>30</sup> A few years ago officials in four states threatened or pursued legal action against the company, which responded by implementing a policy of carding would-be-buyers of the catalog to ensure they are at least 18 years old.

Another company known for its whimsical, and sometimes controversial, ads is Bijan. The fragrance marketer's ads attracted a great deal of attention a few years ago when it decided to forgo the tall, thin, glamorous supermodels typically used in fragrance ads and use very large, naked women instead. The company's founder, Beverly Hills fashion maven Bijan, defended the ads by stating that they were his homage to artists such as Rubens, who used full-figured models (Exhibit 22-8).

Many advertising experts argue that what underlies the increase in the use of shock advertising is the pressure on marketers and their agencies to do whatever it takes to get their ads noticed. However, critics argue that the more advertisers use the tactic, the more shocking the ads have to be to get attention. How far advertisers can go with these appeals will probably depend on the public's reaction. When consumers think the advertisers have gone too far, they are likely to pressure the advertisers to change their ads and the media to stop accepting them.

While marketers and ad agencies often acknowledge that their ads push the limits with regard to taste, they also complain about a double standard that exists for advertising versus editorial television program content. The creative director for Abercrombie & Fitch's agency argues that there is a double standard and hypocrisy in the shock advertising debate: "When advertising uses sex, everybody complains—when editorial does it, nobody cares."<sup>31</sup> Advertisers and agency creative directors argue that even the most suggestive commercials are bland compared with the content of many television programs. Ethical Perspective 22-1 discusses the process by which the standards and practices departments of the four major networks review the thousands of commercials they receive each year and try to resolve issues regarding their tastefulness.

**Exhibit 22-8** Bijan often uses whimsical and controversial ads



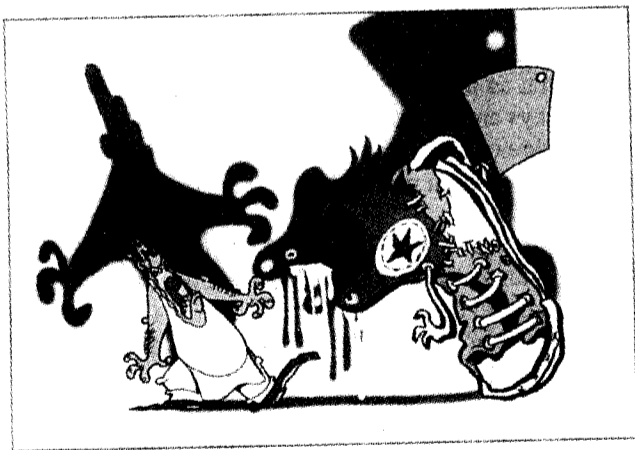
## Advertising and Children

One of the most controversial topics advertisers must deal with is the issue of advertising to children. TV is a vehicle through which advertisers can reach children easily. Children between the ages of 2 and 11 watch an average of

## Networks and Advertisers Battle over Tasteful Advertising

Before any commercial airs on network television, it is reviewed by the standards and practices departments of the major networks. There are approximately 30 censors working for the four major broadcast networks who dictate to advertising agencies and their clients what they can and cannot show on national television. The censors review ads often as early as in the storyboard stage and comment on about half of the ads they see, most often with questions about accuracy. However, along with ensuring that product claims are accurate, the censors also concern themselves with the tastefulness of the ads they review. Ads containing sex, violence, adult language, morbid humor, unsafe or antisocial behavior, and controversial political reviews receive very careful scrutiny.

The network clearance departments argue that advertisers and agencies welcome their feedback and that the system is not an adversarial one. However, frustrated marketers and ad agencies often argue that the clearance process is arbitrary and unfair, with an abundance of double standards and unwritten rules. For example, Rich Silverstein, co-chairman of Goodby Silverstein & Partners in San Francisco, notes: "The networks don't play fair about blood, guts and sex. Judgments about the ads depend on who is judging that day. And their standards are a moving target." His agency has been involved in squabbles with the networks over commercials for clients such as E\*Trade and the California Milk Advisory Board. The agency has pushed the envelope with censors several times with humorous ads created for the long-running "Got milk?" campaign. For example, one of the spots in the campaign showed a frustrated priest kicking a vending machine when it failed to dispense a carton of milk. Censors cried foul—not because it portrayed the priest in an unflattering light but because it is a mis-



demeanor to vandalize a vending machine and ads cannot depict criminal actions.

Another issue that is often raised with the networks is whether they have a double standard, holding commercials to a higher standard than they do their own programs. For example, a few years ago the agency for Converse created a commercial featuring "Lupo the Butcher," who gets whacked by his own cleaver as, cursing in Italian, he tries to turn a high-top shoe into a low-cut. ABC deemed the cartoon butcher too bloody, vulgar, and ethnic for mass audiences. The agency tried unsuccessfully to run the ad after making changes that included toning down some of the ad's colorful language. However, ABC later asked the agency and client to feature the spot in its show *The World's Funniest Commercials*. The creative director who worked on the spot notes: "There is definitely a double standard, and it has frustrated me as a creative person that I am limited in what I can use to communicate an idea."

Those who work in the standards and practices departments for the networks do not agree with their critics, arguing that they give agencies ample leeway to communicate their advertising messages. A CBS clearance editor states: "We do not act as censors. We work in a constructive way with advertisers to make sure that we, as carriers of the public trust, present things in the best possible light to viewers." Roland McFarland, who runs the standards and practices department at Fox, argues that his department tries to assist both agencies and television viewers: "We help agencies tailor and craft their ads for the broad-spectrum audience. We are part of the creative process. We know what plays with our audience and what will have more impact."

Advertisers also become frustrated by the lack of consistency in the decisions across the major networks, as commercials accepted by reviewers at one network are not always accepted by other networks. For example, while Fox is known for its irreverent programming, the network has a reputation as "family friendly" and is considered more cautious and conservative than the Big Three. However, the networks argue that inconsistency among standards and practices departments is uncommon and that if one network has problems with a commercial, the others usually will as well.

Advertisers that feel they have been treated unfairly by a network can appeal the decision to the network's sales department, which has the authority to overrule the censors. However, because clearance editors tend to stay in their jobs for years and have

long memories, agencies and clients are leery of this option. Thus, they prefer to negotiate with the clearance editors and often will make changes and modifications in their ads to satisfy the editors' concerns. In some cases, the networks are persuaded to allow an ad to run to gauge the public's reactions. Ads often run subject to viewer complaint—if the network receives negative reactions from viewers, the ad is pulled.

In some cases advertisers give up trying to please the networks and instead seek approval from the network affiliates, which have their own standards and practices departments and usually are easier to please than the network censors. Advertisers also will take their ads to independent broadcasters as well as cable stations, which may be even less stringent in their reviews. The advertising recession that has plagued the industry in recent years has resulted in a decline in demand for TV commercial time, particularly on syndicated programs and cable. Thus it is often easier to

get ads accepted on their programs than by the major networks.

The clearance editors at the networks review 50 to 150 commercials a day, sometimes examining revisions of a spot three and four times. While they acknowledge that the process is subjective, they argue that they do their best to serve the sometimes competing interests of advertisers, the viewing audience, and the network affiliates. They argue that they have to please a large number of viewers with very different values and opinions as to what is tasteful and responsible advertising. While they do not feel they are censors, they do think of themselves as protectors of social values.

Sources: Joan Voight and Wendy Melillo, "Rough Cut," *Adweek*, March 11, 2002, pp. 27-29; Joan Voight and Wendy Melillo, "To See or Not to See?" *Adweek*, March 11, 2002, p. 30; Vanessa O'Connell, "Invasion of the Tacky Advertisers," *The Wall Street Journal*, February 20, 2002, pp. B1, 4.

21.5 hours of TV a week and may see between 22,000 and 25,000 commercials a year.<sup>32</sup> Studies show that television is an important source of information for children about products.<sup>33</sup> Concern has also been expressed about marketers' use of other promotional vehicles and techniques such as radio ads, point-of-purchase displays, premiums in packages, and the use of commercial characters as the basis for TV shows.

Critics argue that children, particularly young ones, are especially vulnerable to advertising because they lack the experience and knowledge to understand and evaluate critically the purpose of persuasive advertising appeals. Research has shown that preschool children cannot differentiate between commercials and programs, do not perceive the selling intent of commercials, and cannot distinguish between reality and fantasy.<sup>34</sup> Research has also shown that children need more than a skeptical attitude toward advertising; they must understand how advertising works in order to use their cognitive defenses against it effectively.<sup>35</sup> Because of children's limited ability to interpret the selling intent of a message or identify a commercial, critics charge that advertising to them is inherently unfair and deceptive and should be banned or severely restricted.

At the other extreme are those who argue that advertising is a part of life and children must learn to deal with it in the **consumer socialization process** of acquiring the skills needed to function in the marketplace.<sup>36</sup> They say existing restrictions are adequate for controlling children's advertising. A recent study by Tamara Mangleburg and Terry Bristol provided support for the socialization argument. They found that adolescents developed skeptical attitudes toward advertising that were learned through interactions with socialization agents such as parents, peers, and television. They also found that marketplace knowledge plays an important role in adolescents' skepticism toward advertising. Greater knowledge of the marketplace appears to give teens a basis by which to evaluate ads and makes them more likely to recognize the persuasion techniques used by advertisers.<sup>37</sup>

This issue received a great deal of attention in 1979 when the Federal Trade Commission held hearings on proposed changes in regulations regarding advertising to children. An FTC staff report recommended banning all TV advertising for any product directed to or seen by audiences composed largely of children under age eight because they are too young to understand the selling intent of advertising.<sup>38</sup>

The FTC proposal was debated intensely. The advertising industry and a number of companies argued strongly against it, based on factors including advertisers' right of free speech under the First Amendment to communicate with those consumers who make up their primary target audience.<sup>39</sup> They also said parents should be involved in

helping children interpret advertising and can refuse to purchase products they believe are undesirable for their children.

The FTC proposal was defeated, and changes in the political environment resulted in less emphasis on government regulation of advertising. But parent and consumer groups like the Center for Science in the Public Interest are still putting pressure on advertisers regarding what they see as inappropriate or misleading ads for children. One activist group, Action for Children's Television (ACT), was disbanded in 1992, but first it was instrumental in getting Congress to approve the Children's Television Act in October 1990. The act limits the amount of commercial time in children's programming to 10.5 minutes per hour on weekends and 12 minutes on weekdays.<sup>40</sup>

In 1996 broadcasters, children's advocates, and the federal government reached an agreement requiring TV stations to air three hours of children's educational shows a week.<sup>41</sup> Many believe advertisers will play a major role in implementing the new initiative by providing financial backing for the educational shows—which have long had trouble luring sponsors.<sup>42</sup>

Children are also protected from the potential influences of commercials by network censors and industry self-regulatory groups such as the Council of Better Business Bureaus' Children's Advertising Review Unit (CARU). CARU has strict self-regulatory guidelines regarding the type of appeals, product presentation and claims, disclosures and disclaimers, the use of premiums, safety, and techniques such as special effects and animation. The CARU guidelines for advertising addressed to children under 12 are presented in Figure 22-2.

As we saw in Chapter 21, the major networks also have strict guidelines for ads targeted to children. For example, in network TV ads, only 10 seconds can be devoted to animation and special effects; the final 5 seconds are reserved for displaying all the toys shown in the ad and disclosing whether they are sold separately and whether accessories such as batteries are included. Networks also require 3 seconds of every 30-second cereal ad to portray a balanced breakfast, usually by showing a picture of toast, orange juice, and milk.<sup>43</sup>

While concerns over advertising and other forms of promotion directed at children diminished somewhat over the past decade, the issue has been receiving greater attention recently. Reasons for this growing concern include the increasing viewing options children have as a result of the growth of cable television, an increase in the number of ads encouraging children to call 900 numbers, the increase in the number of toy-based

Five basic principles underlie these guidelines for advertising directed to children:

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 capability for evaluating the credibility of what they watch. 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 that imaginative quality of children. Unreasonable expectations of product quality or performance should not be stimulated either directly or indirectly by advertising.
3. Recognizing that advertising may play an important part in educating the child, information should be communicated in a truthful and accurate manner with full recognition by the advertiser that the child may learn practices from advertising that can affect his or her health and well-being.
4. Advertisers are urged to capitalize on the potential of advertising to influence social behavior by developing advertising that, wherever possible, addresses itself to social standards generally regarded as positive and beneficial, such as friendship, kindness, honesty, justice, generosity, and respect for others.
5. 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.

**Figure 22-2** Children's Advertising Review Unit principles

programs on TV, and general concerns over the content of children's programming, particularly with regard to violence.

The marketing of violent entertainment to minors and the advertising practices and rating systems of the film, music, and electronic game industries are also being monitored very carefully. The issue of what young consumers are watching, listening to, and playing and how much violence that entertainment contains became an area of great concern following the shootings at Columbine High School as well as several other schools. In 2001 legislation was proposed that would have given the FTC authority to take action against companies that violated their own industry's voluntary policies governing the marketing of violent products to minors. However, the bill was suspended following FTC reports that the companies had made improvements.<sup>44</sup>

As discussed in the previous chapter, there is also growing concern over how marketers are using the Internet to communicate with and sell to children. Another area that has received a great deal of attention recently is the use of in-school marketing programs, whereby companies provide equipment or pay money to schools in exchange for the rights to sell their products to students or communicate with them. Ethical Perspective 22-2 discusses the controversy over the commercialization of schools.

Advertising to children will remain a controversial topic. Some groups feel that the government is responsible for protecting children from the potentially harmful effects of advertising and other forms of promotion, while others argue that parents are ultimately responsible for doing so. Various consumer groups have also urged the media, particularly television broadcasters, as well as marketers to assume responsibility for the programs and advertising and promotional messages they offer to children.<sup>45</sup> A study comparing the attitudes of business executives and consumers regarding children's advertising found that marketers of products targeted to children believe advertising to them provides useful information on new products and does not disrupt the parent-child relationship. However, the general public did not have such a favorable opinion. Older consumers and those from households with children had particularly negative attitudes toward children's advertising.<sup>46</sup> A recent survey of 12,500 young people up to 18 years of age was conducted for *Advertising Age* regarding their attitudes toward advertising and various media. The study found that two-thirds of those surveyed believed the main goal of advertising is to make them buy things while only 11 percent felt that its objective is to provide information.<sup>47</sup>

It is important to many companies to communicate directly with children. However, only by being sensitive to the naiveté of children as consumers will they be able to do so freely and avoid potential conflict with those who believe children should be protected from advertising and other forms of promotion.

## Social and Cultural Consequences

Concern is often expressed over the impact of advertising on society, particularly on values and lifestyles. While a number of factors influence the cultural values, lifestyles, and behavior of a society, the overwhelming amount of advertising and its prevalence in the mass media lead many critics to argue that advertising plays a major role in influencing and transmitting social values. In his book *Advertising and Social Change*, Ronald Berman says:

The institutions of family, religion, and education have grown noticeably weaker over each of the past three generations. The world itself seems to have grown more complex. In the absence of traditional authority, advertising has become a kind of social guide. It depicts us in all the myriad situations possible to a life of free choice. It provides ideas about style, morality, behavior.<sup>48</sup>

Mike Hughes, president and creative director of the Martin Agency, notes that advertising has a major impact on society: "Ads help establish what is cool in society; their messages contribute to the public dialogue. Gap ads show white, black and Hispanic kids dancing together. Hilfiger ads showed it's cool for people to get along. Ikea showed a gay couple." He argues that advertising agencies have a social and ethical responsibility to consider the impact of the advertising messages they create for their clients.<sup>49</sup>

## Marketing to Kids in School—Is It Cool?

In 1990 an entrepreneur named Chris Whittle created a national controversy and gave parents and educators fits because of a plan to put news programming and advertisements in high school classrooms all over America. In return for providing free TV sets for every classroom and a satellite hookup, Whittle's Channel One would be allowed to show a 12-minute daily news program that contained 2 minutes of commercials for products such as acne medicine, electric razors, cereals, and candy. Channel One struggled in its early years, as many schools were reluctant to provide marketers with yet another way of reaching young people with their advertising messages. However, as the demand for upgraded technology in classrooms increased and funds available to pay for it decreased, many school districts became more receptive to Whittle. Today Channel One broadcasts into nearly 12,000 middle, junior, and high schools, and some 8.3 million teenagers see its news show and commercials every school day.

Many educators, consumer activists, and parent groups feared letting Channel One into schools on the grounds that it would open the doors for corporate America to reach students in a place where they are supposed to be learning English and math rather than watching commercials. Marketers recognize that the youth market is a gold mine, as there are nearly 48 million U.S. children in kindergarten through high school and their purchasing power, as well as influence on their parents' purchases, is immense. Moreover, this is the only market segment whose members are held as a captive audience for six to seven hours a day. The concern was that marketers would find all kinds of creative ways to reach a market that was entirely off-limits just a decade ago.

Channel One has clearly helped spawn the new breed of in-school marketers that are taking advantage of the financial squeeze many schools are in and making them offers they find hard to resist. However, not everyone is welcoming the commercialization of America's schools and classrooms. For example, ZapMe Corp., a California-based computer marketing company, had plans to wire America's classrooms by donating 120,000 top-of-the-line computers to 8,000 high schools, along with high-speed, broadband Internet connections. The hitch was that the equipment and access would be supported by banner advertising and the company would get permission to monitor the student's Web browsing habits. ZapMe was launched in 1996 and by the middle of 2000 it had wired 2,300 schools in 45 states, providing approximately 2 million students with Internet access. However, the company's



plan was plagued by political problems as consumer activists and organizations such as Commercial Alert, which is dedicated to protecting communities and children from commercialism, cried foul. Ralph Nader called for parents to "join together to keep ZapMe and other advertisers out of your children's schools." By late 2000 ZapMe announced that it would not add any new schools to its program, and a year later the company abandoned its plans to wire the nation's schools.

High-tech companies are not the only ones finding their way into schools. General Mills' Box Tops for Education program allows schools to earn cash by having students collect box tops from the company's products. Pizza Hut offers a program called Book It, which awards gift certificates to students in elementary schools who complete reading assignments. Since the program's creation in 1985, Pizza Hut has given away about 45 million coupons worth \$178 million of pizza to schoolchildren. Individual Pizza Hut franchisees are also free to coordinate additional in-school programs.

The most common in-school marketing agreements are with local soft-drink bottlers, which pay school districts large sums of money for exclusive vending rights. Companies such as Coca-Cola, PepsiCo, and Dr. Pepper/Seven-Up leave the negotiation of these "pouring rights" to their independent bottlers. While the agreements with soft-drink bottlers may generate hundreds of thousands of dollars a year in extra revenue for the schools that have them, they are also highly controversial. The vending machines are targeted because of the lack of nutritional value of soft drinks and concerns over youth obesity. To alleviate these problems, many bottlers offer a variety of beverages in the machines, including fruit juices, juice drinks, and water.

As more schools open their doors to marketers, there is concern that the commercialization of our nation's classrooms has gone too far. Gary Ruskin,

director of Commercial Alert, which is Ralph Nader's consumer advocacy group, says, "Kids are in school to learn to read and write and think, not to learn to desire products." David Walsh, president of the National Institute on Media & Family, is concerned about the increasingly sophisticated advertising in schools. He notes, "Kids are bombarded with commercial messages outside of school. The risk is that they will be treated increasingly as consumers in the one institution where they're supposed to be treated as learners."

The debate is likely to continue over commercialization of classrooms. Many argue that these programs are corrupting young students and contaminating the

educational process. They argue that school administrators should not be put in the ethically difficult position of striking deals to make ends meet. However, others argue that the programs are legitimate activities of companies seeking to expand their markets while helping financially strapped schools pay for items that help increase the quality of education.

Sources: Steve Jarvis, "Lesson Plans," *Marketing News*, June 18, 2001, pp. 1, 9, 10; Betsy Schiffman, "ZapMe Kills Computers in the Classroom," [www.Forbes.com](http://www.Forbes.com), Nov. 28, 2000; Peggy J. Faber, "Schools for Sale," *Advertising Age*, Oct. 25, 1999, pp. 22-26; Richard Sale, "Lions among Lambs," *Promo Magazine*, February 1999, pp. 46-51.

While there is general agreement that advertising is an important social influence agent, opinions as to the value of its contribution are often negative. Advertising is criticized for encouraging materialism, manipulating consumers to buy things they do not really need, perpetuating stereotypes, and controlling the media.

**Advertising Encourages Materialism** Many critics claim advertising has an adverse effect on consumer values by encouraging **materialism**, a preoccupation with material things rather than intellectual or spiritual concerns. The United States is undoubtedly the most materialistic society in the world, which many critics attribute to advertising that

- Seeks to create needs rather than merely showing how a product or service fulfills them.
- Surrounds consumers with images of the good life and suggests the acquisition of material possessions leads to contentment and happiness and adds to the joy of living.
- Suggests material possessions are symbols of status, success, and accomplishment and/or will lead to greater social acceptance, popularity, sex appeal, and so on.

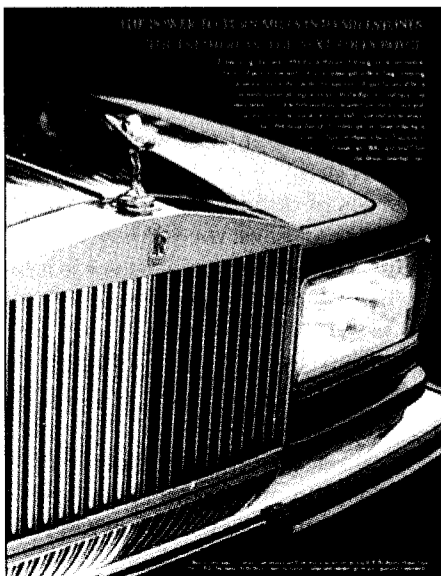
The ad shown in Exhibit 22-9 for Rolls-Royce automobiles is an example of how advertising can promote materialistic values.

This criticism of advertising assumes that materialism is undesirable and is sought at the expense of other goals. But many believe materialism is an acceptable part of the **Protestant ethic**, which stresses hard work and individual effort and initiative and views the accumulation of material possessions as evidence of success. Others argue that the acquisition of material possessions has positive economic impact by encouraging consumers to keep consuming after their basic needs are met. Many Americans believe economic growth is essential and materialism is both a necessity and an inevitable part of this progress.

Economist John Kenneth Galbraith, often a vocal critic of advertising, describes the role advertising plays in industrialized economies by encouraging consumption:

Advertising and its related arts thus help develop the kind of man the goals of the industrial system require—one that reliably spends his income and works reliably because he is always in need of more. In the absence of the massive and artful persuasion that accompanies the management of demand, increasing abundance might well have reduced the interest of people in acquiring more goods. Being not pressed by the need for these things, they would have spent less reliably to get more. The consequence—a lower and less reliable propensity to consume—would have been awkward for the industrial system.<sup>50</sup>

**Exhibit 22.9** Rolls-Royce appeals to consumers' materialism





It has also been argued that an emphasis on material possessions does not rule out interest in intellectual, spiritual, or cultural values. Defenders of advertising say consumers can be more interested in higher-order goals when basic needs have been met. Raymond Bauer and Stephen Greyser point out that consumers may purchase material things in the pursuit of nonmaterial goals.<sup>51</sup> For example, a person may buy an expensive stereo system to enjoy music rather than simply to impress someone or acquire a material possession.

Even if we assume materialism is undesirable, there is still the question of whether advertising is responsible for creating and encouraging it. While many critics argue that advertising is a major contributing force to materialistic values, others say advertising merely reflects the values of society rather than shaping them.<sup>52</sup> They argue that consumers' values are defined by the society in which they live and are the results of extensive, long-term socialization or acculturation.

The argument that advertising is responsible for creating a materialistic and hedonistic society is addressed by Stephen Fox in his book *The Mirror Makers: A History of American Advertising and Its Creators*. Fox concludes advertising has become a prime scapegoat for our times and merely reflects society. Regarding the effect of advertising on cultural values, he says:

To blame advertising now for those most basic tendencies in American history is to miss the point. It is too obvious, too easy, a matter of killing the messenger instead of dealing with the bad news. The people who have created modern advertising are not hidden persuaders pushing our buttons in the service of some malevolent purpose. They are just producing an especially visible manifestation, good and bad, of the American way of life.<sup>53</sup>

The ad shown in Exhibit 22-10 was developed by the American Association of Advertising Agencies and suggests that advertising is a reflection of society's tastes and values, not vice versa. The ad was part of a campaign that addressed criticisms of advertising.

Advertising does contribute to our materialism by portraying products and services as symbols of status, success, and achievement and by encouraging consumption. As Richard Pollay says, "While it may be true that advertising reflects cultural values, it does so on a very selective basis, echoing and reinforcing certain attitudes, behaviors, and values far more frequently than others."<sup>54</sup>

Individuals from a variety of backgrounds are concerned over the values they see driving our society. They believe that materialism, greed, and selfishness increasingly dominate American life and that advertising is a major reason for these undesirable values. The extent to which advertising is responsible for materialism and the desirability of such values are deep philosophical issues that will continue to be part of the debate over the societal value and consequences of advertising.

**Advertising Makes People Buy Things They Don't Need** A common criticism of advertising is that it manipulates consumers into buying things they do not need. Many critics say advertising should just provide information useful in making purchase decisions and should not persuade. They view information advertising (which reports price, performance, and other objective criteria) as desirable but persuasive advertising (which plays on consumers' emotions, anxieties, and psychological needs and desires such as status, self-esteem, and attractiveness) as unacceptable. Persuasive advertising is criticized for fostering discontent among consumers and encouraging them to purchase products and services to solve deeper problems. Critics say advertising exploits consumers and persuades them to buy things they don't need.

Defenders of advertising offer a number of rebuttals to these criticisms. First, they point out that a substantial amount of advertising is essentially informational in nature.<sup>55</sup> Also, it is difficult to separate desirable informational advertising from undesirable persuasive advertising. Shelby Hunt, in examining the *information-persuasion dichotomy*, points out that even advertising that most observers would categorize as very informative is often very persuasive.<sup>56</sup> He says, "If advertising critics really

Some people say that advertising determines America's tastes. Which is another way of saying that advertising determines your tastes. Which is, in turn, another way of saying that you don't have a mind of your own. Well, now and then, again, the advertising industry has found that you do have a mind of your own. If a product doesn't interest you, you simply don't buy it. And if the product's advertising doesn't interest you, you don't buy that either. Think of it as a sort of natural selection.

Good products and good advertising survive. Bad products and bad advertising perish. All according to the decisions you make in the marketplace. So we've concluded that advertising is a mirror of society's tastes. Not vice versa. Our conclusion is based on a great deal of thought. And over many years of reflection.

**ADVERTISING.**  
ANOTHER WORD FOR FREEDOM OF CHOICE.  
American Association of Advertising Agencies

**Exhibit 22-10** The advertising industry argues that advertising reflects society

**Exhibit 22-11** The AAAA responds to the claim that advertising makes consumers buy things they do not need



**DESPITE WHAT SOME PEOPLE THINK, ADVERTISING CAN'T MAKE YOU BUY SOMETHING YOU DON'T NEED.**

Some people would have you believe that you are putty in the hands of every advertiser in the country. They think that when advertising is put under your nose, your mind turns to oatmeal. It's mass hypnosis. Subliminal seduction. Brain washing. Mind control. It's advertising. And you are a pushover for it.

It explains why your kitchen cupboard is full of food you never eat. Why your garage is full of cars you never drive. Why your house is full of books you don't read, TVs you don't watch, beds you don't use, and clothes you don't wear. You don't have a choice. You are forced to buy.

That's why this message is a cleverly disguised advertisement to get you to buy land in the tropics. Got you again, didn't we? Send in your money.

**ADVERTISING**  
AMERICAN BOARD FOR PERSUASION OF CONSCIENCE  
American Association of Advertising Agencies

believe that persuasive advertising should not be permitted, they are actually proposing that no advertising be allowed, since the purpose of all advertising is to persuade."<sup>57</sup>

Defenders of advertising also take issue with the argument that it should be limited to dealing with basic functional needs. In our society, most lower-level needs recognized in Maslow's hierarchy, such as the need for food, clothing, and shelter, are satisfied for most people. It is natural to move from basic needs to higher-order ones such as self-esteem and status or self-actualization. Consumers are free to choose the degree to which they attempt to satisfy their desires, and wise advertisers associate their products and services with the satisfaction of higher-order needs.

Proponents of advertising offer two other defenses against the charge that advertising makes people buy things they do not really need. First, this criticism attributes too much power to advertising and assumes consumers have no ability to defend themselves against it.

Second, it ignores the fact that consumers have the freedom to make their own choices when confronted with persuasive advertising. While they readily admit the persuasive intent of their business, advertisers are quick to note it is extremely difficult to make consumers purchase a product they do not want or for which they do not see a personal benefit. For example, the "green" marketing movement has not gotten consumers to forgo low prices or convenience in favor of products that make environmental claims. The market research firm of Roper ASW conducted an extensive study of 300 green ads that appeared in magazines and found that most were not effective. The study concluded that too many green ads failed to make the connection between what the company is doing for the environment and how this affects individual consumers.<sup>58</sup> Roper ASW conducts an annual "Green Gauge" consumer-marketing poll, which has found that many consumers don't buy green products because they fear they will not work as well as others. And despite all of the environmental claims made by marketers, consumers are more interested in convenience than ideology.<sup>59</sup>

If advertising were as powerful as the critics claim, we would not see products with multimillion-dollar advertising budgets failing in the marketplace. The reality is that consumers do have a choice and they are not being forced to buy. Consumers ignore ads for products and services they do not really need or that fail to interest them (see Exhibit 22-11).

**Advertising and Stereotyping** Advertising is often accused of creating and perpetuating stereotypes through its portrayal of women, ethnic minorities, and other groups.

**Women** The portrayal of women in advertising is an issue that has received a great deal of attention through the years.<sup>60</sup> Advertising has received much criticism for stereotyping women and failing to recognize the changing role of women in our society. Critics have argued that advertising often depicts women as preoccupied with beauty, household duties, and motherhood or shows them as decorative objects or sexually provocative figures. The various research studies conducted through the years show a consistent picture of gender stereotyping that has varied little over time. Portrayals of adult women in American television and print advertising have emphasized passivity, deference, lack of intelligence and credibility, and punishment for high levels of efforts. In contrast, men have been portrayed as constructive, powerful, autonomous, and achieving.<sup>61</sup>

Research on gender stereotyping in advertising targeted to children has found a pattern of results similar to that reported for adults. A recent study found sex-role stereotyping in television advertising targeted at children in the United States as well as in Australia.<sup>62</sup> Boys are generally shown as being more knowledgeable, active, aggressive, and instrumental

than girls. Nonverbal behaviors involving dominance and control are associated more with boys than girls. Advertising directed toward children has also been shown to feature more boys than girls, to position boys in more dominant, active roles, and to use male voice-overs more frequently than female ones.<sup>63</sup> A recent study examining race and gender stereotyping of children's advertising on the Turner Cartoon Network found that the primary target for most of the commercials was active, white boys. Girls were portrayed in traditional roles and shown performing limited passive, indoor activities, while boys were shown in the outdoor world engaging in more exciting and active things.<sup>64</sup>

Feminist groups such as the National Organization for Women (NOW) and the Sexual Assault Prevention and Awareness Center argue that advertising that portrays women as sex objects contributes to violence against women. These groups often protest to advertisers and their agencies about ads they find insulting to women and have even called for boycotts against offending advertisers. NOW has also been critical of advertisers for the way they portray women in advertising for clothing, cosmetics, and other products. The organization feels that many of these ads contribute to the epidemic of eating disorders and smoking among women and girls who hope such means will help them control their weight.<sup>65</sup>

While sexism and stereotyping still exist, advertising's portrayal of women is improving in many areas. Many advertisers have begun to recognize the importance of portraying women realistically. The increase in the number of working women has resulted not only in women having more influence in family decision making but also in more single-female households, which mean more independent purchasers.

Researchers Steven Kates and Glenda Shaw-Garlock argue that the transformed social positioning of women in North American society is perhaps the most important social development of this century.<sup>66</sup> They note that as women have crossed the boundary from the domestic sphere to the professional arena, expectations and representations of women have changed as well. For example, a number of magazines, such as *MS* and *Working Woman*, now incorporate and appeal to the sociocultural shifts in women's lives. Many advertisers are now depicting women in a diversity of roles that reflect their changing place in society. In many ads, the stereotypic character traits attributed to women have shifted from weak and dependent to strong and autonomous.<sup>67</sup>

Some advertisers have found that being more sensitive to women customers can influence their purchase behavior. For example, Maidenform ran a campaign critical of negative stereotyping of women that significantly increased sales (Exhibit 22-12).

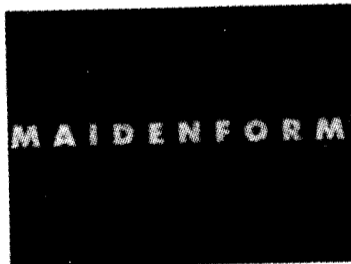
**Exhibit 22-12** Maidenform's campaign lamenting the stereotyping of women resulted in a significant increase in sales



Somehow, women always seem to be portrayed like this.  
Or like this.  
Like this.



Or like this.  
Like this.  
Or like this.  
While there are many stereotypes of women...



there aren't many women who fit them.  
A simple truth known by all women . . . most men . . . and one lingerie company.

**Exhibit 22-13** Ikea broke new ground with this ad showing an interracial couple shopping for furniture



**Blacks and Hispanics** African-Americans and Hispanics have also been the target of stereotyping in advertising. For many years, advertisers virtually ignored all non-white ethnic groups as identifiable subcultures and viable markets. Ads were rarely targeted to these ethnic groups, and the use of blacks and Hispanics as spokespeople, communicators, models, or actors in ads was very limited.<sup>68</sup>

Several studies in the late 1980s and early 90s examined the incidence of minorities in advertising. A study conducted in 1987 found that 11 percent of the people appearing in commercials were African-Americans.<sup>69</sup> Another study conducted two years later found that African-Americans appeared in 26 percent of all ads on network TV that used live models but Hispanics appeared in only 6 percent of the commercials with live models. The researchers also found that TV ads in which blacks appeared were overwhelmingly integrated and the blacks were likely to have played either minor or background roles in the majority of the ads.<sup>70</sup> A study conducted in 1995 found that 17 percent of prime-time network TV ads featured African-Americans as dominant characters and the majority of commercials featured them in minor roles.<sup>71</sup>

Although research suggests that the number of African-Americans shown as dominant characters has not increased dramatically, many advertisers are changing blacks' social and role status in advertising. For example, blacks are increasingly being shown in executive positions in many ads. FedEx said that a commercial featuring a black female executive beating out her white male adversaries in a conference call showdown over a high-stakes business deal was one of its most successful ads in years.<sup>72</sup>

Ads are increasingly likely to be racially integrated. Recently some advertisers have begun breaking the taboo against suggesting interracial attraction. For example, furniture retailer Ikea ran a TV commercial showing an interracial couple shopping for a "daddy chair" and discussing their plans to conceive<sup>73</sup> (Exhibit 22-13). Advertisers are also finding that advertising developed specifically for the African-American market, such as the Head & Shoulders ad shown in Exhibit 22-14 is an effective way of reaching this ethnic market. A recent study by Corliss L. Green found that ads targeting African-Americans through racially targeted media, especially with race-based products, benefit from featuring African-American models with a dominant presence in the ad.<sup>74</sup>

Another minority group that has received attention recently from those researching advertising and stereotyping is Asian-Americans, whose affluence, high education, work ethic, and growth rate has made this group a popular target market. A recent study of prime-time TV

**Exhibit 22-14** Many marketers are creating ads specifically for the African-American market



commercials found that Asian male and female models are overrepresented in terms of their proportion of the U.S. population (3.6 percent), appearing in 8.4 percent of the commercials. However, Asian models were more likely than members of other minority groups to appear in background roles, and Asian women were rarely depicted in major roles. The study also found that portrayals of Asian-Americans put more emphasis on the work ethic and less on other aspects of their lives.<sup>75</sup>

There is little question that advertising has been guilty of stereotyping women and ethnic groups in the past and, in some cases, still does so. But as the role of women changes, advertisers are changing their portrayals to remain accurate and appeal to their target audience. Advertisers are also trying to increase the incidence of minority groups in ads while avoiding stereotypes and negative role portrayals. They are being careful to avoid ethnic stereotyping and striving to develop advertising that has specific appeals to various ethnic groups.

**Other Groups** While the focus here has been on women and ethnic minorities, some other groups feel they are victims of stereotyping by advertisers. Many groups in our society are battling against stereotyping and discrimination, and companies must consider whether their ads might offend them. It is increasingly difficult not to offend some segment of the public. Creative personnel in agencies are feeling restricted as their ideas are squelched out of concern that they might offend someone or be misinterpreted.<sup>76</sup> However, advertisers must be sensitive to the portrayal of specific types of people in their ads, for both ethical and commercial reasons.

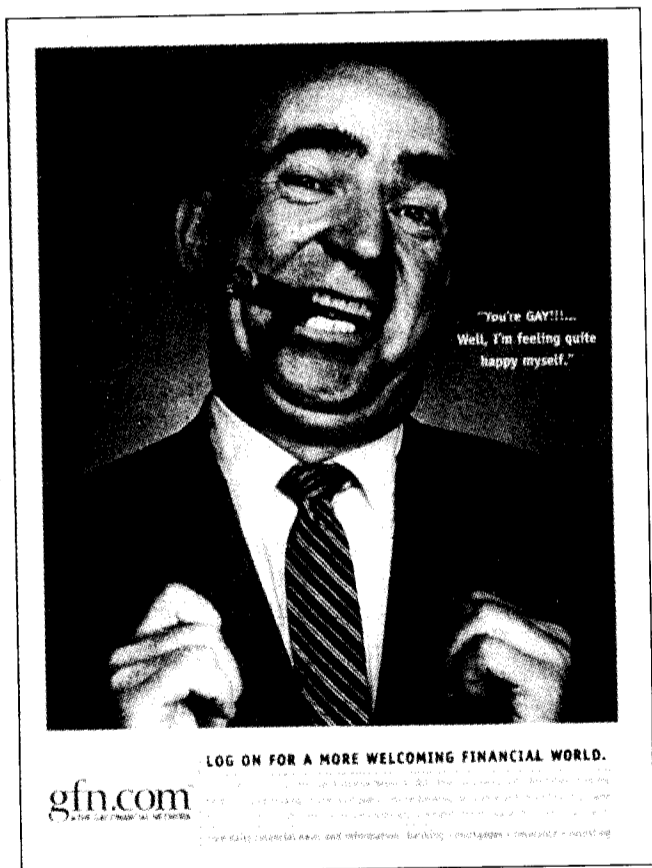
One area where significant changes have taken place recently is in advertising targeted to gay consumers. In 1995 Ikea broke new ground with a TV commercial featuring a gay couple shopping for furniture. For years beer companies targeted this market by placing ads in local gay media to support or sponsor AIDS awareness, Gay Pride festivals, and the Gay Games. However, a number of beer companies, including Anheuser-Busch and Miller Brewing Co., now run gay-specific, brand-specific ads in national gay publications.<sup>77</sup>

A number of other companies, including IBM and United Airlines, also now run ads with gay themes, although they generally confine them to magazines and newspapers targeting the gay market. While a TV commercial or print ad with a gay reference occasionally runs in the mainstream media, it usually is so subtle or ambiguous that many heterosexuals do not perceive it as a gay message. However, in 2000 the Gay Financial Network, an online company (gfn.com) with a gay-friendly financial news and information website, became the first gay-oriented company to advertise in major U.S. business news and entertainment publications.<sup>78</sup> The gfn.com ads take a gentle swipe at homophobia in the business world (Exhibit 22-15).

More advertisers are turning to gay themes in their mainstream commercials, though often subtly. However, few run these ads on network television; they limit them to spot TV and local stations in more gay-friendly cities such as New York, Los Angeles, and San Francisco. The Miller Brewing Co. did take a bold step recently by airing a gay-themed commercial on network television. The ad was for Miller Lite beer and showed a gay couple holding hands in a straight bar to the dismay of two women who are interested in them.<sup>79</sup>

**Advertising and the Media** The fact that advertising plays such an important role in financing the media has led to concern that advertisers may influence or even control the media. It is well documented that *economic*

**Exhibit 22-15** The Gay Financial Network broke barriers by becoming the first gay-oriented company to advertise in the mainstream media



*censorship* occurs, whereby the media avoid certain topics or even present biased news coverage, in acquiescence to advertiser demands.<sup>80</sup> In fact, Professors Lawrence Soley and Robert Craig say, “The assertion that advertisers attempt to influence what the public sees, hears, and reads in the mass media is perhaps the most damning of all criticisms of advertising, but this criticism isn’t acknowledged in most advertising textbooks.”<sup>81</sup> We will address this important issue in this book by considering arguments on both sides.

**Arguments Supporting Advertiser Control** Advertising is the primary source of revenue for nearly all the news and entertainment media in the United States. And because advertising pays the bills, newspaper and magazine publishers, as well as TV and radio networks and station executives, must keep their advertisers happy. Some critics charge that the media’s dependence on advertisers’ support makes them susceptible to various forms of influence, including exerting control over the editorial content of magazines and newspapers; biasing editorial opinions to favor the position of an advertiser; limiting coverage of a controversial story that might reflect negatively on a company; and influencing the program content of television.

Newspapers and magazines receive nearly 70 percent of their revenue from advertising; commercial TV and radio derive virtually all their income from advertisers. Small, financially insecure newspapers, magazines, or broadcast stations are the most susceptible to pressure from advertisers, particularly companies that account for a large amount of the media outlet’s advertising revenue. A local newspaper may be reluctant to print an unfavorable story about a car dealer or supermarket chain on whose advertising it depends. For example, a few years ago more than 40 car dealers canceled their ads in the *San Jose Mercury News* when the paper printed an article titled “A Car Buyer’s Guide to Sanity.” The dealers objected to the tone of the article, which they felt implied consumers should consider car dealers unethical adversaries in the negotiation process.<sup>82</sup> A survey of 147 daily newspapers found that more than 90 percent of editors have been pressured by advertisers and more than one-third of them said advertisers had succeeded in influencing news at their papers.<sup>83</sup>

While larger, more financially stable media should be less susceptible to an advertiser’s influence, they may still be reluctant to carry stories detrimental to companies that purchase large amounts of advertising time or space.<sup>84</sup> For example, since cigarette commercials were taken off radio and TV in 1970, tobacco companies have allocated most of their budgets to the print media. The tobacco industry outspends all other national advertisers in newspapers, and cigarettes constitute the second-largest category of magazine advertising (behind transportation). This has led to charges that magazines and newspapers avoid articles on the hazards of smoking to protect this important source of ad revenue.<sup>85</sup> One study found that magazines relying on cigarette advertising are far less likely than others to publish stories about the health hazards associated with smoking.<sup>86</sup>

Individual TV stations and even the major networks also can be influenced by advertisers. Programming decisions are made largely on the basis of what shows will attract the most viewers and thus be most desirable to advertisers. Critics say this often results in lower-quality television as educational, cultural, and informative programming is usually sacrificed for shows that get high ratings and appeal to the mass markets. It is well recognized that advertisers often avoid TV shows that deal with controversial issues. Most advertisers also have contract stipulations allowing them to cancel a media buy if, after prescreening a show, they are uncomfortable with its content or feel sponsorship of it may reflect poorly on their company.

Advertisers have also been accused of pressuring the networks to change their programming. Many advertisers have withdrawn commercials from programs that contain too much sex or violence, often in response to threatened boycotts of their products by consumers if they advertise on these shows. For example, groups such as the American Family Association have been fighting sex and violence in TV programs by calling for boycotts. A number of companies, including Procter & Gamble, Mars Inc., and Kraft Foods, pulled their advertising from certain talk shows, like those of Jerry Springer, because of some of their incendiary topics.<sup>87</sup>

**Arguments against Advertiser Control** The commercial media's dependence on advertising means advertisers can exert influence on their character, content, and coverage of certain issues. However, media executives offer several reasons why advertisers do not exert undue influence over the media.

First, they point out it is in the best interest of the media not to be influenced too much by advertisers. To retain public confidence, they must report the news fairly and accurately without showing bias or attempting to avoid controversial issues. Media executives point to the vast array of topics they cover and the investigative reporting they often do as evidence of their objectivity. They want to build a large audience for their publications or stations so that they can charge more for advertising space and time.

Media executives also note that an advertiser needs the media more than they need any individual advertiser, particularly when the medium has a large audience or does a good job of reaching a specific market segment. Many publications and stations have a very broad base of advertising support and can afford to lose an advertiser that attempts to exert too much influence. This is particularly true for the larger, more established, financially secure media. For example, a consumer-product company would find it difficult to reach its target audience without network TV and could not afford to boycott a network if it disagreed with a station's editorial policy or program content. Even the local advertiser in a small community may be dependent on the local newspaper, since it may be the most cost-effective media option available.

Most magazine and newspaper publishers insist they do not allow advertiser pressure to influence their editorial content. They argue that they have long regarded the formal separation of their news and business departments as essential to their independence and credibility. This separation is often referred to as "The Wall" and is often spoken of with a mixture of reverence and trepidation.<sup>88</sup> Many magazines and newspapers have traditionally discouraged employees on the publishing side—including advertising, circulation, and other business departments—from interacting with those on the editorial side, who write and edit the articles. This is done by separating editorial and advertising offices, barring the sales force from reading articles before they are printed, and prohibiting editorial employees from participating in advertising sales calls.

Most magazines and newspapers are very concerned over maintaining the concept of The Wall and ensuring that decisions on the writing, editing, and publishing of stories are made on journalistic merit rather than on whether they will attract or repel advertisers. However, the new economics of the publishing industry is making it difficult to maintain the separation: competition from cable TV, direct mail, and the Internet is increasing, and newspaper and magazine readership continues to decline. There have been several well-publicized situations in recent years where major magazines and newspapers were found to have given favorable editorial consideration to an advertiser.<sup>89</sup>

The media in the United States are basically supported by advertising; this means we can enjoy them for free or for a fraction of what they would cost without advertising.<sup>90</sup> The alternative to an advertiser-supported media system is support by users through higher subscription costs for the print media and a fee or pay-per-view system with TV. The ad in Exhibit 22-16, part of a campaign by the International Advertising Association, explains how advertising lowers the cost of print media for consumers. Another alternative is government-supported media like those in many other countries, but this runs counter to most people's desire for freedom of the press. Although not perfect, our system of advertising-supported media provides the best option for receiving information and entertainment.

## Summarizing Social Effects

We have examined a number of issues and have attempted to analyze the arguments for and against them. Many people have reservations about the impact of advertising and promotion on society. The numerous rules, regulations, policies, and guidelines marketers comply with do not cover every

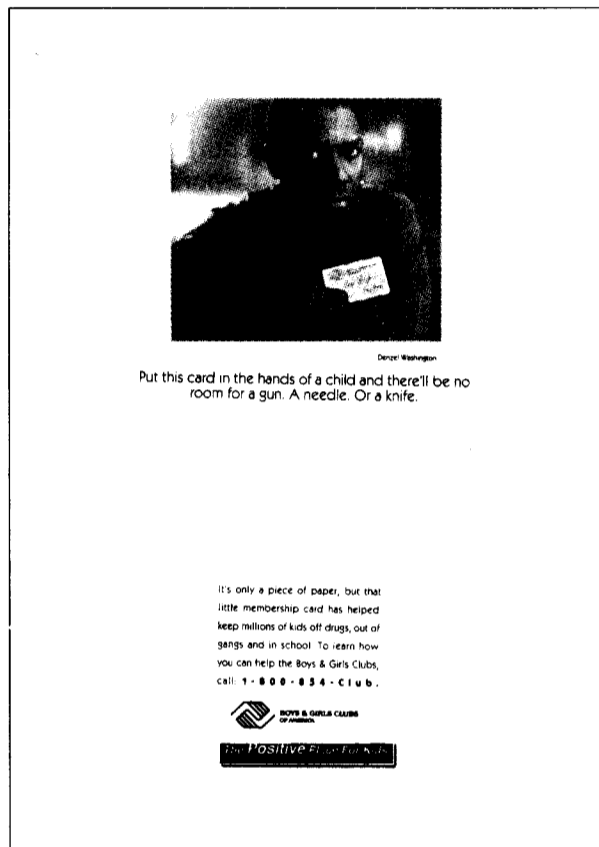
**Exhibit 22-16** This ad points out how advertising lowers the cost of newspapers for consumers

**WITHOUT  
ADVERTISING,  
YOUR NEWSPAPER  
WOULD COST  
YOU A BUNDLE.**

Did you know that every ad in your newspaper helps pay for the rest of the essential pages? The fact is, your paper would cost you about \$5.00 a day without advertisements. A price that would make news indeed. Advertising. That's the way it works.

**INTERNATIONAL  
ADVERTISING  
ASSOCIATION**  
THE WORLD'S LEADING ORGANIZATION OF ADVERTISERS, AGENTS, AND PUBLISHERS

**Exhibit 22-17** This ad campaign for the Boys & Girls Clubs is an example of the pro bono work often done by advertising agencies for nonprofit organizations



advertising and promotional situation. Moreover, what one individual views as distasteful or unethical may be acceptable to another.

Negative opinions regarding advertising and other forms of promotion have been around almost as long as the field itself, and it is unlikely they will ever disappear. However, the industry must address the various concerns about the effects of advertising and other forms of promotion on society. Advertising is a very powerful institution, but it will remain so only as long as consumers have faith in the ads they see and hear every day. Many of the problems discussed here can be avoided if individual decision makers make ethics an important element of the IMC planning process.

The primary focus of this discussion of social effects has been on the way advertising is used (or abused) in the marketing of products and services. It is important to note that advertising and other IMC tools, such as direct marketing and public relations, are also used to promote worthy causes and to deal with problems facing society (drunk driving, drug abuse, and the AIDS crisis, among others). For example, IMC Perspective 22-3 discusses how the Partnership for a Drug Free America and now the U.S. government are using advertising to help fight the war against drugs in the United States. Campaigns for nonprofit organizations and worthy causes are often developed pro bono by advertising agencies, and free advertising time and space are donated by the media.

Exhibit 22-17 shows an ad from a very successful public service campaign for the Boys & Girls Clubs of America featuring actor Denzel Washington. The campaign was designed to establish an image to distinguish the Boys & Girls Clubs from other public service groups and to encourage adults to organize clubs.<sup>91</sup>

## Economic Effects of Advertising

Advertising plays an important role in a free-market system like ours by making consumers aware of products and services and providing

them with information for decision making. Advertising's economic role goes beyond this basic function, however. It is a powerful force that can affect the functioning of our entire economic system (Exhibit 22-18).

Advertising can encourage consumption and foster economic growth. It not only informs customers of available goods and services but also facilitates entry into markets



## Linking Drug Use with Terrorism

For nearly two decades advertising has been used to address the problem of illicit drug use in the United States. Initially the use of advertising in the war against drugs was waged through the Partnership for a Drug Free America, which is a private, nonprofit coalition of professionals from the communications industry whose collective mission is to reduce the demand for drugs in America through media communication. The partnership was founded in 1986 as the advertising industry's affirmative response to the crack cocaine epidemic in America. Since its founding, more than 600 commercials have been created by advertising agencies that work on these ads on a pro bono basis, donating the time, talent, and services of their creative staffs. More than \$2.8 billion in media time also has been donated to the Partnership's national campaign, making it the largest public service ad campaign in history.

In 1997 the U.S. government entered the media war on drugs when the Clinton administration announced a \$2 billion federally sponsored five-year campaign to keep kids from using drugs. As part of this effort the U.S. Office of National Drug Control Policy (ONDCP) was created, and the Ogilvy & Mather advertising agency was hired to manage the account and handle the media buying while doing some minor creative work. While the government's drug control office is separate from the Partnership for a Drug Free America, many of the initial ads used in the campaign were pulled from the Partnership's inventory, such as the updated version of the famous "This is your brain on drugs" showing actress Rachel Lee Cook using a fry-

ing pan to smash apart a kitchen as she shouts, "This is your brain. This is your brain on heroin."

Over the past five years the Partnership has developed the themes for the drug office ads and selected the ad agencies to produce the ads. The ONDCP has provided nearly \$200 million a year in funding for the Partnership's antidrug efforts, primarily to help pay for advertising time and space. However, while the two organizations are supposed to be working together in the battle to combat drug use, they have gone in different directions recently in their approaches to how advertising can best be used to address the problem.

The perspective taken by the Partnership in most of its ads has been to discourage drug use by helping people, particularly children and teenagers, understand the dangers of using them. Many of the ads developed by the Partnership over the past 16 years have focused on resistance techniques that young people can use when confronted with the choice of using drugs, positive alternatives to drug use, and the importance of parental involvement as a way of deterring drug use. However, under its new director, John P. Walters, the ONDCP is taking a different perspective by arguing that the way to deal with the drug problem is to eliminate the flow of drugs at their source. To accomplish this goal, the ONDCP commissioned Ogilvy & Mather to develop an advertising campaign outside the normal channels of the Partnership for a Drug Free America, one linking drug use with the support of terrorism.

The first ads in the campaign ran during the 2002 Super Bowl and took advantage of the public's outrage over the terrorist attacks on the World Trade Center that occurred on September 11, 2001. The commercials featured footage of assault weapons, duct tape, and explosives and implied that the weapons used by terrorists were funded by drug sales in the United States. Some groups were critical of the ads and the government's effort to draw a connection between drug money and terrorism, arguing that it was unfair to blame nonviolent drug users for the actions of terrorists. However, the director of the campaign for the ONDCP described the reaction to the first set of ads as phenomenal, noting that it generated debate on the drug issue.

Eight months after the first ads ran, ONDCP followed with another set of ads that are designed to refute the notion that drug use is a victimless crime by linking drug use to crime and terrorism. The drug office noted that viewers of the initial ads had a difficult time believing that the drug-terrorism link

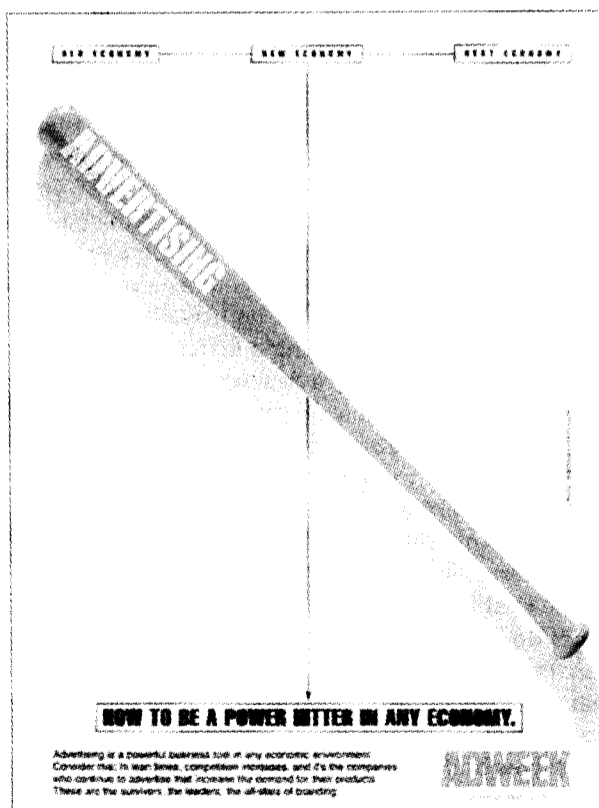


applied to marijuana purchases. Thus the second set of ads more closely shows the connection between drug use and terrorism. One of the commercials begins with a pretty young woman buying a dime bag of marijuana and ends with a child being shot in drug-warfare crossfire. Another links a marijuana user to various parties in the supply chain and ends with a connection to a drug cartel.

Some critics of the drug-terrorism ads have suggested that they create the false paradigm that terrorism is caused by drugs rather than the illegality of drugs. Groups such as the National Organization for

Marijuana Legalization contend that the ads argue more for decriminalization of certain drugs than abstinence. However, the ONDCP feels that the point of the ads is summarized quite well by the onscreen message at the end of each spot: "Drug money supports terrible things. If you buy drugs, you might too."

Sources: Ira Tenowitz, "Ads Linking Drugs, Terrorism Return," *Advertising Age*, Nov. 16, 2002, pp. 1, 45; Vanessa O'Connell, "Drug Czar Says Ad Campaign Has Flopped," *The Wall Street Journal*, May 14, 2002, pp. B1, 10; Ira Tenowitz, "White House Buys Anti-Terror Super Bowl Spots," [www.adage.com](http://www.adage.com), Jan. 30, 2002.



**Exhibit 22-13** This ad promotes the economic value of advertising

for a firm or a new product or brand; leads to economies of scale in production, marketing, and distribution, which in turn lead to lower prices; and hastens the acceptance of new products and the rejection of inferior products.

Critics of advertising view it as a detrimental force that not only fails to perform its basic function of information provision adequately but also adds to the cost of products and services and discourages competition and market entry, leading to industrial concentration and higher prices for consumers.

In their analysis of advertising, economists generally take a macroeconomic perspective: they consider the economic impact of advertising on an entire industry or on the economy as a whole rather than its effect on an individual company or brand. Our examination of the economic impact of advertising focuses on these broader macro-level issues. We consider its effects on consumer choice, competition, and product costs and prices.

## Effects on Consumer Choice

Some critics say advertising hampers consumer choice, as large advertisers use their power to limit our options to a few well-advertised brands. Economists argue that advertising is used to achieve (1) **differentiation**, whereby the products or services of large advertisers are perceived as unique or better than competitors', and (2) **brand loyalty**, which enables large national advertisers to gain control of the market, usually at the expense of smaller brands.

Larger companies often end up charging a higher price and achieve a more dominant position in the market than smaller firms that cannot compete against them and their large advertising budgets. When this occurs, advertising not only restricts the choice alternatives to a few well-known, heavily advertised brands but also becomes a substitute for competition based on price or product improvements.

Heavily advertised brands dominate the market in certain product categories, such as soft drinks, beer, and cereals.<sup>92</sup> But advertising generally does not create brand monopolies and reduce the opportunities for new products to be introduced to consumers. In most product categories, a number of different brands are on the store shelves and thousands of new products are introduced every year. The opportunity to advertise gives companies the incentive to develop new brands and improve their existing ones. When a successful new product such as a personal computer is introduced, competitors quickly follow and use advertising to inform consumers about their brand and attempt to convince them it is superior to the original. Companies like

Virgin Atlantic Airways recognize that advertising has been an important part of their success (Exhibit 22-19).

## Effects on Competition

One of the most common criticisms economists have about advertising concerns its effects on competition. They argue that power in the hands of large firms with huge advertising budgets creates a **barrier to entry**, which makes it difficult for other firms to enter the market. This results in less competition and higher prices. Economists note that smaller firms already in the market find it difficult to compete against the large advertising budgets of the industry leaders and are often driven out of business. For example, in the U.S. beer industry, the number of national brewers has declined dramatically. In their battle for market share, industry giants Anheuser-Busch and Miller increased their ad budgets substantially and reaped market shares that total over 60 percent. Anheuser-Busch alone spent nearly \$700 million on advertising in 2002. However, these companies are spending much less per barrel than smaller firms, making it very difficult for the latter to compete.

Large advertisers clearly enjoy certain competitive advantages. First, there are **economies of scale** in advertising, particularly with respect to factors such as media costs. Firms such as Procter & Gamble and PepsiCo, which spend over \$2 billion a year on advertising and promotion, are able to make large media buys at a reduced rate and allocate them to their various products.

Large advertisers usually sell more of a product or service, which means they may have lower production costs and can allocate more monies to advertising, so they can afford the costly but more efficient media like network television. Their large advertising outlays also give them more opportunity to differentiate their products and develop brand loyalty. To the extent that these factors occur, smaller competitors are at a disadvantage and new competitors are deterred from entering the market.

While advertising may have an anticompetitive effect on a market, there is no clear evidence that advertising alone reduces competition, creates barriers to entry, and thus increases market concentration. Lester Telser noted that high levels of advertising are not always found in industries where firms have a large market share. He found an inverse relationship between intensity of product class advertising and stability of market share for the leading brands.<sup>93</sup> These findings run contrary to many economists' belief that industries controlled by a few firms have high advertising expenditures, resulting in stable brand shares for market leaders.

Defenders of advertising say it is unrealistic to attribute a firm's market dominance and barriers to entry solely to advertising. There are a number of other factors, such as price, product quality, distribution effectiveness, production efficiencies, and competitive strategies. For many years, products such as Coors beer and Hershey chocolate bars were dominant brands even though these companies spent little on advertising. Hershey did not advertise at all until 1970. For 66 years, the company relied on the quality of its products, its favorable reputation and image among consumers, and its extensive channels of distribution to market its brands. Industry leaders often tend to dominate markets because they have superior product quality and the best management and competitive strategies, not simply the biggest advertising budgets.<sup>94</sup>

While market entry against large, established competitors is difficult, companies with a quality product at a reasonable price often find a way to break in. Moreover, they usually find that advertising actually facilitates their market entry by making it possible to communicate the benefits and features of their new product or brand to consumers. For example, South Korea's Daewoo Motor Co. entered the U.S. automotive market in 1998 and has used advertising to create a brand identity for its cars.

"Back in 1983, the world wasn't crying out for another airline to London. People accepted what was available. But then, they didn't know any better. As a frequent flyer myself, I always felt being cooped up in a plane could be made more enjoyable. If you had a guest at your house you wouldn't sit him facing a blank wall and put a rubber chicken in his lap, now would you?"

So I set out to create an airline people would actually enjoy flying. I'd give them more space to sit in, more flight attendants to serve them, and more forms of entertainment to... entertain them. I'd also offer Upper Class passengers the only sleeper seats available in any business class to London. A Sony Video Walkman with 25 films to choose from and free chauffeured limousine service to and from each airport. And, of course, gourmet meals and vintage wine in lieu of foul fowl. Now, having all these niceties would have done me absolutely no good if I kept their existence to myself. So I put every available dollar into getting the word out.

The dollars were hardly momentous at first. But that didn't stop us. We applied some creativity and over a Memorial day weekend, while everyone crowded the parks and beaches, we introduced Virgin Atlantic Airways to the people of New York. With skywriting.

Virgin is now 7 years old, serving 5 major airports and has the highest transatlantic load factor of any airline.

Print, television and radio messages have replaced skywriting. And more than 40 million advertising dollars later, no one has shed a tear for rubber chickens.

**AAAA**  
American Association of Advertising Agencies

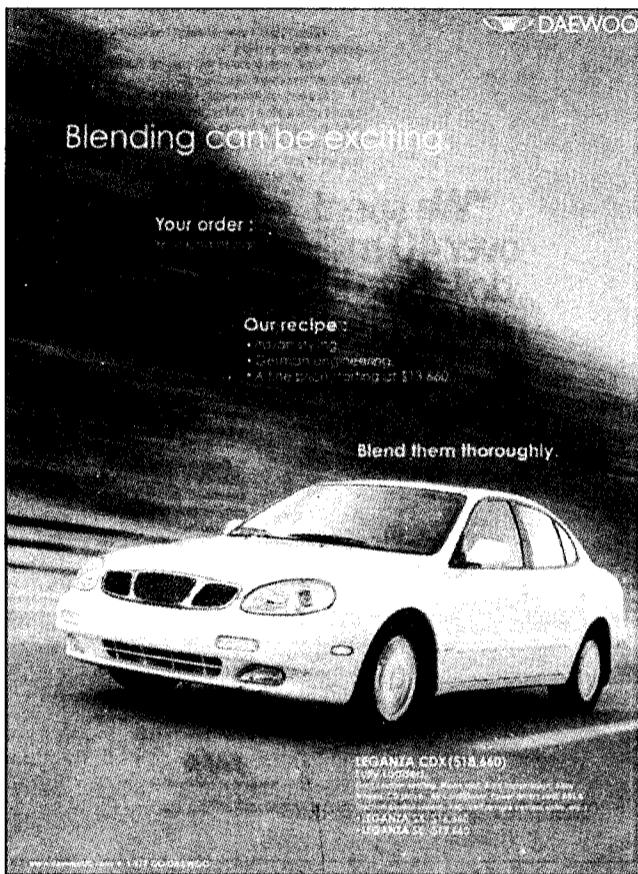
If you would like to learn more about the power of advertising, please write to Department D, AAAA, 666 Third Avenue, New York, New York 10016, enclosing a check for five dollars. We will reserve our limited 40-minute Home Development Seminars in advertising. Post Office Box 1111, New York, New York. Sony Video Walkman is a trademark of Sony. This advertisement prepared by Terry, Kay & Partners, New York.



**“We spent over 40 million dollars to kill a rubber chicken.”**

Richard Branson, Chairman, Virgin Atlantic Airways

**Exhibit 22-19** Virgin Atlantic Airways chair Richard Branson acknowledges the importance of advertising



**Exhibit 22-20** Advertising is very important to companies such as Daewoo Motor America as it enters the U.S. market

**Exhibit 22-21** This ad refutes the argument that reducing advertising expenditures will lead to lower prices



Exhibit 22-20 shows an ad for the company’s flagship Leganza model, which is positioned as offering “affordable luxury.”

### Effects on Product Costs and Prices

A major area of debate among economists, advertisers, consumer advocates, and policymakers concerns the effects of advertising on product costs and prices. Critics argue that advertising increases the prices consumers pay for products and services. First, they say the large sums of money spent advertising a brand constitute an expense that must be covered and the consumer ends up paying for it through higher prices. This is a common criticism from consumer advocates. Several studies show that firms with higher relative prices advertise their products more intensely than do those with lower relative prices.<sup>95</sup> As discussed in the previous chapter, concern has been expressed that the tremendous increase in direct-to-consumer drug advertising by pharmaceutical companies in recent years is driving up the cost of prescription drugs. Critics argue that the millions of dollars spent on advertising and other forms of promotion are an expense that must be covered by charging higher prices.<sup>96</sup>

A second way advertising can result in higher prices is by increasing product differentiation and adding to the perceived value of the product in consumers’ minds. Paul Farris and Mark Albion note that product differentiation occupies a central position in theories of advertising’s economic effects.<sup>97</sup> The fundamental premise is that advertising increases the perceived differences between physically homogeneous products and enables advertised brands to command a premium price without an increase in quality.

Critics of advertising generally point to the differences in prices between national brands and private-label brands that are physically similar, such as aspirin or tea bags, as evidence of the added value created by advertising. They see consumers’ willingness to pay more for heavily advertised national brands rather than purchasing the lower-priced, non-advertised brand as wasteful and irrational. The prescription drug industry is again a very good example of this, as critics argue that the increase in advertising is encouraging consumers to request brand-name drugs and steering them away from lower-priced generics.<sup>98</sup> However, consumers do not always buy for rational, functional reasons. The emotional, psychological, and social benefits derived from purchasing a national brand are important to many people. Moreover, say Albion and Farris,

Unfortunately there seems to be no single way to measure product differentiation, let alone determine how much is excessive or attributable to the effects of advertising . . . Both price insensitivity and brand loyalty could be created by a number of factors such as higher product quality, better packaging, favorable use experience and market position. They are probably related to each other but need not be the result of advertising.<sup>99</sup>

Proponents of advertising offer several other counterarguments to the claim that advertising increases prices. They acknowledge that advertising costs are at least partly paid for by consumers. But advertising may help lower the overall cost of a product more than enough to offset them. For example, advertising may help firms achieve economies of scale in production and distribution by providing information to and stimulating demand among mass markets. These economies of scale help cut the cost of producing and marketing the product, which can lead to lower prices—if the advertiser chooses to pass the cost savings on to the consumer. The ad in Exhibit 22-21, from a campaign sponsored by the American Association of Advertising Agencies, emphasizes this point.

Advertising can also lower prices by making a market more competitive, which usually leads to greater price competition. A study by Lee Benham found that prices of eyeglasses were 25 to 30 percent higher in states that banned eyeglass advertising than in those that permitted it.<sup>100</sup> Robert Steiner analyzed the toy industry and concluded that advertising resulted in lower consumer prices. He argued that curtailment of TV advertising would drive up consumer prices for toys.<sup>101</sup> Finally, advertising is a means to market entry rather than a deterrent and helps stimulate product innovation, which makes markets more competitive and helps keep prices down.

Overall, it is difficult to reach any firm conclusions regarding the relationship between advertising and prices. After an extensive review of this area, Farris and Albion concluded, "The evidence connecting manufacturer advertising to prices is neither complete nor definitive . . . consequently, we cannot say whether advertising is a tool of market efficiency or market power without further research."<sup>102</sup>

Economist James Ferguson argues that advertising cannot increase the cost per unit of quality to consumers because if it did, consumers would not continue to respond positively to advertising.<sup>103</sup> He believes advertising lowers the costs of information about brand qualities, leads to increases in brand quality, and lowers the average price per unit of quality.

## Summarizing Economic Effects

Albion and Farris suggest that economists' perspectives can be divided into two principal schools of thought that make different assumptions regarding the influence of advertising on the economy.<sup>104</sup> Figure 22-3 summarizes the main points of the "advertising equals market power" and "advertising equals information" perspectives.

**Advertising Equals Market Power** The belief that advertising equals market power reflects traditional economic thinking and views advertising as a way to change consumers' tastes, lower their sensitivity to price, and build brand loyalty among buyers of advertised brands. This results in higher profits and market power for large advertisers, reduces competition in the market, and leads to higher prices and fewer choices for

**Figure 22-3** Two schools of thought on advertising's role in the economy

### Advertising = Market Power

Advertising affects consumer preferences and tastes, changes product attributes, and differentiates the product from competitive offerings.

Consumers become brand loyal and less price sensitive and perceive fewer substitutes for advertised brands.

Potential entrants must overcome established brand loyalty and spend relatively more on advertising.

Firms are insulated from market competition and potential rivals; concentration increases, leaving firms with more discretionary power.

Firms can charge higher prices and are not as likely to compete on quality or price dimensions. Innovation may be reduced.

High prices and excessive profits accrue to advertisers and give them even more incentive to advertise their products. Output is restricted compared with conditions of perfect competition.

### Advertising = Information

Advertising informs consumers about product attributes but does not change the way they value those attributes.

Consumers become more price sensitive and buy best "value." Only the relationship between price and quality affects elasticity for a given product.

Advertising makes entry possible for new brands because it can communicate product attributes to consumers.

Consumers can compare competitive offerings easily and competitive rivalry increases. Efficient firms remain, and as the inefficient leave, new entrants appear; the effect on concentration is ambiguous.

More informed consumers pressure firms to lower prices and improve quality; new entrants facilitate innovation.

Industry prices decrease. The effect on profits due to increased competition and increased efficiency is ambiguous.

# WHEN ADVERTISING DOES ITS JOB, MILLIONS OF PEOPLE KEEP THEIRS.

Good advertising doesn't just inform. It sells. It helps move product and keep businesses in business. Every time an ad arouses a consumer's interest enough to result in a purchase, it keeps a company going strong. And it helps secure the jobs of the people who work there.

Advertising. That's the way it works.



**Exhibit 22-22** This ad is part of a global campaign by the International Advertising Association to educate consumers about the economic value of advertising

**Figure 22-4** This message describes the positive economic effects of advertising

consumers. Proponents of this viewpoint generally have negative attitudes regarding the economic impact of advertising.

**Advertising Equals Information** The belief that advertising equals information takes a more positive view of advertising's economic effects. This model sees advertising as providing consumers with useful information, increasing their price sensitivity (which moves them toward lower-priced products), and increasing competition in the market. Advertising is viewed as a way to communicate with consumers and tell them about a product and its major features and attributes. More informed and knowledgeable consumers pressure companies to provide high-quality products at lower prices. Efficient firms remain in the market, whereas inefficient firms leave as new entrants appear. Proponents of this model believe the economic effects of advertising are favorable and think it contributes to more efficient and competitive markets.

It is unlikely the debate over the economic effects and value of advertising will be resolved soon. Many economists will continue to take a negative view of advertising and its effects on the functioning of the economy, while advertisers will continue to view it as an efficient way for companies to communicate with their customers and an essential component of our economic system. The International Advertising Association has been running a campaign for several years to convince consumers around the world of the economic value of advertising. Ads like the one shown in Exhibit 22-22 are used in countries such as China and Russia,

where consumers are unfamiliar with the concept of advertising. The goal of the campaign is to get consumers in these countries to recognize the role advertising plays in contributing to their economic well-being.<sup>105</sup>

Figure 22-4, excerpts from a speech given by famous adman Leo Burnett, summarizes the perspective of most advertising people on the economic effects of advertising. Many advertising and marketing experts agree that advertising and promotion play an important role in helping to expand consumer demand for new products and services and in helping marketers differentiate their existing brands. IMC Perspective 22-4 discusses a recent campaign developed by the American Advertising Federation to illustrate the economic power and value of advertising.

To me it means that if we believe to any degree whatsoever in the economic system under which we live, in a high standard of living and in high employment, advertising is the most efficient known way of moving goods in practically every product class.

My proof is that millions of businessmen have chosen advertising over and over again in the operations of their business. Some of their decisions may have been wrong, but they must have thought they were right or they wouldn't go back to be stung twice by the same kind of bee.

It's a pretty safe bet that in the next 10 years many Americans will be using products and devices that no one in this room has even heard of. Judging purely by past performance, American advertising can be relied on to make them known and accepted overnight at the lowest possible prices.

Advertising, of course, makes possible our unparalleled variety of magazines, newspapers, business publications, and radio and television stations.

It must be said that without advertising we would have a far different nation, and one that would be much the poorer—not merely in material commodities, but in the life of the spirit.

Leo Burnett

## The AAF Promotes the Value of Advertising

The advertising industry in the United States continually promotes the value of advertising. Major advertising associations, such as the American Association of Advertising Agencies (AAAA) and the American Advertising Federation (AAF), along with trade associations for various media, such as the Magazine Publishers of America, often run campaigns reminding the general public of advertising's contributions to the economy as well as to consumers' social well-being. However, sometimes the industry must also remind advertisers themselves of the value of advertising.

In 1998 a nationwide survey of 1,800 top corporate executives revealed that modern business fails to appreciate the true value of advertising. Although advertising was valued, the survey showed that executives do not truly appreciate its strategic capacity and that the industry's knowledge of consumers was not fully understood. Of the marketers surveyed, 27 percent indicated that advertising would be among the first budget items cut in a sales downturn. Concerned by these results, the American Federation of Advertising, which is the advertising industry's primary trade organization, decided to take action to change the way advertising is viewed by companies. The AAF is a unify-

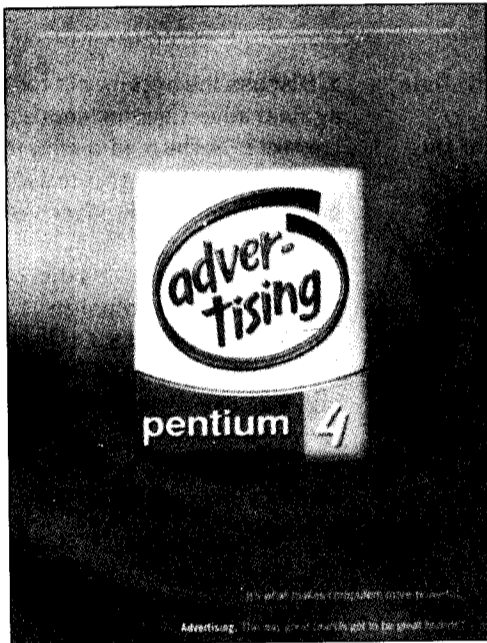
ing voice for advertising and serves as a home base for advertisers, agencies, media companies, direct marketers, online publishers, and many other specialties that constitute the advertising industry.

The AAF decided that the best way to get marketers to recognize the value of advertising was to practice what it preaches, and thus an integrated marketing communications campaign was developed to redefine advertising in the eyes of corporate executives. The campaign is targeted at the "O's"—CEOs, COOs, CFOs, and CMOs—who are responsible for establishing and maintaining budget levels for advertising. The theme of the campaign is "Advertising: The way great brands get to be great brands," and it cautions corporate America not to neglect brand development. In today's business environment and time of economic challenge, the campaign stresses that advertising is more important than ever and plays a very significant role in building brand equity and profits.

The "Great Brands" campaign broke in October 2000 and initially was run in national newspapers such as *The Wall Street Journal*, *USA Today*, and *New York Times*; financial magazines such as *Forbes* and *Fortune*; and leading trade magazines such as *Advertising Age*, *Adweek*, *Mediaweek*, *Brandweek*, and *Brand Marketing*. The campaign featured successful brands such as Altoids, Intel, Coca-Cola, Energizer, Budweiser, and Sunkist. In early 2002 the campaign moved to television with the premier of two TV commercials. The 15-second spots feature the Coca-Cola and Intel brands. All media time and space for the campaign are donated; since it began, more than \$4 million worth of media coverage has been given to run the ads. The creative work for the campaign is also done on a pro bono basis, by the Carmichael Lynch agency.

The AAF president and CEO, Wally Snyder, notes that the Great Brands campaign is a way to illustrate the economic power of advertising by featuring companies that are synonymous with quality advertising and for which advertising has played a critical role in building brand equity. His goal is to make sure that other marketers get the message regarding the value of advertising.

Sources: "AAF's 'Great Brands' Campaign Moves to Television," press release, AAF News, Jan. 29, 2002; "Advertising: The Way Great Brands Get to Be Great Brands," Great Brands Q&A, [www.AAF.org](http://www.AAF.org).



## Summary

Advertising is a very powerful institution and has been the target of considerable criticism regarding its social and economic impact. The criticism of advertising concerns the specific techniques and methods used as well as its effect on societal values, tastes, lifestyles, and behavior. Critics argue that advertising is deceptive and untruthful; that it is often offensive, irritating, or in poor taste; and that it exploits certain groups, such as children. Many people believe advertising should be informative only and advertisers should not use subjective claims, puffery, embellishment, or persuasive techniques.

Advertising often offends consumers by the type of appeal or manner of presentation used; sexually suggestive ads and nudity receive the most criticism.

Advertisers say their ads are consistent with contemporary values and lifestyles and are appropriate for the target audiences they are attempting to reach. Advertising to children is an area of particular concern, since critics argue that children lack the experience, knowledge, and ability to process and evaluate persuasive advertising messages rationally. Although an FTC proposal to severely restrict advertising to children was defeated, it remains an issue.

The pervasiveness of advertising and its prevalence in the mass media have led critics to argue that it plays a major role in influencing and transmitting social values. Advertising has been charged with encouraging materialism, manipulating consumers to buy things they do not really want or need, per-

petuating stereotypes through its portrayal of certain groups such as women, minorities, and the elderly, and controlling the media.

Advertising has also been scrutinized with regard to its economic effects. The basic economic role of advertising is to give consumers information that helps them make consumption decisions. Some people view advertising as a detrimental force that has a negative effect on competition, product costs, and consumer prices. Economists' perspectives regarding the effects of advertising follow two basic schools of thought: the advertising equals market power model and the advertising equals information model. Arguments consistent with each perspective were considered in analyzing the economic effects of advertising.

## Key Terms

ethics, 751

shock advertising, 757

consumer socialization

process, 760

materialism, 764

Protestant ethic, 764

differentiation, 774

barrier to entry, 775

economies of scale, 775

## Discussion Questions

1. The opening vignette discusses how “branded content” and “adver-tainment” are the wave of the future. Discuss what is meant by these two concepts and why they are becoming popular among marketers. Why are many consumer watchdog groups such as Commercial Alert concerned over this trend?

2. Discuss the role of ethics in advertising and promotion. How do ethical considerations differ from legal considerations in developing an integrated marketing communications program?

3. What is meant by shock advertising? Evaluate the arguments for and against the use of shock advertising by marketers.

4. Ethical Perspective 22-1 discusses the clearance process used by the standards and

practices departments of the four major television networks. Evaluate the effectiveness of this process from the perspective of the networks as well as advertisers.

5. Ethical Perspective 22-2 discusses how many companies are targeting their promotional programs to schools as a way of reaching the youth market. Do you think companies should allow companies to reach students through programs such as Channel One or by granting “pouring rights” to soft-drink bottlers? Evaluate the arguments for and against these programs.

6. A common criticism of advertising is that it stereotypes women. Discuss the ways this might occur. Do you think the Airwalk ad shown in Exhibit 22-6 is suggestive and symbolizes sexual submission?

7. Discuss the arguments for and against advertiser influence and/or control over the media. How might a newspaper or magazine avoid being influenced by advertisers?

8. IMC Perspective 22-3 discusses the advertising campaign developed by the U.S. Office of National Drug Control Policy linking drug use with the support of terrorism. Do you think these ads are an effective way of dealing with the drug problem? Why or why not?

9. Discuss how advertising can affect product costs and the prices consumers pay for products and services.

10. Discuss the two major perspectives of the economic impact of advertising: “advertising equals market power” versus “advertising equals information.”