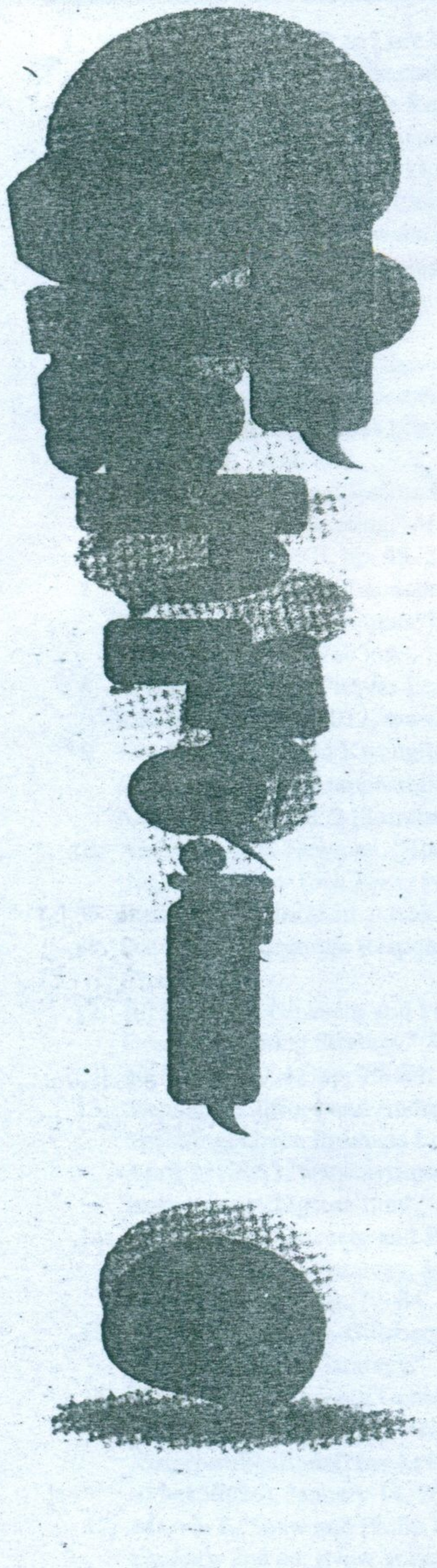
REGULATIONS AND ETHICAL CONCERNS

From Chapter 14 of *Integrated Advertising, Promotion, and Marketing Communications*, Sixth Edition. Kenneth E. Clow and Donald Baac
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REGULATIONS AND ETHICAL CONCERNS

CHAPTER OBJECTIVES

After reading this chapter, you should be able to answer the following questions:

- Which agencies and laws regulate marketing communications?
- What are the relationships between puffery, deception, and substantiation?
- What legal remedies can be used to correct deceptive communications practices?
- How do the three major industry regulatory agencies help keep advertising and business practices from injuring customers or other businesses?
- What ethical criticisms have been registered against advertising and marketing practices?
- What marketing tactics raise ethical concerns?
- How can marketers apply the various ethical frameworks and ethics programs to their activities and actions?
- What international issues influence the discussion of legal and ethical marketing activities?

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REEBOK PAYS $25 MILLION SETTLEMENT

The running shoe and sport shoe industry has dealt with criticism and concern for many years. Complaints have been made regarding the high prices of shoes, the foreign labor used to produce them, and the strong amount of social pressure parents and children face to buy the most fashionable and cutting edge models, at the expense of other, more practical and necessary merchandise.

In 2011, Reebok encountered a new controversy. The company's Easy Tone and Run Tone product lines in the toning shoes market are designed with a rounded or otherwise unstable sole. Companies including Reebok, New Balance, and Skecher make such shoes and claim they force wearers to use more muscle to maintain balance while working out. The different shoe styles for running, walking, and training, sell for about $100 per pair. Reebok

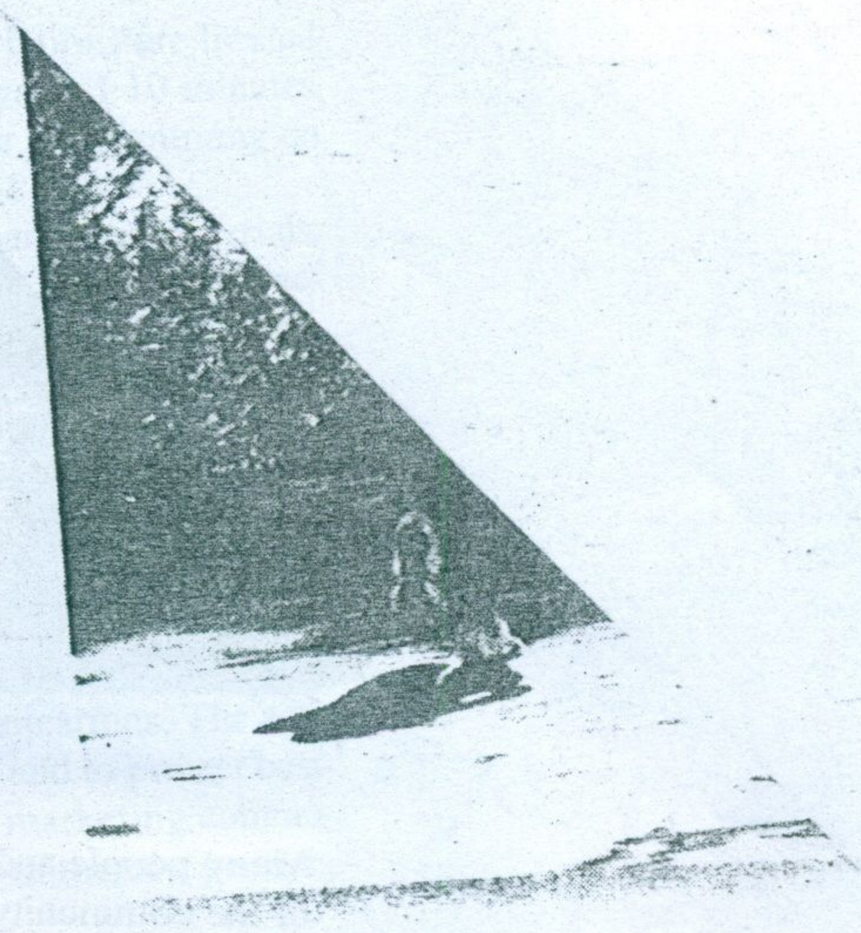
has sold more than five million pairs in the US and 10 million abroad. Toning shoes became a $1.1 billion market in just a few years.

In ads for the Easy Tone and Run Tone lines, Reebok made specific claims. One commercial featured a super fit women who assures viewers that Easy Tone sneakers strengthen hamstrings and calves by up to 11 percent and tone one's butt (e.g, one's gluteus maximus muscles) "up to 28 percent more than regular sneakers, just by walking." And, as Ellie Krupnick from the Huffington Post noted, "How was Reebok planning on backing that up, exactly?"

The Federal Trade Commission (FTC) stepped in. The agency announced that Reebok must pay $25 million in a settlement over the Easytone and RunTone products, which fail to fulfill the body-shaping promises claimed in the ads. According to the FTC complaint, Reebok was making made unsupported claims in advertisements. David Vladeck, director of the FTC's Bureau of Consumer Protection, said, "The FTC wants national advertisers to understand that they must exercise some responsibility and ensure that their claims for fitness gear are supported by sound science."

Reebok maintained its stance regarding the shoes, stating that "We stand behind our Easy Tone technology—the first shoe in the toning category that was inspired by balance-ball training. Settling does not mean we agree with the FTC's allegations; we do not. We have received overwhelmingly enthusiastic feedback from thousands of Easy Tone customers, and we remain committed to the further development of our Easy Tone line of products. Our customers are our number one priority, and we will continue to deliver products that they trust and love."

Reebok International Ltd. continues to make a range of toning products, including its Run Tone running shoes, Easy



Tone walking shoes and flip flops and some clothing. The company, which is owned by Adidas AG, claims that its toning shoes were one of its most popular product launches ever when they debuted in 2009. The company marketed them heavily with ads featuring women in shorts and with shapely bottoms; one ad even said the shoes would "make your boobs jealous".

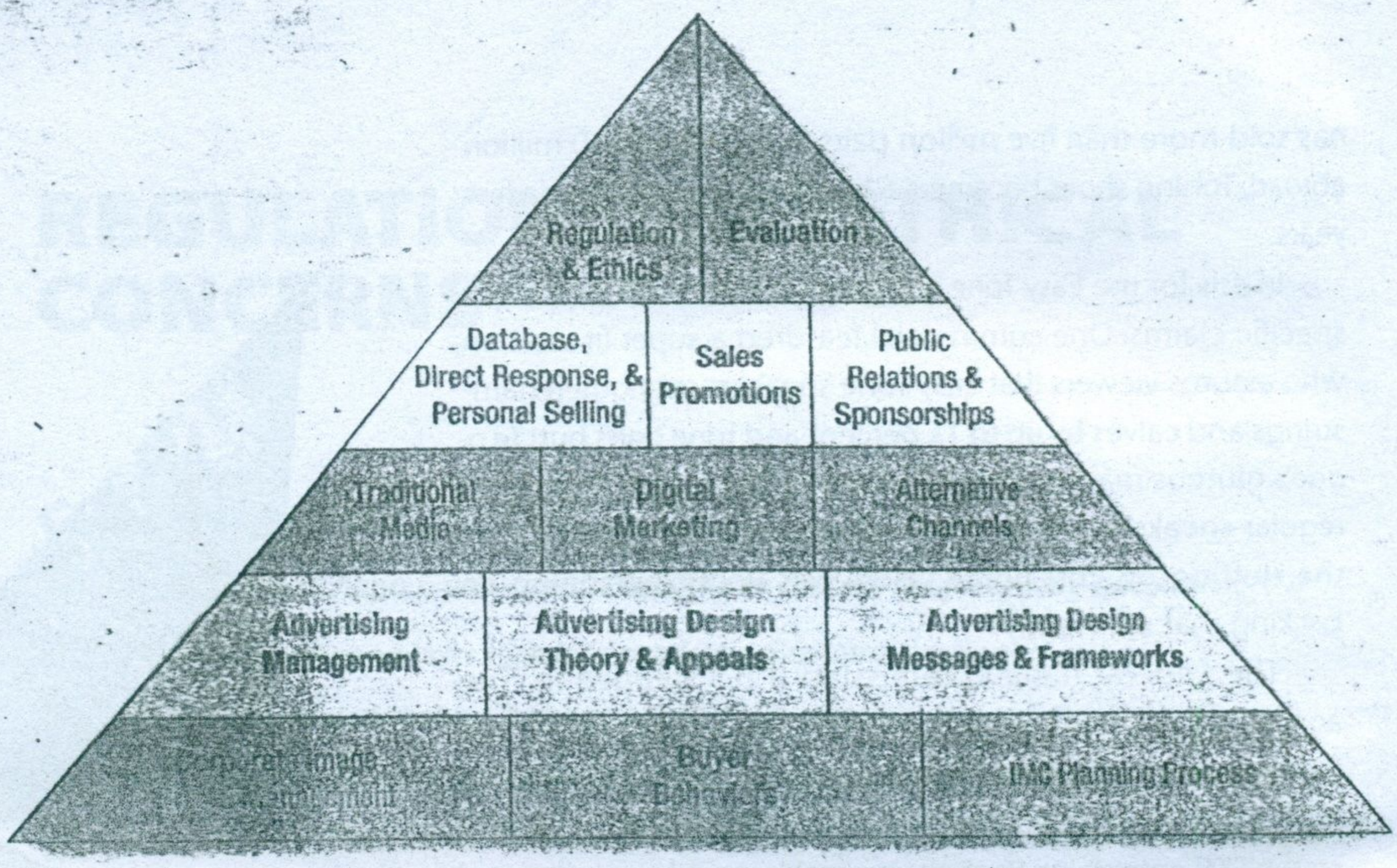
Reebok was not the only company admonished by the FTC. Skechers agreed to pay $41 million regarding advertising and marketing of a similar product. In both situations, the Federal Trade Commission concluded that the claims being made were not in the best interests of consumers because they were misleading.[1]

OVERVIEW

The final level of an IMC program includes making certain the communications program meets ethical and legal requirements and is properly evaluated. These topics are examined in this part of the text. Figure 1 displays the completion of an IMC program.

The fields of marketing and marketing communications have long been the subject of scrutiny from the general public, special interest groups, and the government, which may not be surprising. In marketing and sales, money is involved as people make purchases.

FIGURE 1
Integrated marketing communications



Many people and organizations express concern about the public trust and the well-being of the community. When companies sell goods and services that can injure people or cause harm in some other way, criticisms and legal actions likely will follow.

This chapter examines two interrelated topics. The first is a description of the legal environment surrounding marketing and marketing communications. The second part features views of ethics, morals, and social responsibility as they relate to marketing, advertising, and promotions.

In essence, those involved in marketing programs should consider both the letter of the law—regulations and other legal limitations—as well as the spirit of the law. Guided by both personal principles and organizational guidelines, marketing professionals can try to ensure that their actions are both legal and ethical.

Marketing Communications Regulations

OBJECTIVE
Which agencies and laws regulate marketing communications?

The U.S. federal government has passed considerable legislation designed to keep companies from taking unfair advantage of consumers and other businesses. Various states also regulate for-profit companies and other organizations. Many of these federal and state laws are enforced by regulatory agencies. This section reviews governmental actions in the areas of legislation and regulation of company marketing practices.

GOVERNMENTAL REGULATORY AGENCIES

Governmental agencies serve as watchdogs to monitor for potential violations of the law, some of which are only partially related to marketing. For example, the Food and Drug Administration (FDA) regulates and oversees the packaging and labeling of products. The FDA also monitors advertising on food packages and advertisements for drugs, yet its primary responsibilities are ensuring food quality and drug safety.

The Federal Communications Commission (FCC) regulates television, radio, and the telephone industry. The FCC grants (and revokes) operating licenses for radio and television stations. The FCC also holds jurisdiction over telephone companies. The FCC does not have jurisdiction over the content of advertisements transmitted by mass media. Further, the FCC does not control which products may be advertised. The organization

- Food and Drug Administration (FDA)
- Federal Communications Commission (FCC)
- U.S. Postal Service (USPS)
- Bureau of Alcohol, Tobacco and Firearms (ATF)
- Federal Trade Commission (FTC)

FIGURE 2
Government regulatory agencies

monitors advertising directed toward children. Under FCC rules, TV stations are limited to 12 minutes per hour of children's advertisements during weekdays and 10 minutes per hour on weekends. Recently, Viacom agreed to pay $1 million for programming on Nickelodeon that violated the time limitation 600 times in the span of 1 year.[2]

The U.S. Postal Service (USPS) has jurisdiction over all mailed marketing materials. The USPS also investigates mail fraud schemes and other fraudulent marketing practices. The Bureau of Alcohol, Tobacco and Firearms (ATF) rules when the sale, distribution, and advertising of alcohol and tobacco are at issue. Ordinarily, the governmental agency that examines incidents involving deceptive or misleading marketing tactics is the Federal Trade Commission (FTC). These agencies are listed in Figure 2.

THE FEDERAL TRADE COMMISSION

The **Federal Trade Commission**, or **FTC**, which was created in 1914 by the passage of the Federal Trade Commission Act, presides over marketing communications. The act's original intent was to create a federal agency to enforce antitrust laws and to protect businesses from one another. It had little authority over advertising and marketing communications except when an advertisement was considered to be unfair to the competition, thereby restricting free trade.

UNFAIR AND DECEPTIVE MARKETING PRACTICES

In 1938, Congress passed the Wheeler–Lea Amendment to Section 5 of the Federal Trade Commission Act to increase and expand the authority of the FTC and to prohibit false and misleading advertising. The agency was granted the authority to stop unfair or deceptive advertising practices and to levy fines when necessary. The law also provided the FTC access to the courts to enforce the law and ensure that violators abide by FTC rulings.

A firm can violate the act even when the company did not expressly intend to deceive. An advertisement or communication is deemed to be deceptive or misleading when:

1. A substantial number of people or the "typical person" is left with a false impression or misrepresentation that relates to the product.
2. The misrepresentation induces people or the "typical person" to make a purchase.

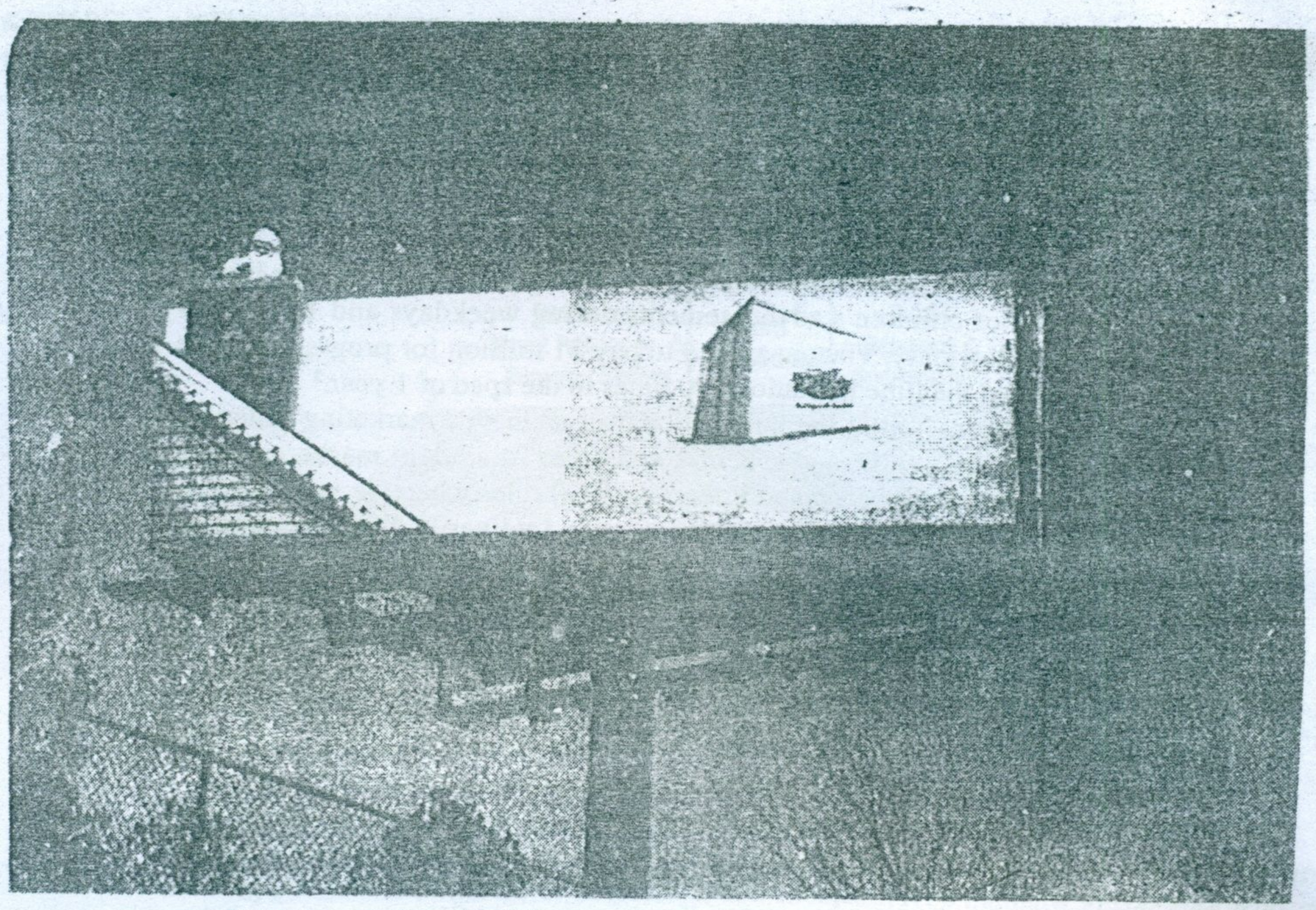
Consumers may be misled by advertisements, mailings, corporate literature, labels, packaging, Web site materials, and oral and written statements made by salespeople. This gives the government a great deal of latitude in dealing with deceptive practices.

DECEPTION VERSUS PUFFERY

Puffery can be used in advertisements and marketing messages. **Puffery** exists when a firm makes an exaggerated statement about its goods or services. The key difference, in terms of the FTC and the courts, between puffery and a claim is that puffery does not constitute a *factual statement*. In contrast, a *claim* makes a factual statement that can be proven true or false. Firms may make puffery statements without proving them; claims must be substantiated or proven in some manner.

Terms normally associated with puffery include words such as *friendliest*, *best*, *greatest*, and *finest*. A firm can advertise "our brand is the best" or "our signature dishes use only the finest ingredients." Courts and the regulatory agencies view these statements as puffery and believe that consumers expect firms to use them routinely in their

OBJECTIVE 2
What are the relationships between puffery, deception, and substantiation?



Courtesy of Interstate Battery Systems International, Inc.

▲ This Interstate Batteries billboard advertisement provides an excellent example of using puffery by stating its products are "outrageously dependable."

advertisements. An advertisement for Flair Jewelers stating that "Nobody does 'I do' like we do," a form of puffery. The tagline makes no statement of fact that can be proven true or false.

The word *best* will normally be accepted as puffery. The word *better* has been construed to imply a comparison. The term has recently been tested through the FTC, the National Advertising Division of the Better Business Bureau, and the courts. Papa John's use of the phrase "Better Ingredients, Better Pizza" was found to be puffery, as was the phrase "Only the best tomatoes grow up to be Hunt's."

In another situation, Progresso made the statement "Discover the Better Taste of Progresso" in company advertisements. The slogan was challenged by Campbell's Soup Company, which argued that Progresso's "better taste" phrase was not puffery. Representatives for Campbell's contended that taste tests can be used to determine if one food product tastes better than other brands. The courts agreed and ordered Progresso to either modify the phrase or prove that Progresso soups do taste better.[3]



Courtesy of Alliance One Advertising

▲ Southwest General Hospital uses puffery in this advertisement stating its heart care is first, and "second to none."

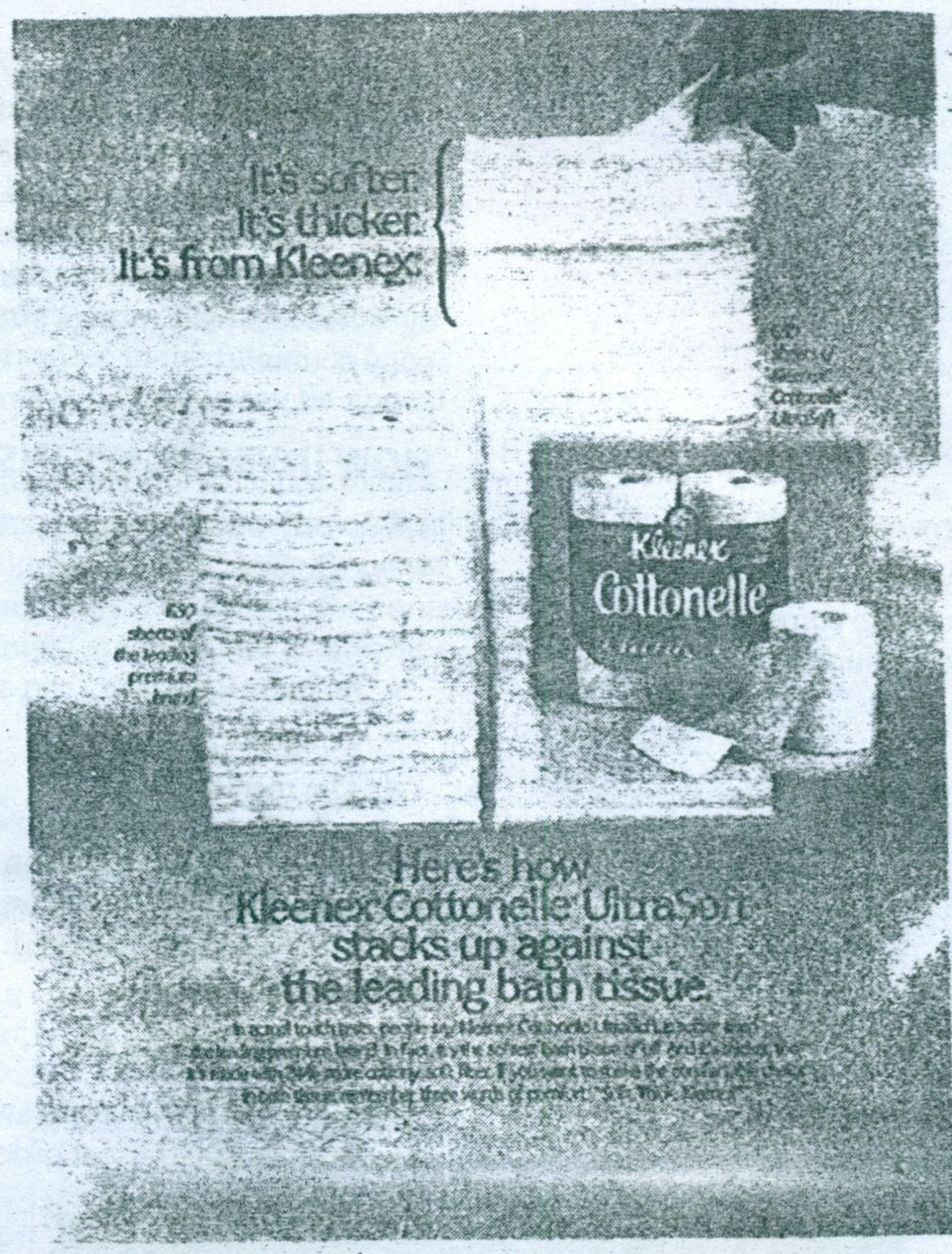
Quick service restaurants and other food providers have begun using words such as "wholesome, fresh, natural, and local" to avoid scrutiny by the FTC that was created by ads making health-related claims. The words are vague and have no specific marketing-related meaning. In addition, they are accepted by consumers. Darren Tristano, V.P. at Technomic, commented, "More traditional health claims on the menu tend to get adverse reactions by the customer because they associate healthy claims with less taste. The newer descriptors are designed around the idea that the food is better for you."[4]

SUBSTANTIATION OF MARKETING CLAIMS

The concept of substantiation applies to claims that are not puffery. **Substantiation** means that an advertising claim or promise must be proven with data, facts, or through competent and reliable evidence. Failure to do so can result in a lawsuit or governmental action.

An advertisement featuring an endorser must contain truthful statements representing the person's experiences or opinions. When a commercial uses an expert endorsement, the statements must be based on legitimate tests performed by professionals in the field.

All marketing claims must reflect the typical experience that a customer would expect to encounter from the use of a good or service, unless the advertisement clearly and prominently states otherwise. A few years ago a Kleenex Cottonelle advertisement made the claim that the product was softer. Kleenex provided actual touch tests by consumers as evidence. The company then used engineering and lab tests to show that Kleenex tissue consists of 24 percent more cottony, soft fiber. Thus, Kleenex was able to substantiate the claim. Substantiation may not always be easy. To increase the probability the substantiation will be accepted by the FTC and courts, company leaders use the following principles:[5]

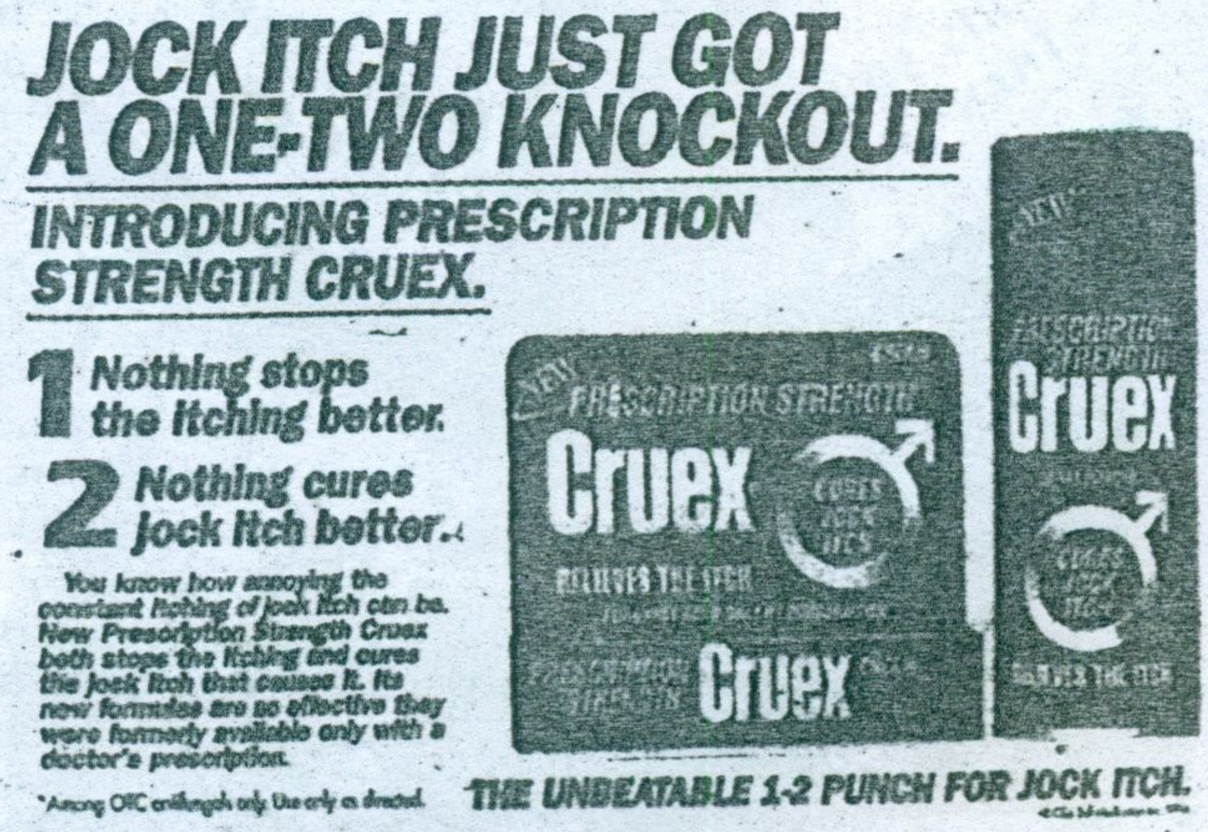


Courtesy of Kimberly–Clark Corporation. The illustrated advertisement, all copyright thereto and rights to the trademark property of Kimberly–Clark Corporation and used with its permission.

▲ An advertisement for Kleenex Cottonelle with a claim that must be substantiated.

▼ Cruex states that nothing else stops itching better or faster, which would be considered a claim by the FTC and therefore would require substantiation.

1. The federal government assumes consumers read ads broadly and do not pay much attention to fine print and qualifying language. Thus, hiding a qualifier at the bottom of the ad or using words such as *usually*, *normally*, or *under typical situations* somewhere in the ad is not normally accepted as substantiation.
2. The evidence has to be for the exact product being tested, not for a similar product, regardless of the similarity.
3. Evidence should come from or be accepted by experts in the relevant area of the product and would be considered valid and reliable by the experts. Studies conducted by the company or something found on the Internet is not acceptable.
4. The FTC and courts will consider the totality of the evidence. If the company has one study that supports the claim but there are four studies by other independent organizations that indicate something different, then the evidence will not be accepted as valid substantiation.



Regardless of the type of communication, the FTC prohibits unfair or deceptive marketing communications. Marketers must substantiate claims through competent and reliable evidence. Unfortunately, a great deal of gray area exists between puffery and a claim that must be substantiated. Consequently, lawsuits are filed and governmental agencies are required to address complaints and suspected violations of the law. These agencies and their rulings strongly affect individual marketing practices as well as company actions.

HOW INVESTIGATIONS BEGIN

OBJECTIVE
What legal remedies can be used to correct deceptive communications practices?

An investigation into misleading or deceptive advertising can be triggered in a number of ways. Sources of complaints can be:

- Consumers
- Businesses
- Congress
- The media

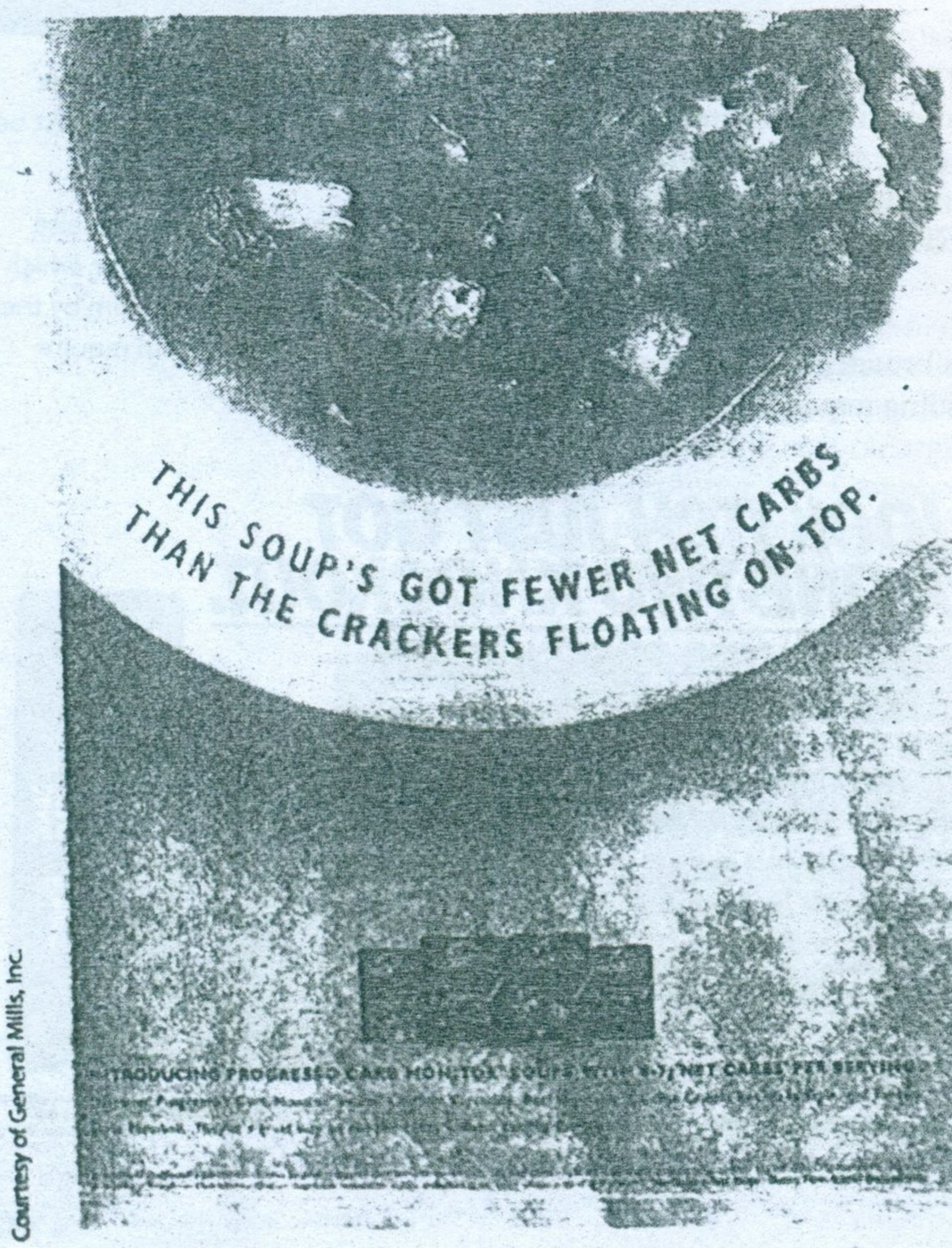
Each can raise questions about what appears to be an unfair or deceptive practice. Investigations by the FTC remain confidential at first, which protects the agency and the company being investigated.

CONSENT ORDERS

When the FTC believes a law has been violated, a **consent order** will be issued. Company leaders that sign consent orders agree to stop the disputed practice without admitting guilt.

Kentucky Fried Chicken (KFC) signed consent agreements with the FTC concerning two ads the FTC investigated and concluded they were not adequately substantiated. In the first, the FTC held that KFC made false claims in an advertisement that stated eating two Original Recipe fried chicken breasts had less fat than the Burger King Whopper. It was true that the chicken did have slightly less total fat and saturated fat than the Whopper; however, the chicken had more than three times the trans fat and cholesterol, more than twice the sodium, and more calories. Thus, the FTC ruled the claim was inadequately substantiated.[6]

▼ An advertisement for Progresso Soup with a testable claim that must be substantiated.



Courtesy of General Mills, Inc.

FTC SETTLEMENTS

Occasionally, rather than agreeing to a consent order, company leaders accept a settlement with the FTC. Such a situation occurred at Facebook with regard to its privacy practices. The settlement required Facebook to take a number of steps to improve its privacy policies and practices. In addition, Facebook agreed to FTC monitoring for the next 20 years. The FTC had charged that Facebook "deceived consumers by telling them they could keep their information on Facebook private, and then repeatedly allowing it to be shared and made public." The challenge Facebook now faces is that the information about its members that makes Facebook attractive to advertisers because they can target ads to specific market segments based on their profiles. It is this very issue that led the FTC to require monitoring of Facebook for 20 years as part of the settlements.[7]

ADMINISTRATIVE COMPLAINTS

Most FTC investigations end with the signing of a consent order or settlement. When a one cannot be reached, the FTC issues an **administrative complaint**. At that point, a formal proceeding similar to a court trial will be held before an administrative law judge. Both sides submit evidence and render testimony. At the end of the administrative hearing, the judge makes a ruling. When the judge concludes a violation of the law has occurred, a *cease and desist order* is issued. The order requires the company to stop the disputed practice immediately and refrain from similar practices in the future. When a company is not satisfied with the decision of the administrative law judge can be appeal the case to the full FTC commission.

The *full commission* holds hearings similar to those before administrative law judges. Rulings are made after hearing evidence and testimony. Companies that are dissatisfied with the ruling of the full FTC commission can appeal the cases to the U.S. Court of Appeals and further, to the highest level, the U.S. Supreme Court. The danger for companies that appeal cases is that consumer redress can be sought at that point. This means companies found guilty of violating laws can be ordered to pay civil penalties.

COURTS AND LEGAL CHANNELS

Occasionally, the FTC uses the court system to stop unfair and deceptive advertising and communications practices. This take place when a company violates previous FTC cease and desist orders or when the actions of a company are so severe that immediate action is needed. The latter occurred in a case involving the National Consumer Council (NCC), a debt reduction and negotiation firm based in Santa Ana, California. The FTC investigation found that the National Consumer Council encouraged consumers to stop paying their debts once they signed up with NCC for debt reduction. At the same time, NCC did not normally start negotiation with debtors for 6 months. By then, the customer's debtors were irate and not willing to negotiate. In the meantime, the NCC customer had been making payments into a fund at NCC. Charges and monthly fees were being withdrawn for payment to NCC. Many customers did not know NCC was making the charges. Eventually, the customers discovered that not only did NCC ruin their credit ratings, but they were also deeper in debt than when they signed on. Almost all of them were forced to declare bankruptcy. Due to the severity of NCC's activities, the FTC obtained a restraining order from a federal court to immediately close NCC's operation. The FTC also obtained a restraining order against the London Financial Group, which provided telemarketing, accounting, and management services to NCC.[8]

The FTC also works with other legal entities, such as state and federal attorneys general. The FTC, Orange County (CA) district attorney, and the California State Attorney investigated Body Wise International, Inc., for false and deceptive advertising and for violating a consent agreement between Body Wise International and the FTC that was signed previously. The complaint against Body Wise involved the alleged medical benefits of a product called "AI/E-10." Body Wise International advertised that AI/E-10 could prevent, treat, and cure diseases such as cancer, HIV/AIDS, and asthma. Body Wise supported these claims through the expert testimony of

▼ The FTC would consider the statement "Twice as Good" to be puffery, but the statement "Tree Top puts 2 apples in every glass" would have to be substantiated.



a physician, Dr. Stoff. The FTC investigation revealed that Stoff received royalties for every bottle sold and that he could not provide medical substantiation for any of the claims. The FTC order banned Body Wise International from making the claims and prohibited Stoff from misrepresenting the tests and studies of AI/E-10. In the final settlement, Body Wise International agreed to pay $2 million to the FTC in civil penalties and $1.5 million in civil penalties. The final agreement also contained a $358,000 monetary judgment against Dr. Stoff.[9]

CORRECTIVE ADVERTISING

In the most severe instances of deceptive or misleading advertising, the FTC orders a firm to prepare **corrective advertisements**. These rare situations occur when the members of the FTC believe that discontinuing a false advertisement will not be sufficient. When the FTC concludes that consumers believed the false advertisement, it can require the firm to produce corrective ads to bring consumers back to a neutral state. Consumers should return to the beliefs they had prior to the false or misleading advertising.

The FTC ordered corrective advertising for the Novartis Corporation. The judgment was based on false and deceptive advertisements of a product called Doan's analgesic. During the investigation, members of the FTC concluded that Doan's claim of greater efficiency than competing products was not substantiated. The FTC ordered Novartis to immediately cease comparative advertising and to make this statement in corrective ads: "Although Doan's is an effective pain reliever, there is no evidence that Doan's is more effective than other pain relievers for back pain." Novartis was ordered to spend $8 million advertising the statement and include it for 1 year in all advertisements, except for 15-second broadcast ads. Unhappy with the order, leaders at Novartis filed a lawsuit in federal court against the FTC, but the federal court upheld the FTC order.[10]

TRADE REGULATION RULINGS

The final type of action the FTC takes, a **trade regulation ruling**, applies to an entire industry. Normally, the commission holds a public hearing and accepts both oral and written arguments. The commission then makes a ruling that applies to every firm within an industry. As with other FTC rulings, decisions can be challenged in the U.S. Court of Appeals.

The recent rise in personal blogs led to an explosion of product reviews by bloggers. Often bloggers are paid or received free merchandise to post positive comments. Blogger Jessica Smith was given a Ford Flex to use for 1 month plus a free gas card in exchange for a positive review. Microsoft sent bloggers a free laptop loaded with the newest Microsoft operating system. After investigating these practices, the FTC issued a ruling that bloggers who review products must disclose any connection with the advertiser or product, whether the product provided was free or if they were compensated in any way. The ruling also applies to celebrities who promote products on talk shows or on Twitter.[11]

A similar industry trade ruling occurred with gift cards issued by retailers. Many retailers were charging dormancy fees for cards that were not used immediately and many had expiration dates. This information was not conveyed to consumers at the time of purchase. The FTC issued a ruling that any merchant issuing a gift card must "boldly" display any fees or expiration dates on the card.[12]

Industry Oversight of Marketing Practices

OBJECTIVE
How do the three major industry regulatory agencies help keep advertising and business practices from injuring customers or other businesses?

Federal regulatory agencies cannot handle all industry activity. Although industry regulatory agencies have no legal power, they can reduce the load on the FTC and the legal system. The three most common and well-known industry regulatory agencies are all a part of the Council of Better Business Bureaus: the National Advertising Division, the Advertising Self-Regulatory Council, and the Children's Advertising Review Unit (Figure 3).

- National Advertising Division (NAD)
- Advertising Self-Regulatory Council (ASRC)
- Children's Advertising Review Unit (CARU)

FIGURE 3
Regulatory agencies

COUNCIL OF BETTER BUSINESS BUREAUS

The Council of Better Business Bureaus provides resources to either consumers or businesses. Consumers and firms can file complaints with the bureau about unethical business practices or unfair treatment. The bureau compiles a summary of all charges leveled against individual firms. Customers seeking information about the legitimacy of a company or its operations can contact the bureau. The bureau provides a carefully worded report containing any complaints against the company and reveals the general nature of customer concerns. The Better Business Bureau helps individuals and businesses make sure they are dealing with a firm with a low record of problems.

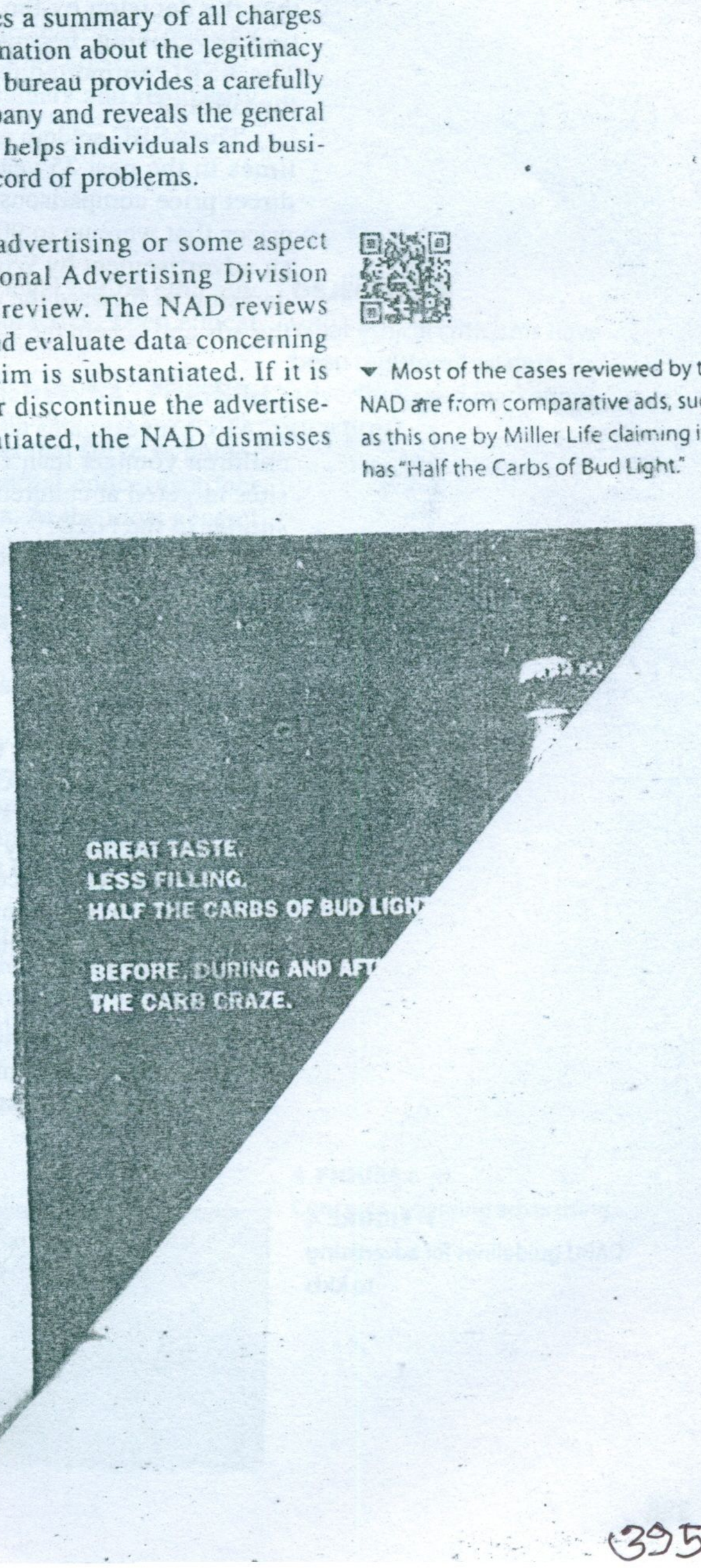
National Advertising Division Complaints about advertising or some aspect of marketing communications are referred to the National Advertising Division (NAD) of the Council of Better Business Bureaus for review. The NAD reviews the specific claims. NAD lawyers collect information and evaluate data concerning the complaint to determine whether the advertiser's claim is substantiated. If it is not, the NAD negotiates with the advertiser to modify or discontinue the advertisement. When the firm's marketing claim can be substantiated, the NAD dismisses complaint.

Individuals and companies can file complaints about unfair ads. Most complaints are from competing brands and deal with comparative ads. A few do not deal directly with a competitor but are the result of advertising that is viewed as misleading. Such was the case with a print ad for CoverGirl NatureLuxe Mascara featuring singer Taylor Swift that was investigated by the NAD. After reviewing the claims and photos in the advertisement, the NAD ruled that Swift's eyebrows had been digitally enhanced to make them look fuller and as a result were misleading. In response, Procter & Gamble (owner of the CoverGirl brand) discontinued the ads and the use of any photographs of Swift that had been enhanced in production. Procter & Gamble stated, "As soon as we were aware that the NAD had concerns, we voluntarily discontinued the advertising—a move that the NAD itself regarded as entirely proper."[13]

The CoverGirl decision illustrates the power of the NAD and is typical of NAD recommendations. In 95 percent of the cases when the NAD recommends an ad be discontinued or modified, the company voluntarily complies with the decision. The NAD is not a legal entity, which means companies do not have to abide by a decision.[14]

Advertising Self-Regulatory Council When a complaint cannot be resolved by the NAD or the advertiser appeals the NAD's decision, it goes to the Advertising Self-Regulatory Council (formally the National Review Board). The Advertising Self-Regulatory

▼ Most of the cases reviewed by the NAD are from comparative ads, such as this one by Miller Life claiming it has "Half the Carbs of Bud Light."



Council (ASRC) is composed of advertising professionals and prominent civic individuals. When the ASRC rules that the firm's advertisements are not substantiated, it orders the firm to discontinue the advertisements in a manner similar to a consent order by the FTC. The ASRC is a private board. When the business or firm being accused refuses to accept the ASRC ruling, the matter will be turned over to the FTC or the most appropriate federal regulatory agency.

The ASRC has been involved in numerous business-versus-business disputes. Minute Maid was recently ordered to modify ads because the copy claimed that consumers preferred Minute Maid orange juice to Tropicana by a 2:1 margin. Tropicana lodged a complaint and won when it was heard by the NAD. Minute Maid disagreed with the NAD ruling and appealed to the ASRC. Minute Maid complained that the decision by the NAD placed an unnecessary and unfair burden on comparative advertising, because all claims relative to a competitor must be substantiated. The ASRC supported the NAD and issued an order for Minute Maid to comply with the ruling.[15]

The ASRC seldom refers a case to the FTC. Such an action has been taken only four times in the past 25 years. The last was a case dealing with Winn-Dixie, which made direct price comparisons with competitors. The ASRC found that Winn-Dixie was using prices that were up to 90 days old. The ASRC ruled that any price comparisons made in an advertisement by Winn-Dixie must use prices that are no more than 7 days old. The decision to forward the case to the FTC was made when Winn-Dixie refused to modify the ads and accept the ASRC ruling.[16]

Children's, Advertising Review Unit The Children's Advertising Review Unit (CARU) investigates and monitors all forms of advertising in all media directed toward children younger than 12 years of age. It also monitors online privacy practices of Web sites targeted at children younger than 13 years of age. The CARU operates in a manner similar to the NAD.

In addition to handling complaints about advertising to children, CARU began prescreening ads directed to children in 2005. CARU now examines more than 300 ads per year. The prescreening allows CARU to highlight any potential problems with an advertisement before it goes into production. CARU has also issued a series of guidelines to help advertisers prepare ads for children. Figure 4 highlights these guidelines.[17]

Children younger than age 12 do not have the same reasoning abilities as adults. Consequently, the CARU stresses the importance of advertisers acting responsibly. Advertisements must show a toy as if a child were playing with it. It must convey the difference between any fantasy used in a commercial and the reality when the child plays with the toy. When accessories are shown, the commercial must clearly state that the accessories do not come with the original toy so the child will not be disappointed. If an item such as a trampoline is advertised, then adult supervision must also be shown in the advertisement.

Advantages to Using Self-Regulation These industry-based actions are designed to control the marketing communications environment and limit legal actions that will be required by the courts or a governmental agency. As highlighted in Figure 5, industry

▶ **FIGURE 4**
CARU guidelines for advertising to kids

- Ads for toys should not create unreasonable expectations. Toys shown in acts should look and act as they would if a child were playing with it.
- Ads should not blur the line between fantasy and reality.
- Ads should have clear and visible disclosures about what items come with a toy and what items do not.
- Items that require adult supervision must be shown with adults supervising the child.
- Products and ad content should be appropriate for children.

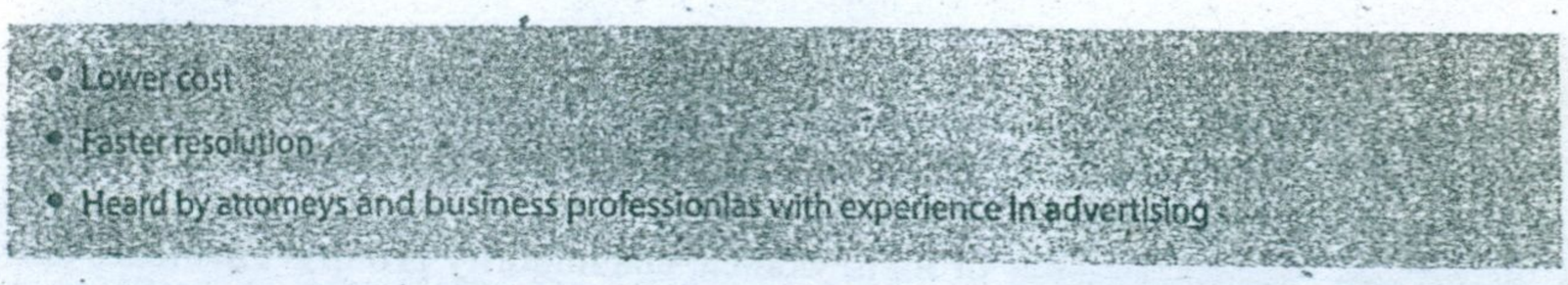


FIGURE 5
Using the CBB's regulatory agencies

regulatory agencies offer several benefits over FTC and legal remedies. The cases are normally heard sooner and are less costly for the companies involved. Further, complaints are heard by attorneys and business professionals with experience in advertising. Although FTC judges may have knowledge of the advertising industry, it is not normally as extensive as the individuals involved in the CBBB's agencies.

Effective management, however, will be proactive rather than reactive. Company leaders can work to create an image of a socially responsible firm. This creates a far better approach than reacting to the constant scrutiny of angry consumers and regulatory agencies.

IMC and Ethics

OBJECTIVE
What ethical criticisms have been registered against advertising and marketing practices?

In many instances, an advertising or marketing practice may be legal but be ethically suspect. This section considers various marketing and advertising tactics. Then ethical frameworks and responses involving them are described.

Ethics and morals are key principles that can be used to guide a person's activities in the world of commerce. **Morals** are beliefs or principles that individuals hold concerning what is right and what is wrong. **Ethics** are moral principles that serve as guidelines for both individuals and organizations. Many ethical and moral concerns affect the fields of marketing, advertising, and marketing communication. At the most general level, several major concerns and criticisms have arisen. They include the items shown in Figure 6.

Ethics and Advertising

Some critics complain that advertisements cause people to *buy more than they can afford*. It is closely connected to the comment that advertising *overemphasizes materialism*. A case can be made that many commercials do indeed stress luxury, social standing, and the prestige of being first to purchase an item. At the same time, the messages are still just commercials. Those who defend advertising point out that consumers should be responsible for spending money wisely.

Advertising has been alleged to *increase the costs of goods and services*. This debate has been waged for many years. Advertising professionals note that without consumer awareness, products would not be purchased, because consumers would not know of their existence. Further, advertising widens the base of potential customers and may increase repeat business. Additional sales lead to economies of scale and lower, rather than higher, prices.

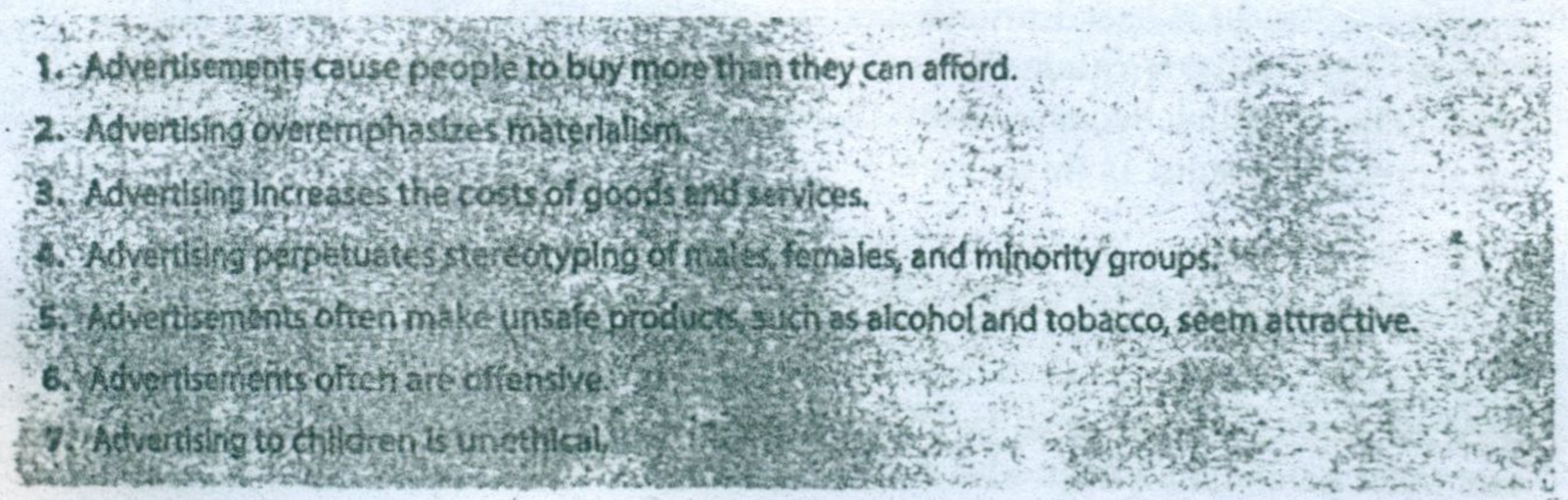


FIGURE 6
Concerns regarding advertising



iofoto/Fotolia

▲ Elderly people are sometimes stereotyped in advertising.

PERPETUATING STEREOTYPES

Many social commentators suggest that advertising and other forms of media perpetuate stereotyping of men, women, and minority groups. This leads to several questions. For instance, is segmentation the same as stereotyping? In an era in which the term *political correctness* routinely appears, debate defining "acceptable" continues. In marketing, some of the categories in which market segments are identified include age, race, gender, social status, and income. When marketing to or portraying different individuals from these categories, do advertisers use clichés that are no longer appropriate?

Advertisements often portray a market segment as one-dimensional figures rather than reflecting the complexities of specific gender, racial, or age segments. Teens are depicted as rebellious, carefree, and sexually starved. Asian Americans are shown in advertising as technological experts—knowledgeable, savvy, and even mathematically adept or intellectually gifted. They are usually shown in ads for business-oriented or technical products. From a marketing perspective, it is much easier to group people into smaller subgroups with common interests. Is it unethical, bad business, or simply a practical matter to represent or misrepresent consumers in these ways?

ADVERTISING UNSAFE PRODUCTS

Marketing has been associated with unsafe products, such as alcohol, cigarettes, and other potentially harmful items. By the age of 18, the average American teen has viewed more than 100,000 beer commercials. The use of sexuality and social acceptance combined with humor makes the products in commercials appear desirable. Critics of the brewing industry and marketing agree: Many beer commercials encourage underage drinking and build brand loyalty or brand switching in a population that should not even use the product. Occasional underage drinking can lead to an addiction in a few months, because underage drinkers are less developed mentally, physically, and emotionally. The question becomes: Do a few public relations advertisements represent a real attempt to reduce underage drinking, or are they designed to placate the government and critics?

The same holds true for tobacco products. Many charges have been made arguing that tobacco companies focus on reaching young people through characters such as Joe Camel. Any marketing professional entering the field should consider his or her comfort level with such approaches.

After tobacco advertising on television was banned by the government, marketers created a series of tactics to make certain company products are mentioned on the air. Sponsorships of the Virginia Slims Tennis Tournament and Marlboro Cup Racing have come under scrutiny, because sportscasters state the names of the products while reporting scores and results. Is this ethical?

OFFENSIVE ADVERTISEMENTS

Many adult products require tasteful advertising and marketing programs, even when they are free to be shown through any medium. Feminine hygiene products, condoms, and other personal adult products may be featured in practically any venue. Marketing

professionals should select media that are appropriate as well as to create ads that will not offend.

In the international arena, the responsibility becomes even greater. In many Islamic countries, advertisements for personal hygiene or sexually-related products are offensive. Company leaders should explore cultural differences before undertaking any kind of marketing campaign.

Another ethical issue that has arisen concerns the use of nudity and sexuality featuring children. In recent years, an increase in sensitivity to issues of child molestation, child pornography, and related sexual issues has emerged. Marketing professionals must carefully consider what the limits should be. Suggesting that sex sells is simply not enough, nor is making a defensive claim about freedom of speech or freedom of expression. Ethics, morals, and a clear conscience should serve as additional guides when a company pushes the limits of sexuality when using young people as models.



Anatoliy Samara/Fotolia

▲ From a social perspective, advertising to children remains a controversial issue.

ADVERTISING TO CHILDREN

A continuing controversy in the field of marketing is the ethical acceptability of advertising to children. Children represent a tremendous level of spending and buying power, over $20 billion annually. Critics question the tactics used to reach them.

Mary Pipher, clinical psychologist and author of *The Shelter of Each Other*, suggests that "No one ad is bad, but the combination of 400 ads per day creates in children a combination of narcissism, entitlement, and dissatisfaction."[18] Ads targeted to children employ multiple tactics, including building brand awareness through images and logos, featuring toys and collectibles, and developing tie-ins with television programs and movies, including the *Hannah Montana* phenomenon. Characters such as Barney, Ronald McDonald, and Harry Potter vend everything from food to toys to clothes.

With so many potential venues to sell directly to children and to put pressure on their parents, many company leaders believe it is best to "get them while they're young." From a societal perspective, however, the question remains as to whether such impressionable young minds should be subjected to so many messages.

Marketing and Ethics

Ethical dilemmas are present in places other than advertisements. Many times, however, a connection exists between a marketing program and what takes place in the marketing communications area. A review of some of these issues follows (see Figure 7).

OBJECTIVE 6

What marketing tactics raise ethical concerns?

BRAND INFRINGEMENT

Numerous ethical challenges have been associated with brand management. One continuing problem, **brand infringement**, occurs when a company creates a brand name that closely resembles a popular or successful brand, such as when the Korrs beer company

- Brand infringement
- Professional services marketing
- Gifts and bribery
- Spam and cookies
- Ambush marketing
- Stealth marketing

◀ **FIGURE 7**
Ethical issues in marketing

was formed. In that case, the courts deemed the brand an intentional infringement, and the name was abandoned. Another brand-infringing company ordered by the courts to give up the name was Victor's Secret.

The brand infringement issue becomes more complex when a brand becomes so well-established that it may be considered a generic term, such as a Kleenex tissue or a Xerox copy. Band-Aid encountered the problem in the 1970s, forcing the marketing team to make sure the product was identified as "Band-Aid Brand Strips" rather than simply "band aids," to keep the competition from being able to use the name. The most vulnerable new brand name may be Google, as in "I Googled myself" or "I Googled it."

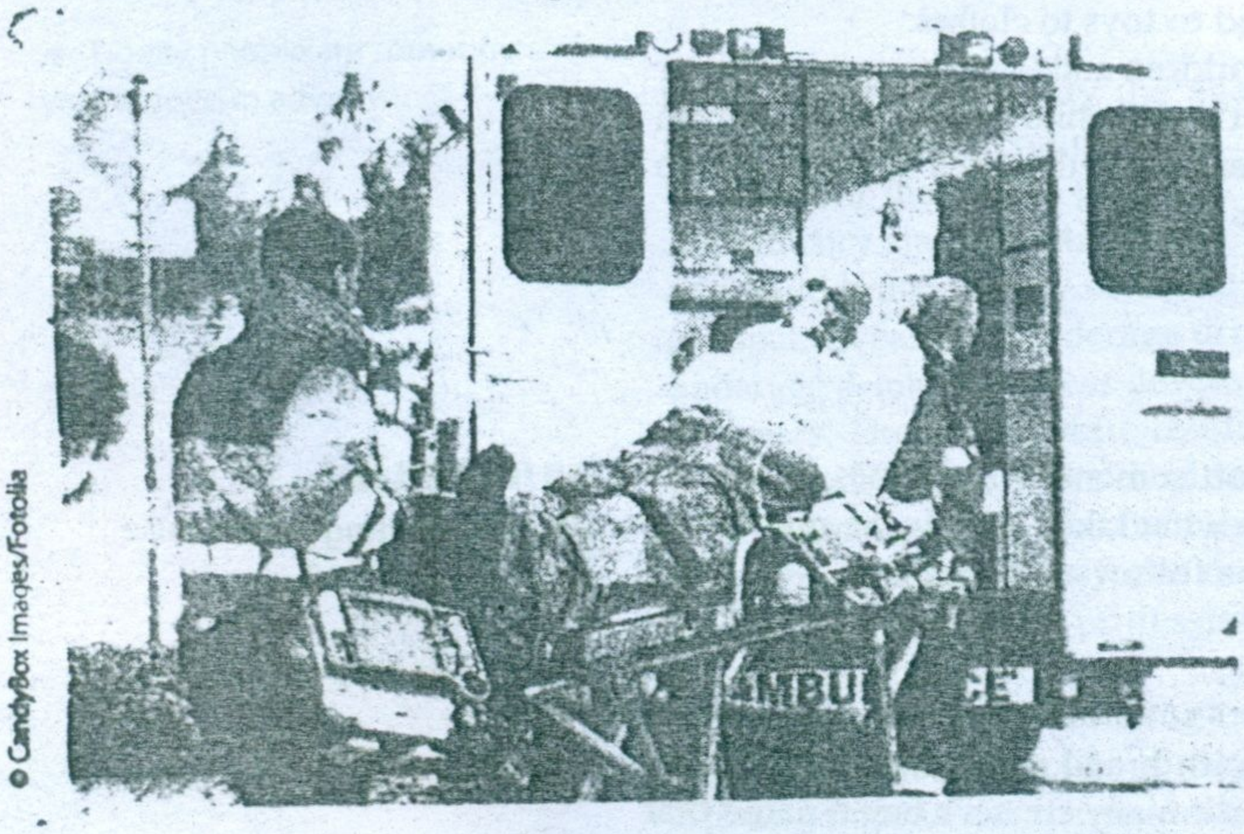
A newer form of unethical behavior, *domain squatting* or *cyber squatting* on the Internet, is the controversial practice of buying domain names (barnesandnoble.com, kohls.com, labronjames.com, etc.) that are valuable to specific people or businesses in the hopes of making a profit by reselling the name. At the extreme, whitehouse.com was a pornographic Web site. Any new company trying to build a presence in the marketplace may find itself stifled by domain squatters. Names matter, and cyber squatters are willing to take advantage of these activities to make profits at some else's expense.[19]

MARKETING OF PROFESSIONAL SERVICES

Is it ethical to advertise a physician's services or new drugs? For many years, attorneys, dentists, and physicians did not advertise for fear of being viewed as "ambulance chasers." Recently the trend has gone in the opposite direction. For example, a dermatologist will advertise a "skin rejuvenation" practice with only a bare mention that it is also part of a medical practice. Critics argue that this takes medicine into the area of merchandising and suggest that doing so is deceptive.

People injured by accidents, poor medical care, or bad medications are encouraged to call a toll-free number for information on how they can obtain compensation. Other ads encourage people to get rid of bad debts by filing bankruptcies. Critics of medical advertising have suggested attorneys are now chasing the same ambulances, hoping for large settlements of which they receive a substantial portion.

▼ Attorneys, dentists, and physicians who advertise have been criticized as "ambulance chasers."



© CandyBox Images/Fotolia

Pharmaceutical companies now spend millions advertising new drugs. A great deal of discussion has taken place with regard to sexual dysfunction products. Unfortunately, many young men are buying and using the drugs for recreational purposes. Marketing critics complain that advertising and promotional tactics encourage this type of misuse.

The marketing of herbs, supplements, and other untested products has also created concern. Claims are made regarding their contributions to energy level, sexual stamina, and mental acuity. Other products are marketed using unsubstantiated reports about weight loss.

Physicians, pharmaceutical companies, and attorneys have the right to market their services. The ethical questions deal with how these services are presented to the public.

GIFTS AND BRIBERY IN BUSINESS-TO-BUSINESS MARKETING PROGRAMS

When marketing to other businesses, close personal contacts are often common, both in personal sales calls and in other venues such as trade shows. Among the more serious ethical issues are gifts and bribery.

To influence sales, purchasing agents and other members of the buying company are often the recipients of gifts, meals, entertainment, and free trips. From a personal ethics standpoint, many concerned leaders question accepting personal gifts that are designed to influence business decisions. The International Olympics Committee wrestles with this issue when selecting sites for games. Exorbitant gifts, meals and entertainment have been used by various cities in an effort to sway the selection process.

Closely tied with the issue of receiving gifts is offering or accepting bribes. These can be related to gaining governmental contracts or making business contacts. Without them, permits may not be granted or can be very difficult to obtain. In Germany and France, the government actually allows companies to write off bribes as tax deductions.

SPAM AND COOKIES

Technology creates a double-edged sword in the area of marketing. On the one hand, it leads to ingenious new ways to quickly reach a set of consumers with a key message and to keep in continuous contact with those customers. On the other hand, it can be invasive and intrusive and presents ethical dilemmas for those working on the Web.

Numerous complaints about spamming have been raised. Even with anti-spam legislation, individuals continue to receive unwanted e-mails. One university in the Midwest receives about 100,000 e-mails a day, of which approximately 95,000 are spam. Should this be considered an ethical issue or simply a practical matter? Either way, the marketing team should assess the viability of spam programs.

Cookie technology allows a company's Web site to track a browser's activities and other Web sites a consumer has visited. The technology allows a firm to customize and personalize Web content to match a consumer's interest. A Harris Interactive survey revealed that 95 percent of consumers believe it is at least somewhat important that companies know "who I am, my buying history, past problems or complaints, preferences, and billing record."[20] At the same time, many consumers express concerns about privacy issues and what firms do with the information collected. Primary questions that are raised are:

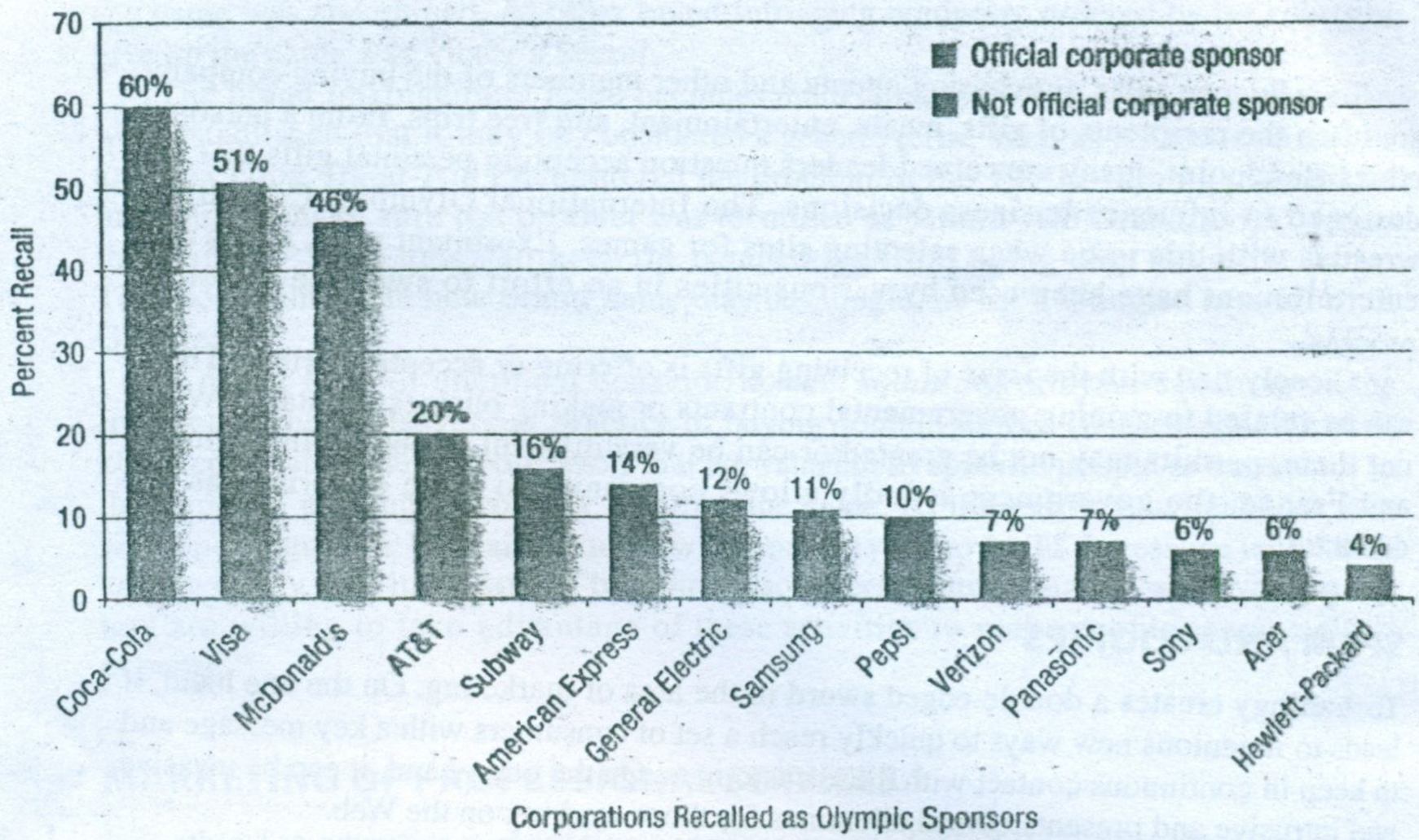
- Should an Internet company be allowed to gather this information?
- Should the company be allowed to sell the information to other companies?

Answers fall into two categories: legal and moral. Although it may be legal to collect and transfer consumer information in this manner, the ethical issue remains. Marketing professionals continue to experience the need for quality information. They should try to balance this need with the ethical ramifications of invading privacy rights. Failure to do so may result in long-term implications for both the company and those who use the Internet to shop for products.

AMBUSH MARKETING

The rise of dollars spent on sports sponsorships and the use of athletes as endorsers has been accompanied by a rice in **ambush marketing**, which is "a brand's attempt to associate itself with a team or event without buying the rights to do so."[21] Official sponsorships often cost millions, so firms have looked at alternative methods of capitalizing on a major sporting event without paying for the rights to be an official sponsor.

To appreciate the potential impact of ambush marketing, consider Figure 8. Chadwick Martin Bailey of Boston surveyed individuals asking them to recall the official sponsors of the Winter Olympics. In Figure 8, the bars in blue represent the $40 million companies paid to become official sponsors. The companies indicated by red were not official sponsors, but consumers thought they were. Some of this confusion was deliberately created. Figure 9 identifies the primary categories of ambush marketing.



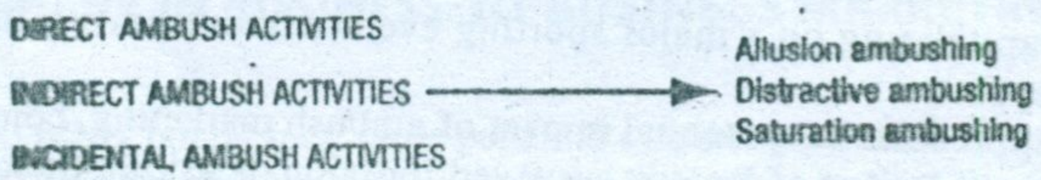
▸ **FIGURE 8**
Recall of Olympic sponsors

Source: Adapted from Aaron Baar, "Olympics Sponsors Benefit, As Do Competitors," *Marketing Daily* (www.mediapost.com/publications/?fa=Articles.printFriendly&art aid=122665), February 17, 2010.

Direct ambush marketing occurs when firms intentionally design advertising or marketing campaigns to capitalize on a major sporting event. The firm seeks to appear to be an official sponsor without stating whether it is or is not a sponsor. VISA was the official credit card sponsor of the Olympics. American Express was not; however, during, and after the Olympics American Express ran television commercials with scenes of Barcelona, Spain (the site of the Summer Olympics) and a message that said, "You don't need a visa" to visit Spain.

Verizon was also not an official sponsor of the Olympics, but the company ran ads stating that it was a sponsor of the U.S. speed skating team. The result of the campaign was that 7 percent of viewers of the Olympics thought Verizon was a sponsor, more than some of the companies that paid the $40 million sponsorship price tag.[22]

Indirect ambush marketing occurs when a firm suggests or hints it is associated with a sporting event when it is not. With **allusion ambushing**, an organization creates an impression that is a sponsor, when it is not. During a recent Summer Olympics, Nike ran a series of ads centered on the number 8, which is a symbol of good luck in China, where the games were being held. Nothing was said about the Olympics or even the athletes competing in the events. **Distractive ambushing** involves a company designing a promotion or event near a major sporting event. At a recent Winter Olympics, MasterCard, which was not an official sponsor, sent two catering trucks to busy intersections in Vancouver every day to distribute cups of coffee and cocoa. As a result, MasterCard's logo was seen all over downtown Vancouver on cups and napkins. **Saturation ambushing** happens when a firm increases advertising and marketing during a major event, such as the NCAA basketball tournament. No mention is made of the event, but the brand will be seen numerous times by viewers of the event not only during but also before and after



▸ **FIGURE 9**
Types os ambush marketing

Source: Adapted from Simon Chadwick and Nicholas Burton, "Ambushed!" *The Vall Street Journal* (http://online.wsj.com/le/SB10001424052970204731804574302699362862.html). January 25, 2010.

the event. This method works best when an event lasts several days, such as the NCAA basketball tournament or the Olympics.[23]

Incidental ambushing takes place when a brand is associated with an event without any intentional or indirect effort on the part of the company. At recent collegiate swimming events as well as the Olympics, announcers have mentioned Speedo's LZR Racer swimsuit worn by swimmers. Speedo gained considerable brand exposure, but it was incidental and not planned by Speedo's marketing team.

None of these ambushing strategies are illegal; however, some question whether such approaches are ethical. Clearly, direct and indirect ambush marketing approaches capitalize on the popularity of the event without paying the price to be an official sponsor.

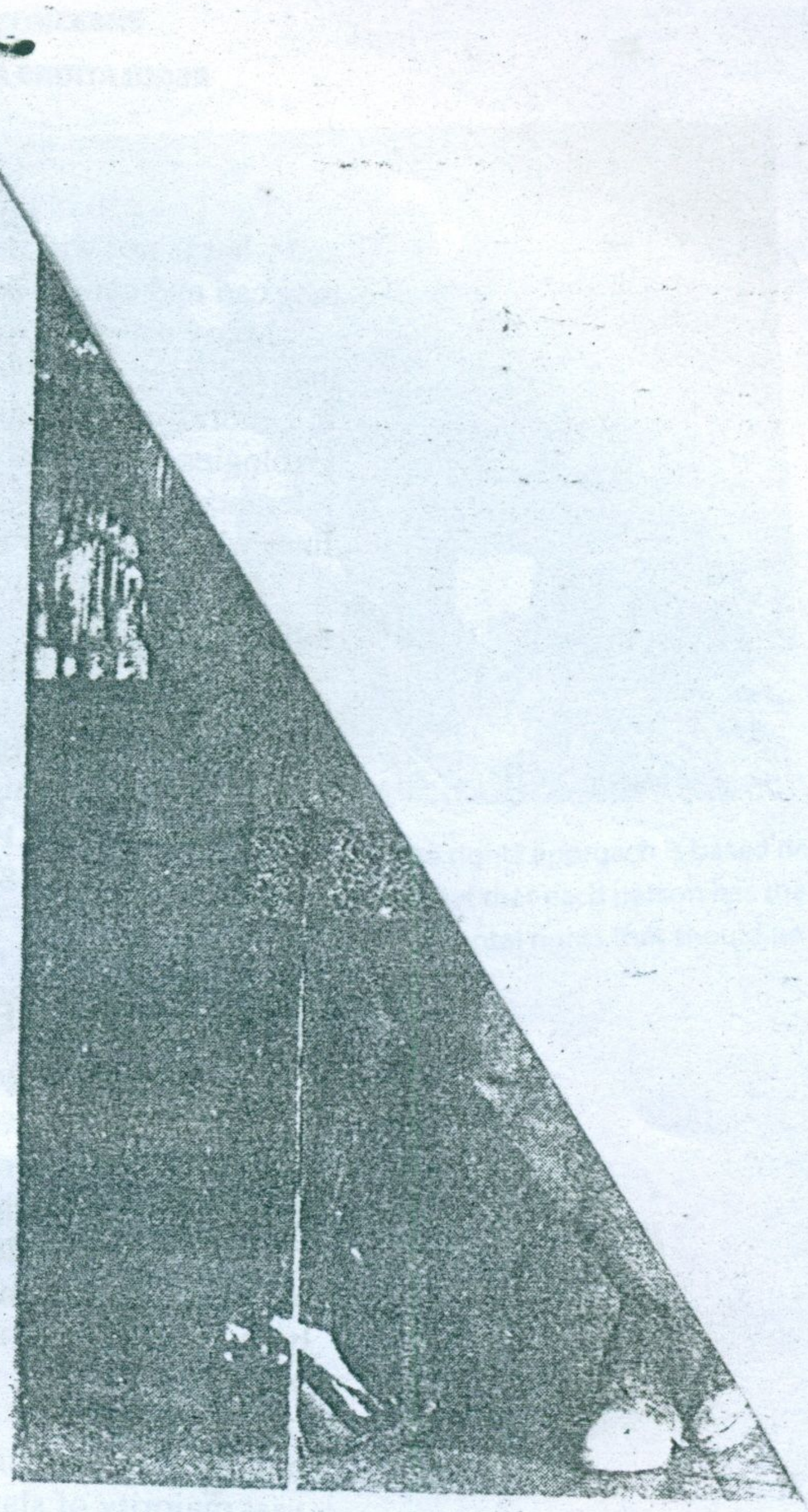
STEALTH MARKETING

Some companies have used the buzz method of **stealth marketing**. The approach entices consumers to look at a product through a personal contact without them realizing the person making the pitch is actually being paid or compensated in some way.

Jonathan Margolis, CEO of the Michael Alan Group and co-author of the book *Guerilla Marketing for Dummies*, believes the risks of stealth marketing outweigh the benefits. He says, "It might work if the product is good enough, but ultimately the consumer is being duped. It's risky to stage something that people think is a natural occurrence. There is a potential for backlash. Consumers don't like being deceived, and brands don't want to look bad."[24]

A recent event illustrates why Margolis believes stealth marketing borders on being unethical. An attractive 26-year-old woman was paid by BlackBerry to go to nightclubs and bars and flirt with well-dressed men. She enticed the men to pay attention to her, handed them her BlackBerry, and asked them to put their phone numbers in the phone, with the promise she would call. She had no intention of calling; rather she sought to show them the phone, get them to hold it, and use it while she talked about how much she loved it. Many view that level of deception as unethical.

Not all marketers agree. Jason Van Trentlyon, president of Street Guerilla Marketing, argued, "Stealth marketing has a greater potential to make a more sincere impact on the public as opposed to a TV or billboard ad. People are inundated with so many blatant advertisements on TV and in magazines that they don't pay attention anymore. This is a way of creating buzz, and any buzz is good buzz."[25]



▲ Stealth marketing involves pitching the benefits a brand without revealing you area paid to do so.

Responding to Ethical Challenges

The foundation and frameworks for ethical guidelines are derived from several sources. These include philosophy, law, religion, and common sense.

One *philosophy of life* involves maximizing pleasure and minimizing pain. This idea represents **hedonism**. Critics note that life is often more than the simple pursuit of pleasure and avoidance of pain. **Homeostasis** is the natural craving for balance. People balance a variety of urges throughout life.

OBJECTIVE 2

How can marketers apply the various ethical frameworks and ethics programs to their activities and actions?

The **law** offers guidelines regarding right and wrong as well as what is acceptable and what is not within a geographic area. Legal systems are designed to tell people what they can and cannot do. Remember, however, that not all legal systems are the same.

Many **religions**, or belief systems, profess a version of the philosophy that is summarized by the *Golden Rule*: Do unto others as you would have them do unto you. Acting in a morally acceptable manner starts with treating others well. Still, specific religious ideologies vary widely. Many disagreements about what is right or wrong exist. Respect, tolerance, discussion, compromise, and accommodation should become ethical guidelines when the religious views of others contradict your own.

At the end of the day, one overriding constant may be that ethical actions, moral correctness, and social responsibility all boil down to *common sense*. Two processes can be used to analyze an ethical concept. The first is logic and reasoning, which leads to common sense conclusions. One's conscience may become muted over time if it is continually ignored; however, most people know when they are doing something right or wrong. The second element of common sense is gut instinct. Deep down inside, most people know when something is appropriate or inappropriate. A person's inner thoughts and gut reaction should never be ignored in an ethical reasoning process.

ETHICAL FRAMEWORKS

The building blocks and personal ethical systems noted in the previous sections help to define various approaches to ethical reasoning. As shown in Figure 10, several frameworks have been proposed for the analysis of ethical issues, including utilitarianism, individualism, the rights approach, and the justice approach.

Utilitarianism is a means of making decisions based on what is the greatest good for the greatest number of people. Utilitarianism is referred to as the "calculus of pain," because it tries to minimize pain and maximize pleasure for the greatest number of people.

Unfortunately, utilitarianism perspectives may overlook the rights or needs of the minority. As an extreme example, the use of slaves may create greater well-being for a vast majority of slaveholders, but at the same time the rights of the few, the slaves, are being destroyed.

Ethicists may conclude that utilitarianism involves a judgment call as to what is "good" as well as considering that "good" in light of its effects on both the majority and the minority. Care should be given in deciding how much "pain" to others is acceptable.

Individualism represents the degree to which a society values personal goals, personal autonomy, privacy over group loyalty, commitments to group norms, involvements in collective activities, social cohesiveness, and intense socialization. Therefore, ethical decisions are based on personal self-interests, so long as one's actions do not harm others.

The individualism approach may cause the weakest members of society to suffer the most. In health care, individualists favor systems in which those with money are able to retain the best medical professionals. The individualist position has been used to criticize programs such as socialized medicine. It suggests that those who contribute to society's well being, by being employed and paying taxes, have earned greater access to health care, and others should have less access.

The **rights approach** is a means of making decisions based on the belief that each person has fundamental rights that should be respected and protected. These rights include freedom of speech, privacy, and access to due process, plus the right to a safe and healthy environment at work and at home. Rights to free speech include the rights of companies to advertise any kind of product, even those that make people uncomfortable or ones they object to.

The difficulty with the rights approach is that many times the rights of one group, or a certain type of right, may impede on others. For example, conflict between rights

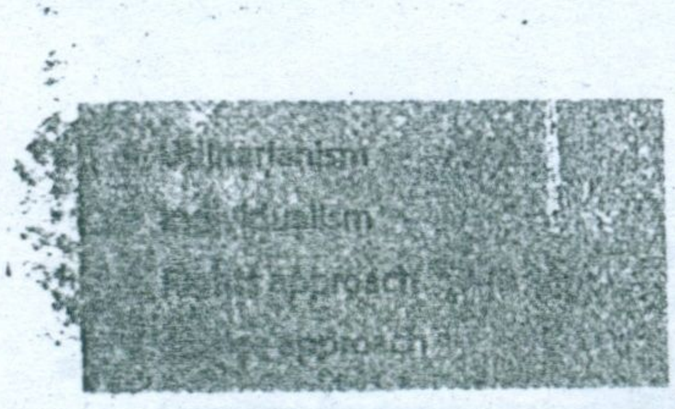


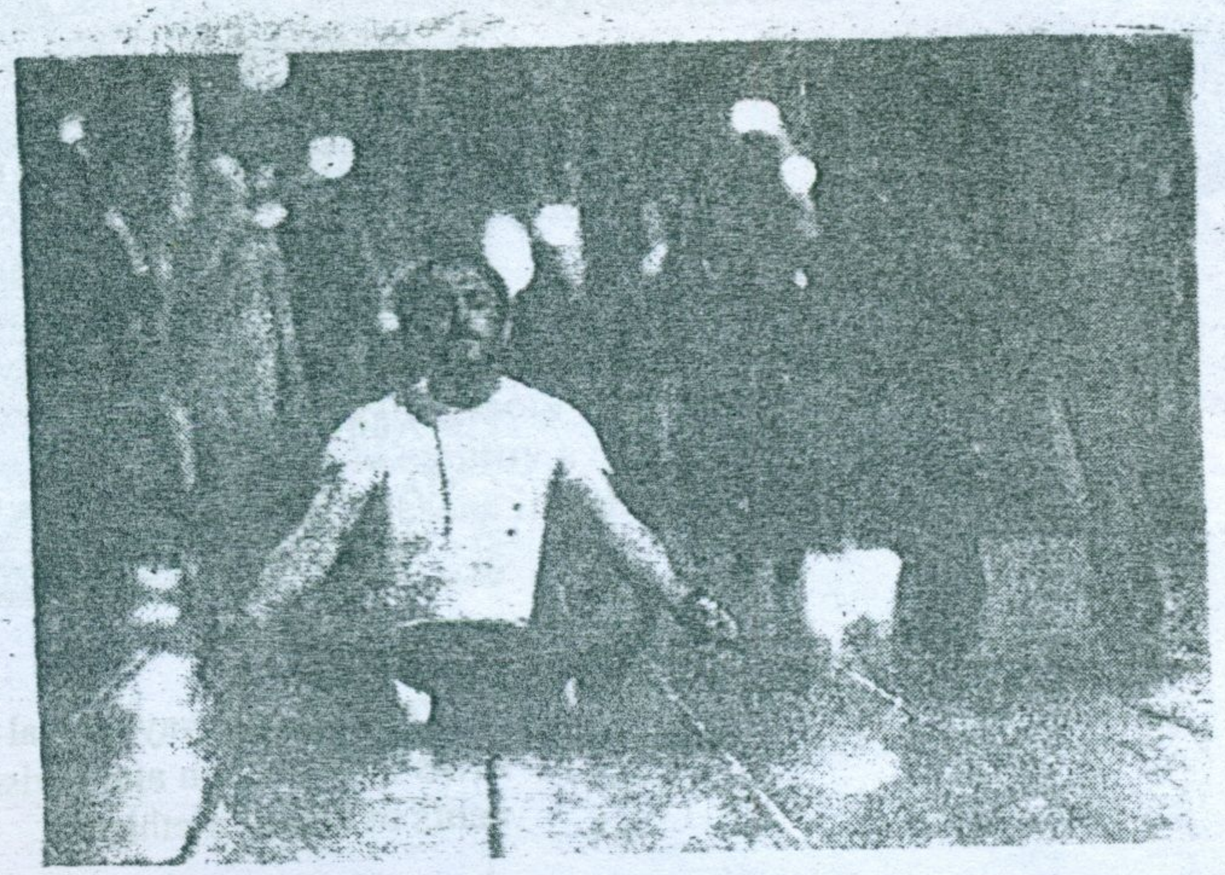
FIGURE 10
Ethical frameworks

to privacy versus freedom of speech arises when the issue is a job reference. Someone who has been fired for being incompetent, unreliable, or unethical may wish to keep that information confidential. Freedom of speech, however, should protect the rights of a former employer who simply tells the truth about why the person was terminated. As an ethical framework, the balancing act is present in defining what rights apply to a situation and which rights take precedent.

The **justice approach** is a method of decision making based on treating all people fairly and consistently. *Distributive justice* concentrates on the fairness of rewards, punishments, and outcomes. *Procedural justice* focuses on fair and consistent application of rules and protocols.

The justice approach suggests that when someone is hurt by another's actions, as an individual or collectively, there should be consequences. These consequences are supposed to punish the perpetrator for the misdeeds and serve as a deterrent to others. Also, when one's actions help others or lead to a greater good, the consequences should be in the form of a reward. In both circumstances (harm or good), the methods by which rewards are granted or negative sanctions are imposed should be based on an impartial, reasonable, and constant program of judgment and justice.

One problem with the justice approach is that what one person considers a proper reward or punishment may not seem fair to another. Many people believe that capital punishment is a just outcome for some crimes. Others believe it is never justified. The same holds true regarding those who make the *judgments*. What may seem like a fair procedure to one could appear to be totally biased to another.



.shock/Fotolia

▲ The rights approach is based on the belief that each person has the fundamental rights that should be protected.

Ethics Programs

Various individuals and groups have responded to the need for a more ethical environment by creating ethics training programs, codes of ethics, and ethics consulting systems. These attempts are designed to assist individual employees, managers or supervisors, and others within a company facing ethical challenges or dilemmas.

ETHICS TRAINING PROGRAMS

Ethics training can take place at several points. Early moral training occurs in many families as part of growing up, both in secular settings and in religious organizations. Those attending college receive further instruction. The Association to Advance Collegiate Schools of Business (AACSB), a major accrediting body for schools of business, places a strong emphasis on ethics instruction for over a decade.

Many corporations now add ethics topics into new-employee training programs as well as manager training systems. Some are self-created; others are developed in conjunction with professional organizations and nearby colleges and universities.

CODES OF ETHICS

Codes of ethics are created in two ways. The first appears within professional organizations. In marketing, two key organizations are the American Marketing Association (AMA) and the American Academy of Advertising (AAA). The AMA code of ethics may be found on the organization's Web site (www.marketingpower.com).

FIGURE 11
Components of codes of ethics

- The purpose of the code, including (1) regulation of behaviour and (2) inspiration to employees.
- A statement of aspirations often included in a preamble that outlines the ideals a company aspires to for its employees. The statement should include the values and principles of the organization.
- A list of principles.
- A list of rules, if needed.
- A statement regarding how the code was created.
- How the code will be implemented.
- How the code will be publicized internally to employees.
- How the code will be publicized externally to constituents and publics.
- How the code will be embraced.
- A statement regarding how and when the code will be revised.
- Most of the time, values, principles, and rules are listed in order of importance.

The second way ethical codes are developed is within business organizations. Many firms have written and revised ethical codes. Figure 11 displays some common components of codes of ethics.

ETHICS CONSULTING SYSTEMS

Numerous individuals and organizations are willing to provide counsel regarding ethical dilemmas. Some employ "ethics hotlines" through which a concerned employee can make contact to discuss an ethics problem. The services offered by such organizations vary. Some provide additional instruction, whereas others offer ethical consultations designed to build in-house ethics advisors as well as formulate codes of ethics.

Ethics and social responsibility concerns all boil down to the actions and decisions made by individuals and groups. Any person entering the fields of marketing and advertising should carefully consider what he or she considers to be acceptable and unacceptable acts prior to taking a position as well as while working within any role. The term *whistle-blower* describes an individual who is willing to go public with charges about an organization doing something that is illegal or unethical. Making the choice to be a whistle-blower is difficult; it can cause a career setback and make the individual vulnerable to lawsuits and other retaliatory actions. Failure to take action is also a choice. One's conscience and belief system provide the ultimate guides as to when and how to respond to moral issues.

International Implications

OBJECTIVE
What international issues influence the discussion of legal and ethical marketing activities?

Each individual country has its own set of laws regarding what is legal and what is not in the areas of marketing, promotions, and advertising. The role of the marketing department is to make sure these laws and regulations are clearly understood. The company should make every effort to comply with them. For instance, in China it is important to remember the Communist Party is always in charge. Censorship rules are vague, but enforced by the Communist Party. Rules governing the Internet are also vague, but again can be censored and enforced by the Communist Party. Finally, trademarks belong to the first entity that registers it, not the first person or company that uses it. While probusiness, China creates ethical and legal challenges for U.S. companies.

Legal systems vary. In the United States and many Western countries, *common law* is based on local customs, traditions, and precedents. Legal history, previous cases, and national customs serve as guides, and judges typically have more discretion in making legal decisions.

Civil law, which is present in many European countries, is based on a broad set of legal principles, and decisions are made based on legal codes that have been written over time. This gives judges less flexibility.

Theocratic law is based on religious teachings. The most common form of theocratic law, Islamic law, is based on the *Koran* and *Sunnah*. In many Islamic countries, transactions are regulated in different ways. For instance, charging interest is not permitted in the Islamic system.

Moral reasoning follows a similar pattern in international marketing. One cannot assume that a given system of ethics and morals is completely acceptable in another country. For example, views of the roles of men and women in society vary widely. Any marketing program with an international outreach should employ a cultural assimilator to help individuals understand ethical principles present in other nations.

MyMarketingLab

Go to mymktlab.com to complete the problems marked with this icon.



SUMMARY

To enforce fair standards in the areas of advertising and marketing communications, a number of governmental agencies are ready to take action when needed. These include the Federal Trade Commission, the Food and Drug Administration, the Federal Communications Commission, and others. Each tries to keep unfair marketing activities from taking place.

The primary agency regulating marketing communications, the FTC, makes special efforts to stop instances of unfair or deceptive practices. In conjunction with the courts, the FTC and other governmental agencies regulate the majority of companies and industries in the United States. The FTC regulates cases of fraudulent practices targeted at individual consumers as well as conflicts between businesses. Through the use of consent orders, administrative complaints, cease and desist orders, and full commission hearings, the FTC is able to make its findings and rulings known to the parties concerned. Court actions and corrective advertising programs are utilized in more severe cases. Trade regulation rulings apply when an entire industry is guilty of an infraction.

Ethics and morals are key principles that can be used to guide a person's activities in the world of commerce. Morals are beliefs or principles that individuals hold concerning what is right and what is wrong. Ethics are moral principles that serve as guidelines for both individuals and organizations. Marketing and marketing communications activities are affected by ethical and moral concerns.

Some of the more common complaints about advertising include issues of materialism and overconsumption. Also, there are criticisms that advertising perpetuates stereotypes, features unsafe products, sends out offensive messages, is deceptive, and unfairly targets children. Each o these issues requires consideration by anyone entering th profession.

Marketing programs are also subject to ethical con cerns. Brand infringement, questionable medical marketin and advertising programs, business-to-business tactics, an Internet marketing programs have all come under scrutin Responses to these criticisms are the responsibility of to management, the marketing department, and those assoc ated with public relations.

A number of ethical frameworks and guidelines a vailable. Those in the field of marketing may be guid by concepts regarding social responsibility. Also, et ics programs consisting of ethics training, codes of ethic and ethics consulting systems a e available to those faci dilemmas or wishing to pose questions.

The issues of legality and morality are present in t international arena as well. Each is complicated by diff ent bodies of law and views of ethics in various natio Companies seeking to expand internationally should aware of these differences in order to find ways to resp to them.

Federal Trade Commission (FTC) A federal agency that presides over marketing communications.

puffery When takes place when a firm makes an exaggerated claim about its products or services without making an overt attempt to deceive or mislead.

substantiation Firms must be able to prove or back up any claims made in their marketing communications.

consent order A directive issued when the FTC believes a violation has occurred.

administrative complaint A formal proceeding similar to a court trial held before an administrative law judge regarding a charge filed by the FTC.

corrective advertisements Ads that bring consumers back to a neutral state, so consumers once again hold beliefs they had prior to being exposed to a false or misleading advertisement.

trade regulation ruling Findings that implicate an entire industry in a case of unfair or deceptive practices.

morals Beliefs or principles that individuals hold concerning what is right and what is wrong.

ethics Moral principles that serve as guidelines for both individuals and organizations.

brand infringement Occurs when a company creates a brand name that closely resembles a popular or successful brand.

ambush marketing A brand's attempt to associate itself with a team or event without buying the rights to do so.

direct ambush marketing When a firm intentionally designs advertising or marketing to capitalize on a major sporting event without becoming a sponsor.

indirect ambush marketing When a firm suggests or hints that it is associated with a sporting event when it is not.

allusion ambushing When a firm creates an impression that it is a sponsor, when it is not.

distractive ambushing When a firm designs a promotion or event near a major sporting event without sponsoring the event.

saturation ambushing When a firm increases advertising and marketing during a major event without mentioning or sponsoring the event.

incidental ambushing A brand is associated with an event without any intentional or indirect effort on the part of the company.

stealth marketing A tactic in which consumers are enticed to look at a product through a personal contact without them realizing that the person making the pitch is being paid or compensated.

hedonism Maximizing pleasure and minimizing pain.

homeostasis The natural craving for balance.

law Governmental guidelines for what is right and wrong as well as what is acceptable and what is not within a geographic area.

religions Belief systems.

utilitarianism A means of making decisions based on what is the greatest good for the greatest number of people.

individualism The degree to which society values personal goals, personal autonomy, privacy over group loyalty, commitments to group norms, involvements in collective activities, social cohesiveness, and intense socialization.

rights approach A means of making decisions based on the belief that each person has fundamental rights that should be respected and protected.

justice approach A method of decision making based on treating all people fairly and consistently.

1. Name the governmental agencies that oversee marketing programs.
2. What role did the Wheeler–Lea Amendment play in regulating advertising practices?
3. When does an ad or message become false or misleading?
4. What is puffery? When is puffery legal?
5. What does substantiation mean? How does a company know that the substantiation test has been passed?
6. What four groups can trigger an investigation by the FTC?
7. What are the steps of the process when the FTC investigates a claim of false or misleading advertising?
8. What is a consent order?
9. What is an administrative complaint?
10. What is the purpose of a corrective advertisement?
11. What is a trade regulation ruling? How does it differ from other Federal Trade Commission rulings?
12. What is the relationship between the Council of Better Business Bureaus and the National Advertising Division?
13. What is the primary function of the National Advertising Review Board?
14. How does the Children's Advertising Review Unit operate?
15. Define *ethics* and *morals*.
16. Identify the types of ethical complaints that are raised regarding advertising.

17. What is brand infringement?
18. What types of ethical issues have been raised regarding medical marketing and advertising?
19. Describe the ethical issues associated with Internet marketing.
20. Describe all of the forms of ambush marketing.
21. What is stealth marketing? How does it create an ethics debate?
22. Describe four ethical frameworks noted in this chapter.
23. Name the three types of ethics programs that can be used to help marketing professionals cope with moral challenges.

DISCUSSION QUESTIONS

1. In labeling of food products, companies walk a fine line between promoting the product and truth in content. Phrases such as "low sodium," "fat free," "no sugar added," and "light" may give the impression that a food is healthful, but not reveal the entire truth. How often do you read package labels and make purchases based on their content? On your next trip to the grocery store, examine various labels that have one of the words identified earlier in this question and compare them to other brands. Do those brands actually contain less than competing brands?
2. Reread the section "Deception Versus Puffery." Find three advertisements that you think are examples of either deception or puffery. How difficult is it to differentiate between the two? When does an ad cease to be puffery and become deceptive?
3. One of the industries closely watched by the FTC is the weight-loss industry. Find three advertisements from magazines, newspapers, or television that deal with weight loss. What claims were made? Do you believe the claims are truthful and legitimate? How do you, as a consumer, distinguish between what is truthful and what is deceptive?
4. Advertising directed toward children remains a hot topic among parents and educators. Many feel that advertising unfairly targets children and creates materialistic desires. By the time a child is 3 years old she already knows many brands of products, such as McDonald's. What is your opinion of advertising to children? Is the current regulation enough, or should it be more stringent?
5. One of the criticisms of advertising is that it causes people to buy more than they can afford. Each year a large number of people in United States declare bankruptcy, often because they have overspent. Do you agree that advertising causes people to buy more than they can afford, or is advertising just responding to the materialistic desire of individuals? Defend your response.
6. Advertising does increase the cost of goods and services, but a common defense is that advertising provides people with knowledge about availability of products, which allows consumers to make more intelligent decisions. Do you think this is a valid defense of advertising? Why or why not? What other defense could you offer to support why advertising is important?
7. Think about advertisements you have seen or heard recently and identify one that you believe is offensive. Why was it offensive? Why do you think the advertiser ran the ad if it is offensive? Do you think offensive ads can be effective? Why or why not?
8. What is your opinion of alcohol and tobacco advertising? Should alcohol and tobacco companies have the same freedom to advertise as other product manufacturers? Do you think it is a danger for children to see alcohol or tobacco ads? Does it influence their desire to use these products?
9. Using sex to sell products is another area that many consumers find offensive. Locate two print ads or ads on television that are highly sexual in nature, one that you consider offensive and one that you consider is appropriate. What makes the difference? Are there too many ads that use sexual themes?
10. You undoubtedly have seen advertisements by attorneys and medical professionals. Discuss your opinion about these advertisements? Do you think ads by attorneys just increase the number of lawsuits and bankruptcies? Why do medical professionals such as doctors and dentists advertise? Does it affect your opinion of their professionalism? Why or why not?
11. The textbook identifies four ethical frameworks. Although each framework has its merits, which one do you lean toward or believe in the most? Why? Discuss all four frameworks in terms of your personal philosophy of life.
12. Do you believe that ethics can be learned, or is it something an individual has internally? What can companies do, if anything, to make their employees more ethical? Why has America seen so much corruption in the corporate world? What steps would you suggest to curb this corruption?

Integrated Learning Exercises

1. The Federal Trade Commission (FTC) is the primary federal agency that oversees advertising and other marketing-related communications. Access its Web site at www.ftc.gov. What type of information appears on the Web site for consumers? For businesses? Pick one of the headlines and write a brief report about the article's contents.
2. The FTC's Bureau of Consumer Protection works for the consumer to prevent fraud, deception, and unfair business practices in the marketplace. Access the FTC's Web site at www.ftc.gov and go to the Consumer Protection section of the site. What information is available? Find an article or recent event from the Web site and write a short report. How does the FTC's Bureau of Consumer Protection safeguard consumers?
3. Access the FTC's Web site at www.ftc.gov. Access each of the following components of the Web site. What type of information does each section contain? Why is it important?
   a. Competition
   b. Economics
   c. Policy
4. One of the primary functions of the FTC is to investigate possible false and deceptive advertising and marketing practices. Access the FTC Web site at www.ftc.gov. Go to the "Actions" section of the site. Read through the list of recent actions. Find two that are interesting. Review the cases and write a brief report on each case. What were the results of the FTC investigation?
5. Access the FTC Web site at www.ftc.gov. Go to the "News" section of the Web site. Read through the list of recent actions. Find two that are interesting. Review the cases and write a brief report on each case. What were the results of the FTC investigation?
6. The Council of Better Business Bureaus is an important industry organization for businesses as well as consumers. Access the Web site at www.bbb.org. What types of information are available on the Web site? Go to the "Consumer" section of the Web site. How can the BBB assist consumers? What types of information is available to consumers?
7. Access the Web site of the Council of Better Business Bureaus at www.bbb.org. Go to the "Business" section of the Web site. What types of information are available? Briefly describe each component of the "Business" section of the Web site and how it is beneficial to businesses.
8. The National Advertising Division (NAD) of the Council of Better Business Bureaus can be found at www.nadreview.org. Access the site. Look through the recent cases the NAD has investigated. Find two of interest to you. Write a report about each case, discussing the issues and the findings of the NAD.
9. The Children's Advertising Review Unit (CARU) of the Better Business Bureau can be found at www.caru.org. Access the site. Look through the recent cases the CARU has investigated. Find two of interest to you. Write a report about each case discussing the issues and the findings of the CARU.
10. Protecting the privacy of children is an important function of the Children's Advertising Review Unit (CARU). Access the CARU Web site at www.caru.org. Go to the "Privacy Program" component of the site. Discuss the information that is available on the site. How does this protect children? How is it beneficial to parents?

Student Project

CREATIVE CORNER

Solidax ADX was developed in the United States in 2005 and was recently rated by the Weight Loss Institute to be the best weight-loss product on the market. Solidax ADX is based on synephrine, chromium picolinate, and pyrovate and is designed to suppress appetite and increase metabolism and calorie expenditure. Unlike other diet pills, it does not have negative central nervous effects. The ingredients found in Solidax have been proven to be effective in controlled, laboratory-based human weight-loss studies.[26]

Concerned about recent FTC investigations of false and deceptive advertising of competing brands, the makers of Solidax ADX want a print ad that will be effective but not subject to FTC investigation. Based on the information provided, design a print advertisement for Solidax ADX.

CASE 1 A SALTY SITUATION

How much sodium should an adult consume per day? According to the National Research Council of the National Academy of Sciences, 1,200 to 1,500 milligrams per day is sufficient. The body needs sodium for a number of key functions, including regulation of blood pressure and blood volume as well as muscle and nerve functioning. A tablespoon of table salt, which is 40 percent sodium, contains 2,300 milligrams of sodium.

Many health care professionals are concerned with the amount of sodium in food products, especially processed foods. Overconsumption of sodium is related to numerous health problems, including high blood pressure, which can lead to strokes and heart attacks. Further, excess sodium is connected to fluid build-up, which aggravates cirrhosis and kidney problems, and can contribute to congestive heart failure.

These concerns have been well known for many years, yet the food industry has been slow to respond. Why? Essentially, there are two answers. First, salt gives food flavor. Everything from meats, such as bacon, sausage, and ham, to canned soups and vegetables use salt to add taste. A serving of Van Camp's Baked Beans contains over 390 milligrams of sodium (a 15-ounce can contains more than three servings of sodium). Products such as Worcestershire sauce, soy sauce, and bouillon cubes also contain high levels of salt. Typical diet-food frozen dinners average between 510 and 590 milligrams per serving. Even cookies and cakes contain surprisingly large amounts of sodium.

The second reason for high sodium content is food preservation. Salt placed into food draws away moisture so that bacteria do not grow. Salt also kills existing bacteria that might cause spoilage. At one time, salting was one of the only methods available to preserve food. Currently, many other methods are available, which leads back to the taste issue.

Fast-food companies and other restaurants are notorious for using high levels of sodium in the items sold. For example, a McDonald's Big Mac contains 1,040 milligrams of sodium (the number rises when a soft drink and fries are added). A Burger King Whopper contains nearly 1,500 milligrams.

The net result is that consumers, unless they are very careful, typically consume as much as 3,000 milligrams of sodium per day. The negative health effects of sodium overconsumption are well documented. Yet Congress and the Food and Drug Administration do little more than require the amount of sodium contained in products to be reported, with no attempts to limit amounts.

Some companies have begun to respond. In 2008, Lays launched a new line of products with the label "Pinch of Salt." A 1-ounce serving of these potato chips contains 75 milligrams of sodium (a bag is typically 12 ounces). In contrast, a 1-ounce serving of regular Lays chips contains 270 milligrams of sodium.

In 2006, Campbell's began selling soup flavored with sea salt, which reduces the sodium content. Campbell's is also looking for ways to reduce sodium in V8 drinks. Numerous companies specialize in low-sodium foods.



Monkey Business/Fotolia

▲ Salt is a major contributor to high blood pressure.

The sodium content of food products provides an example of the intersection between what is legal and what is ethical. Time will tell if various organizations respond in ways that benefit profits or society, and whether the government will respond with legislation.[27]

1. What are the ethical issues in this case?
2. What ethical frameworks should guide companies as they consider sodium content in foods?
3. What, if any, are the potential legal aspects of sodium content in foods? Explain your answer.
4. Compare sodium content in food to nicotine content in cigarettes and alcohol content in beer. What are the ethical and legal similarities? Differences?
5. What role should advertising and marketing communications play in explain sodium content levels to consumers?

CASE 2

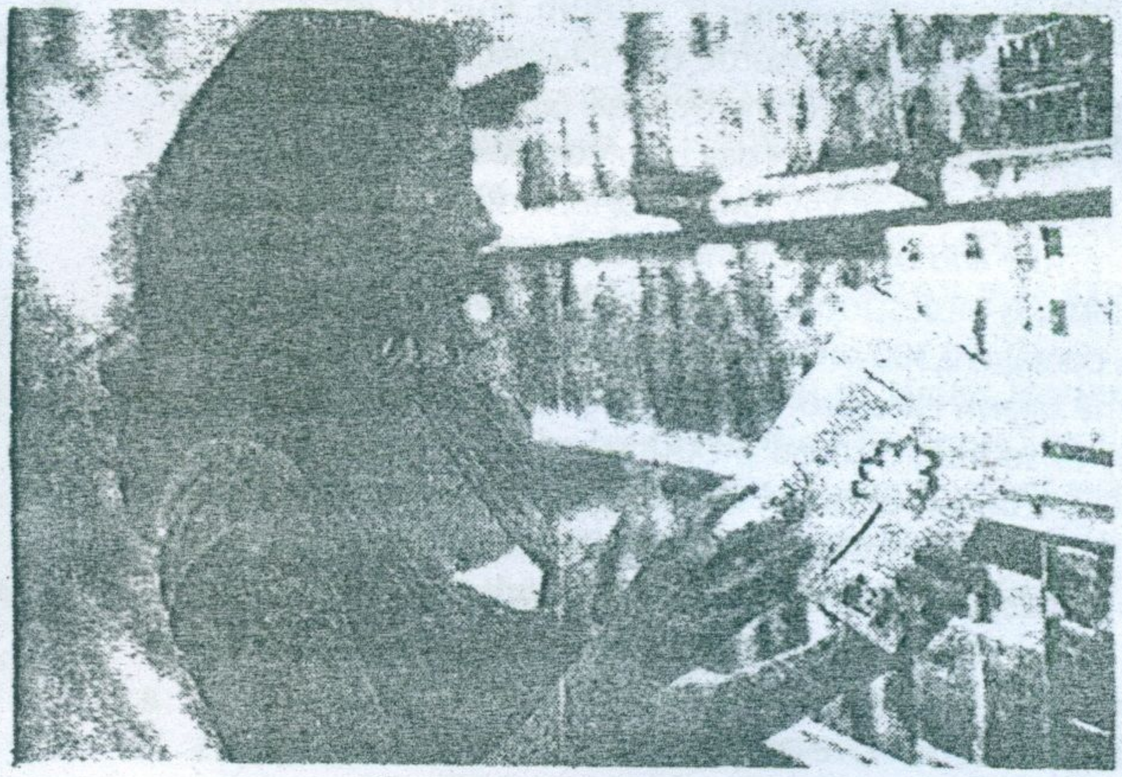
ASSESSING SMART CHOICES

One continuing trend in the United States is an interest in the content of food products. Many consumers want to buy foods that promote good health and nutrition. One recent effort that generated a substantial amount of controversy was the Smart Choices Program, which was created by the nonprofit American Society of Nutrition. Ten large food manufacturers enrolled in the program, including Kellogg's and Kraft.

Under the system, a food product had to meet a specific set of guidelines to qualify for the Smart Choices endorsement. The system was based on the federal Dietary Guidelines for Americans developed by a conglomerate of food industry leaders, academics, nutritionists, and public interest organizations. Accepted products received permission to print a front-of-package or front-of-box label, in the form of a large green checkmark, with the phrase "Smart Choices Program and Guiding Food Choices" underneath. The logo clearly suggested an endorsement of a nutritional program, and many critics believed consumers would interpret the label as carrying a governmental stamp of approval.

Any company wishing to place the Smart Choices label and logo was required to pay up to $100,000 per year for the right to do so. Quickly, manufacturers of a series of foods, including sugary cereals, snacks, and sandwich spreads, paid the money. Among the products that featured the endorsement were Fruit Loops, Kid Cuisine Cheeseburgers, Teddy Grahams, and Kraft Macaroni and Cheese. And as one industry observed noted, the more products receiving the label, the greater the amount of money the American Society of Nutrition was able to collect from a food producer.

It did not take long for the reactions to grow strong. Following a *CBS Evening News* report and other exposures in various media, companies began to withdraw support for the Smart Choices Program logo. Charges were raised that conflicts of interest could not be avoided using the system as it had been implemented. The Food and Drug Administration (FDA) issued a Guidance for Industry letter in October of 2010. The agency announced that it would analyze food labels with the intent of identifying any that might be misleading. The FDA also announced it would develop a universal front-of-packaging labeling system that all food manufacturers must follow. The FDA did not name the Smart Choices Program specifically in the letter, but the program subsequently decided to suspend the use of the logo.



Monkey Business/Fotolia

▲ The Smart Choice endorsement suggests a nutritional healthy product.

The Friedman Sprout, which is the official student newspaper for the Friedman School for Nutrition Science and Policy, published an article wondering if the school's reputation had been damaged by the involvement of the school's dean with The American Society of Nutrition.

The American Society of Nutrition continues operations. Its chief officer remains with the organization. The organization has announced intentions to follow new FDA guidelines for labels on packages and to become re-involved with the food manufacturers that had originally participated in the program.[28]

1. Why would the FDA become involved in this situation? What legal standard might have been violated?
2. What actions could the FDA have taken beyond writing a Guidance for Industry letter?
3. Do you believe the American Society of Nutrition violated any ethical standards? If so, which ones?
4. Do you believe the food manufacturers that sold sugary cereals and junk food carrying the Smart Choices Program label violated any ethical standards? If so, which ones? Explain.
5. Should the food manufacturers continue associating with the American Society of Nutrition? Why or why not?
6. Do you believe the dean of the School for Nutrition Science and Policy violated any ethical standards? If so, which ones? Explain.

MyMarketingLab

Go to **mymktlab.com** for Auto-graded writing questions as well as the following Assisted-graded writing questions:.

1. Do you believe that ethics can be learned, or is it something an individual has internally? What can companies do, if anything, to make their employees more ethical? Why has America seen so much corruption in the corporate world? What steps would you suggest to curb this corruption?
2. Protecting the privacy of children is an important function of the Children's Advertising Review Unit (CARU). Access the CARU Web site at www.caru.org. Go to the "Privacy Program" component of the site. Discuss the information that is available on the site. How does this protect children? How is it beneficial to parents?
3. Mymktlab Only—comprehensive writing assignment for this chapter.

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