

**THE ETHICAL CONCERNS OF FALSE  
ADVERTISEMENT**

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**ABSTRACT**

Just as the media of social communication themselves have enormous influence everywhere, so advertising, using media as its vehicle, is a pervasive, powerful force shaping attitudes and behavior in today's world. The purpose of this study is to point out some different measures used in false advertising and to note ethical and moral problems that advertising can and does raise and, finally, to suggest certain steps for the consideration of those professionally involved in advertising, as well as for others in the private sector.

## INTRODUCTION

Advertising, generally speaking, is the promotion of goods, services, companies and ideas, usually performed by an identified sponsor. Marketers see advertising as part of an overall promotional strategy. Other components of the promotional mix include publicity, public relations, personal selling, and sales promotion (Wikipedia).

False advertising is an act of deliberately misleading a potential client about a product, service or a company in general by reporting false or misrepresenting information or data in advertising or other promotional materials. False advertising is a type of fraud. False advertising is often a crime. In some countries advertising practices (including "truth in advertising") are regulated by a government authority (FTC in the USA), in others the advertising industry is self-regulated and professional associations combat false advertising. To decrease their legal liability for false advertising, many companies cover their tracks using small print (Wikipedia).

## LITERATURE REVIEW

In ancient times the most common form of advertising was by word of mouth, however, commercial messages and political campaign displays have been found in the ruins of Pompeii. Egyptians used papyrus to create sales messages and wall posters, while lost-and-found advertising on papyrus was common in Greece and Rome. Wall or rock painting for commercial advertising is another manifestation of an ancient media advertising form, which is present to this day in many parts of Asia, Africa, and South America. For instance, the tradition of wall paintings can be traced back to Indian rock-art paintings that goes back to 4000 BC. As printing developed in the 15th and 16th century, advertising expanded to include handbills. In the 17th century advertisements started to appear in weekly newspapers in England. Today, advertising continues to evolve with such innovations as "guerrilla" promotions, which involve unusual approaches such as staged encounters in public places, giveaways of products such as cars that are covered with brand messages, and interactive advertising where the viewer can respond to become part of the advertising message. This reflects an increasing trend

of interactive and "embedded" ads, such as via product placement, having consumers vote through text messages, and various innovations utilizing social networking sites. Commercial advertising media can include wall paintings, billboards, street furniture components, printed flyers, radio, cinema and television ads, web banners, web popups, skywriting, bus stop benches, magazines, newspapers, town criers, sides of buses, taxicab doors and roof mounts, musical stage shows, subway platforms and trains, elastic bands on disposable diapers, stickers on apples in supermarkets, the opening section of streaming audio and video, and the backs of event tickets and supermarket receipts. Any place an "identified" sponsor pays to deliver their message through a medium is advertising. Covert advertising embedded in other entertainment media is known as product placement.

### ADVERTISING REGULATION

There have been increasing efforts to protect the public interest by regulating the content and the reach of advertising. Some examples are the ban on television tobacco advertising imposed in many countries, and the total ban on advertising to children under twelve imposed by the Swedish government in 1991. Though that regulation continues in effect for broadcasts originating within the country, it has been weakened by the European Court of Justice, which has found that Sweden was obliged to accept whatever programming was targeted at it from neighboring countries or via satellite. Two conflicting principles are involved in advertising law. The first being, the First Amendment, which is part of the U.S. Constitution and grants us the right of free speech, protects all forms of communication, including advertising (referred to by lawyers as "commercial speech"). And the second being, the U.S. Constitution gives the federal government the power to regulate interstate commerce. Most state constitutions similarly give state governments the power to regulate commerce conducted solely within that state.

In exercising its power over interstate commerce, the Congress has enacted two statutes that have the greatest effect on advertising. These are the Federal Trade Commission (FTC) Act and the Lanham Act. The FTC Act states that false advertising is

a form of unfair and deceptive commerce. The term "false advertising" has been broadly construed. As you might expect, the term includes advertisements that are in fact untrue. However, the term false advertising extends well beyond untrue advertisements. It also includes advertisements that make representations that the advertiser has no reasonable basis to believe, even if the representations turn out to be true. An example would be an advertisement for a photocopier machine which stated that the machine used less toner than any comparable machine. The advertiser would have committed false advertising if it had no reasonable basis to believe the truth of this claim (such as through comparative tests), even if it turned out to be true. The FTC Act gives the FTC broad authority to regulate advertising. Under this broad mandate, the FTC has issued regulations barring advertisements that could be misleading even if they are true. A famous example involves Anacin, a brand of aspirin. The maker of Anacin ran ads claiming that clinical tests showed that Anacin delivered the same headache relief as the leading pain relief prescription. The ad did not mention that aspirin itself is the leading pain medicine. The FTC determined that the ad was misleading. The ad implied that Anacin was more effective than aspirin, when in fact, Anacin is really just aspirin.

To establish a violation under the Lanham Act, consumers and competitors must prove the following: (1) the advertiser made false statements of fact about its product; (2) the false advertisements actually deceived or had the capacity to deceive a substantial segment of the target population; (3) the deception was material; (4) the falsely advertised product was sold in interstate commerce; and (5) the party bringing the lawsuit (known as the "plaintiff") was injured as a result of the deception. Actual loss is not required to show an injury. All that is needed is a reasonable basis for the belief that the plaintiff is likely to be damaged as a result of the advertising. An example of such damage would include ads that deceive consumers who are the target population of both the advertiser and the plaintiff. The penalties for a Lanham Act violation include the plaintiff's lost profits, the additional profits to the advertiser resulting from the deceptive ad, treble damages, and attorneys' fees.

**Some different methods used in false advertising**Going out of business/bankruptcy sales

By utilizing advertisement with titles such as "Going out of business", "Closing store", "Liquidation sale" or "Bankruptcy sale" a message of urgency and "dumped" prices is conveyed - where in reality the business has no plans on closing its store or going out of business. Some cities in the U.S. now require permits for these types of advertisements to combat the false advertising.

False price comparison

By comparing a sale price to a regular price for the same product, advertisers can inflate the "regular" price in order to create the impression that the sale price is very low. The intent is to mislead consumers into thinking that they are saving money by purchasing the "on-sale" item or service. Some clothing stores in particular have essentially every item on sale, and some grocery stores advertise "e savings" over their (unreasonable) regular prices for those using loyalty cards.

Misrepresentations

This is utilizing words such as descriptive terms or location terms to increase the perceived value of a product. An example would be advertising "Maine Lobsters" when in fact the lobster is from the Pacific Ocean.

Buy one, get two free

This type of false advertising concludes that more is better. By increasing the price of a fire cracker, for example, to five times its original marginal profit-based price, a 5-for-1 "special" sale is offered while still keeping the same profit line. In other cases the free product is of lower quality than the originally purchased item.

### Bait and switch

An offering of a service or product at a very low price with no intention to sell said service or product as advertised. This is accomplished by lowering standards on the advertised product -- such as guarantees, credit terms, quality either verbally or actual degrade in standards. Another method is to offer a "limited quantity" deal. Once the consumer is lead up to this point, sales personnel will try and coax a consumer to purchase the more expensive, real product.

### False labeling

The use of labels with statements concerning quality, identity, quantity, manufacture or origin that are misrepresented or false. Another method of false labeling is hiding or destroying a label indicating the product's origin (e.g. "Made in Taiwan" or "Made in Botswana").

### False Credentials

An advertiser may have a false expert testify that a product is genuine and effective, when in fact it is not. An example of this practice is having actors dressed as doctors or wearing lab coats - lulling potential buyers into believing that the product is backed by the faith of knowledgeable experts. Another example of this is scripted witness testimony. An actor is hired to claim that they were satisfied by a product or service, when in fact they never used it. A buyer may interpret the statement to mean that if the other 'customer' was satisfied, then they will be too.

### Real Estate Fraud

Although creative wording and other creative footwork can make a tenement sound like a charming house, there are some points that can be considered real estate fraud. Listing a new condo building that has been open for 4 years as "brand new" is fraudulent and in some states in the United States can be grounds for ethics charges from the realty board or state regulatory board.

### ETHICAL PERSPECTIVE

Consider the Anacin claim that its product contained more of "the pain reliever doctors recommend most." This pain reliever is none other than plain old aspirin, and generic brands will do quite nicely (and cost less). This claim is not exactly false, but it is definitely misleading. One should note that both false and misleading ads only work insofar as consumers are uninformed. The same goes for political advertising and other forms of "rhetoric." But is it the job of advertisers to educate the public? Or is it acceptable for them to take advantage of the vulnerabilities of an uneducated or uninformed public? How much knowledge may the public be expected to have? One thinks of the age-old saying: "Let the buyer beware." *Caveat emptor* (in Latin). Of course, to the extent that consumers are intelligent and informed, advertising becomes superfluous. Such consumers know what they want or need, and they know the difference between reality and hype. The point of advertising is to create wants that did not exist before and to influence choices in the direction of "advertised brands." Everybody buys cereal, but do we really need "Cocoa Puffs"? Consumers don't have to be reminded to purchase food, clothing, and shelter.

Most "deceptive" advertising falls somewhere between "innocent truth" and "outright lie." It is obvious, that outright lies are morally wrong. The issue is: When do claims about one's product or services become deceptive or misleading? What criteria can we use? Key to this discussion is the "intent" of the advertiser: Did the advertiser intentionally or deliberately deceive. Such intentional manipulation aims at getting the consumer to do things he or she would not normally do and might not be in his or her best interest (might even cause harm). Manipulation is nothing other than treating people as mere means, rather than as ends in themselves. One could argue, in fact, that even the term "consumers" implies that persons are directed to ends outside of themselves.

There is an "imperative requirement" that advertising respect the human person, his right duty to make a responsible choice, his interior freedom; all these goods would be violated if man's lower inclinations were to be exploited, or his capacity to reflect and decide compromised. These abuses are not merely hypothetical possibilities but realities

in much advertising today. Advertising can violate the dignity of the human person both through its content -- what is advertised, the manner in which it is advertised -- and through the impact it seeks to make upon its audience. We have spoken already of such things as appeals to lust, vanity, envy and greed, and of techniques that manipulate and exploit human weakness. In such circumstances, advertisements readily become vehicles of a deformed outlook on life, on the family, on religion and on morality -- an outlook that does not respect the true dignity and destiny of the human person. This problem is especially acute where particularly vulnerable groups or classes of persons are concerned: children and young people, the elderly, the poor, the culturally disadvantaged. Much advertising directed at children apparently tries to exploit their credulity and suggestibility, in the hope that they will put pressure on their parents to buy products of no real benefit to them. Advertising like this offends against the dignity and rights of both children and parents; it intrudes upon the parent-child relationship and seeks to manipulate it to its own base ends. Also, some of the comparatively little advertising directed specifically to the elderly or culturally disadvantaged seems designed to play upon their fears so as to persuade them to allocate some of their limited resources to goods or services of dubious value.

### CONCLUSION

The indispensable guarantors of ethically correct behavior by the advertising industry are the well formed and responsible consciences of advertising professionals themselves: consciences sensitive to their duty not merely to serve the interests of those who commission and finance their work but also to respect and uphold the rights and interests of their audiences and to serve the common good. Many women and men professionally engaged in advertising do have sensitive consciences, high ethical standards and a strong sense of responsibility. But even for them external pressures -- from the clients who commission their work as well as from the competitive internal dynamics of their profession -- can create powerful inducements to unethical behavior. That underlines the need for external structures and systems to support and encourage responsible practice in advertising and to discourage the irresponsible.

Voluntary ethical codes are one such source of support. These already exist in a number of places. Welcome as they are, though, they are only as effective as the willingness of advertisers to comply strictly with them. It is up to the directors and managers of the media which carry advertising to make known to the public, to subscribe to and to apply the codes of professional ethics which already have been opportunely established so as to have the cooperation of the public in making these codes still better and in enforcing their observance. We emphasize the importance of public involvement. Representatives of the public should participate in the formulation, application and periodic updating of ethical codes. The public representatives should include ethicists and church people, as well as representatives of consumer groups. Individuals do well to organize themselves into such groups in order to protect their interests in relation to commercial interests.

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