CHAPTER 11

Advertising Controversial Products

Bans and Beliefs

The physically fit can enjoy their vices.

—Lord Percival

One reason that people purchase products and services is to complement and enhance their lifestyles. As we discussed earlier in this book, many of our purchase decisions are based on a combination of factors, including the images and messages presented in the advertising for the products and services, the price of the products and services, and our past experiences with the products and services or those of competitors. Most of our purchases are fairly uncontroversial and use uncontroversial advertising messages: You rarely hear a media outcry regarding advertising messages in peanut butter commercials, for example.

However, for certain products and services, the situation is somewhat more complex. There are several products and services that individuals and groups believe should not be available for purchase. Sometimes these people believe that products should not be available to the public at large (e.g., certain types of weapons). In other situations, people believe the products should not be available to certain segments of the consumer population (e.g., some believe birth control products should not be available to persons younger than 18).

A number of products tend to be questioned. Concerns with such products represent a range of issues regarding the products themselves, their target audiences, and the companies that produce them. Advertising is often attacked as a surrogate for the product and its producer. Individuals and groups often find that public demand will not permit a direct attack on the objects of their disfavor, and so they attack the ads that sell these products (Nicosia, 1974).

THE NATURE OF CONTROVERSIAL PRODUCTS

A range of products and services has been considered controversial in the past and may continue to be considered controversial, at least by certain segments of the population, in the future. We can further examine the nature of controversial products and services by grouping them into four broad categories: (a) products and services seen as a "rite of passage"; (b) sexually oriented products; (c) products that make blatantly excessive promises about results; and (d) products produced by companies with questionable production policies.

Rite-of-Passage Products

Many products are thought of as controversial because using them is akin to an individual's independence; that is, young people use the products so that they can be viewed as more adult. In addition, the products can represent a statement of individuals' striving for self-identity. Behaviors such as smoking cigarettes, drinking alcohol, and gambling are seen as part of the rite of passage from childhood to adulthood in our culture. Advertising messages tend to present these products as the means of initiation into the adult world, and the images associated with the products include courtship and staying up late. Therefore, individuals and groups that are concerned with children growing up too fast and facing adult problems too early are also likely to be concerned with advertising for these types of products. Many countries throughout the world ban advertising of these rite-of-passage products. Australia, for example, recently banned gambling advertising, and the United Kingdom banned advertising for online gaming sites.

Sexually Oriented Products

The category of sexually oriented products is in a way a subsegment of the rites of passage category. Many products associated with a rite of passage have either direct or indirect associations with sexuality. Products including birth control pills and devices and even feminine hygiene products are problematic for individuals who believe that private matters should be kept within families and that a public discussion of sexuality is inappropriate. For some of these individuals, advertising concerns are specifically related to concerns with sexual behavior among youth. Some believe that the act of advertising products that promote sexuality either directly or indirectly tends to mainstream the products and make them and the resultant behaviors socially acceptable. This becomes problematic to persons who believe the resultant behaviors, such as premarital and nonmonogamous sexual relations, are inappropriate and in some cases morally wrong.

Products That Make Blatantly Excessive Promises

A third category of controversial products includes those products that consistently mislead the public. As you learned in an earlier chapter of this book, the Federal Trade Commission (FTC) has the power to regulate national advertising that misleads consumers. However, two specific product categories—state lotteries and diet pills—have

consistently been questioned and criticized for their misleading tactics. You may not think that lotteries and diet pill advertising are similar, but in this case, they are.

Both products use advertising messages that focus directly on the end result of purchasing and using the product: either winning the lottery or losing weight. In such advertising, the messages suggest great results but are misleading because advertising messages rarely explain the poor odds of success (lottery ads in the state of Oregon, for example, do explain the poor odds in a voice-over spoken rapidly at the end of television ads). Such advertisements emphasize that purchasing the product is the "easy way out" over hard work and provide instant gratification over prudent investments of time and energy (e.g., saving money for long-term gain or committing to a long-term diet program for good health). Advertising messages suggest that luck is the only thing individuals need to win a lottery (Figures 11.1a and 11.1b) or that new scientific breakthroughs mean individuals no longer have to diet to lose weight ("State Governments and Lotteries,"

Figures 11.1a and 11.1b Ads promote state lotteries.

1999) (Figure 11.2). More importantly, any risks associated with purchasing and using the products (e.g., loss of finances or health) are rarely mentioned (Abelson, 1991).

State lotteries are exempt from the FTC truth-in-advertising standards because the advertisements are purchased by the individual states and do not run on a national basis. Restrictions and constraints on advertising messages for state lotteries vary by state: Some states require that the odds of winning must be displayed in the advertising, and in other states, advertising messages cannot induce people to play by using a message such as "go out and buy a ticket today" ("State Governments and Lotteries," 1999). Several states have few restrictions on the content of lottery advertising.

Diet drugs are regulated by the FTC and also by the Federal Drug Administration (FDA) (if they are considered over-the-counter drugs and not herbal remedies). Many diet drug advertisements are direct-response advertisements that attempt to generate sales based on a single exposure to the ad. Therefore, many diet drug ads will run in several publications for a brief period of time (e.g., they may run in several magazines with a June cover date). By the time the FTC has investigated the diet drug ads, the campaign would have completed its run and would have generated responses and sales from consumers. Therefore, the goal of the message (to sell products) is completed by the time the FTC can investigate and ask that the ads be stopped (Abelson, 1991). In 2007, the FTC levied huge fines against the manufacturers of four diet drugs: Xenadrine EFX, One A Day Weight Smart, CortiSlim, and TrimSpa. The companies were fined for making false claims without scientific support. Indeed, one company even had a scientifically based study that showed that a placebo worked better than the advertised drug for weight loss (FTC, 2007).

Company Philosophy

Associations with lifestyle choices are not the only reasons some individuals believe that advertising for certain products should be banned. Other products are controversial because of the overall company philosophy that may or may not be presented in an advertisement. For example, companies that produce products in Third World countries have labor practices that many consider questionable, and advertising and purchasing these companies' products appear to support and condone the companies' behaviors. Animal testing is a similar issue: Purchasing products by companies that use animal testing is seen as condoning this practice, which some see as unfair to animals. Another questionable production practice is that of genetically engineered foods: Many are concerned with biotechnology's role in producing the foods we consume and the long-term effects of such practices. Regardless of the practice, opponents and critics believe that banning the advertising of such products can negatively affect their purchase and possibly prohibit the success of the category itself.

TO BAN OR NOT TO BAN ADVERTISING OF CONTROVERSIAL CATEGORIES?

Individuals and groups support advertising bans of controversial product categories for several reasons. As mentioned in the previous section, banning advertising for controversial products may result in a decrease in the use (and possible abuse) of the specific product category. Banning advertising messages for controversial products, especially on television,

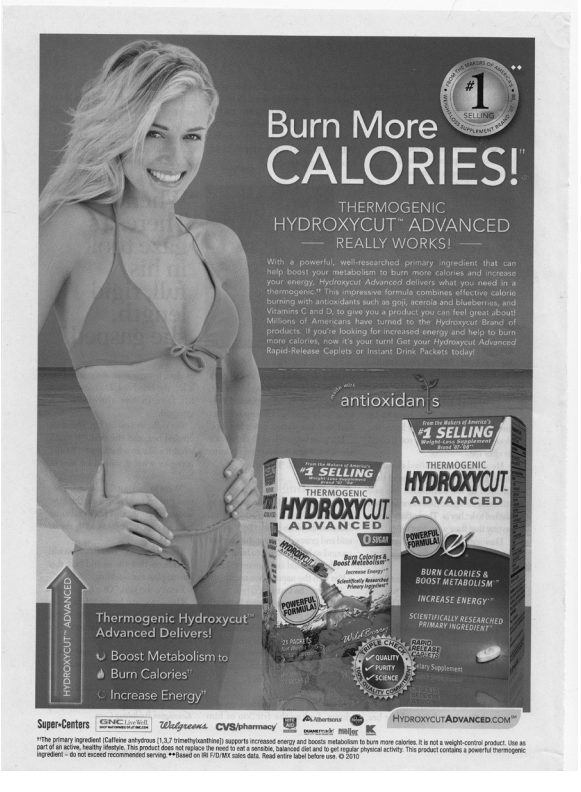
may protect youth in particular from an onslaught of advertising messages that may be problematic. Finally, banning advertising for controversial products will result in products being stigmatized in society, and some believe that there will be societal pressure to eliminate some controversial products from society as a whole.

However, banning advertising is a complex process, and there are numerous concerns with banning specific types of advertising from a range of groups. These concerns involve issues of freedom of speech, effectiveness of advertising bans, and government power in general.

Freedom of Speech

As we discussed in Chapter 4, the First Amendment provides protection for a wide range of commercial messages for products and services. Any type of ban on advertising that is proposed, then, is likely to come under the scrutiny of the legal system and of various industry groups in the United States. The American Advertising Federation (AAF) makes its policy in this matter clear. The AAF states that the "U.S. Supreme Court has affirmed that truthful commercial speech enjoys the free speech protections of the First Amendment. The government's right to ban a product does not give it the right to ban speech about the product" (AAF, 1999).

Figure 11.2 Diet pill ad promises that one can take pills and lose weight.



The Supreme Court tends to reject bans on advertising as unconstitutional when complaints are based on concerns with the products themselves and not with the messages. The courts have also recognized the important role consumer information plays in our society today. In 1993, for example, the Supreme Court refused to ban advertising messages about liquor because a consumer's interest in the free flow of information is more important to consumers than their interest in the day's most urgent political debates (Peck, 1993). A complete ban on some types of commercial speech would give the government an opportunity to censor nonmisleading speech about a legal product, leaving no other channels open to the product or service, and consumer choice could be compromised. If free speech is to be meaningful today, exceptions for any speech that some may believe is fraught with problems cannot be made (Peck, 1993). As outlined in Chapter 4, many countries around the world have free speech doctrines, and advertising bans are similarly challenging. In 2010, the Catholic Church in the Philippines called for the banning of condom ads and was met with challenges both in terms of freedom of speech in that country and in terms of health concerns regarding HIV/Aids ("Catholic Bishops Want Condom Ads Banned," nd).

Effectiveness of Banning Ads

The AAF suggests that assumptions regarding advertising restrictions and product purchases are flawed and states that restricting product advertising will not greatly affect use of the products. This is particularly germane when thinking about products that promote questionable behavior, since advertising bans are not likely to advance any government interests in reducing the abuse or use of products or services. The AAF points to experiences from other countries that illustrate that banning product advertising has not resulted in a decline in the consumption of those products. The U.S. Supreme Court itself stated that keeping users of a product ignorant in order to manipulate their choices does not work (Chafetaz, 2000).

In fact, some suggest that advertising mainstreams products in a positive way and that showing products as mundane consumer products can take away some of their mystique. In this way, advertising can provide images that normalize behaviors and make them less glamorous (Hanson, 2001). Additionally, it has been suggested that banning advertising will force marketers to channel advertising dollars to other areas that may be possibly more influential. The tobacco industry, for example, has cut back on advertising in the United States and now promotes products abroad. It also invests more funds in in-store point-of-sale advertising.

Fear of Subsequent Bans

Overall, the advertising industry is concerned about any bans on commercial speech. The industry points out that even extreme political parties have the basic liberty of freedom of speech and argues that most consumer products are probably much less dangerous than some extreme political groups. In addition, there are concerns in the industry that bans on advertising for one product or service inevitably will lead to bans on the advertising of other products and services. The AAF warns that censorship is contagious (AAF, 1999), and it fears that any potentially dangerous product could have its voice restricted. For example, butter and eggs can be considered unhealthy because they can lead to high cholesterol levels, so banning advertising for butter and eggs, and products made with butter and eggs,

could lead to improved public health. This could help lower our nation's health care bill. But would you want to live in a world where you couldn't see an advertisement for butter and eggs or for anything containing butter and eggs? Wouldn't it be possible to find something potentially dangerous about almost every product and service that we consume? Where would the line be drawn?

APPROACHES TO CONTROVERSIAL ADVERTISING

Given advertising's power to influence large groups of people, there are several strategies available to advertisers and to other groups to counteract any potentially problematic messages. Suggestions about banning advertising are often seen as paternalistic because groups advocating bans assume that consumers do not know what is good for them and cannot be trusted to make decisions for themselves when they are exposed to advertising (Peck, 1993). Obviously, groups including women and minorities are as capable of resisting the lure of advertising as any other groups are (Jacobson & Mazur, 1995). However, other approaches that are used in the industry to address controversial messages are provided in this section.

Temperance or Moderation Messages

Right now, some industries that promote controversial products also provide funding for informational advertising that educates and promotes moderation in the use of the controversial product. If bans were placed on controversial advertising, messages promoting moderation would also be cut back. This could work against other efforts (e.g., public service messages) that promote abstinence or moderation. Perhaps a more reasonable alternative would be to require advertisers of certain controversial products and services to match product advertising with moderation messages on a dollar-for-dollar basis.

Warning Labels

Tobacco advertising carries warning labels, and it is possible that other products that result in demonstrable health problems could also be required to include some type of warning messages. Warnings would not necessarily have to feature an abstinence or moderation message but could state the long-term effects of continued use and/or misuse of the controversial product.

However, others suggest that warning labels have an effect opposite of what is intended. Specifically, if warning labels portray products as forbidden fruit, the products are made more attractive to young people (Fox, Krugman, Fletcher, & Fischer, 1998). We will discuss the controversy regarding warning labels in more detail in the next chapter.

Content Restriction

It has been proposed that certain types of images be prohibited in messages for controversial products. For example, some feel that celebrities should not be used in advertising

for controversial products that appeal to youth (e.g., rock 'n' roll stars appearing in beer advertisements). Consumers, particularly young consumers, are highly influenced by celebrities in advertising. Athletes in particular add a "healthful" aura to many products or services that are not healthy, such as alcoholic beverages and high-fat snack foods. Positive feelings toward celebrities translate to trust in a product and its benefits, which may be an erroneous association (Dyson & Turco, 2002).

Tax Issues

Currently in the United States, most advertising expenses are tax deductible. It has been suggested that tax benefits should be reconsidered, and advertising dollars should not be tax deductible and perhaps even taxed themselves. There are currently "vice taxes" on products like alcohol and tobacco, which help to repay the demonstrable social costs of the products. Some suggest that tax deductions for advertising expenditures other than price advertising should be eliminated; therefore, any ad that features a message that does not include price (a key piece of consumer information) would not be tax-deductible. China, for example, recently disallowed companies to deduct advertising expenditures for tobacco products on their income taxes (KPMG, 2012). Others suggest that advertising space costs be taxed for certain questionable products and services. For example, a condom manufacturer running a print campaign would have to pay an additional 10% to the government over the amount spent on the advertising cost for its magazine schedule. Such tax strategies are seen as discouraging advertising without overtly violating freedom of speech (Murray, 1989).

SUMMARY

In this chapter, we provided a brief introduction to some of the general issues and debates regarding controversial products and services. The following chapters are devoted to an examination of several different controversial products. In Chapter 12, we will look at tobacco and alcohol products. In Chapter 13, we will examine direct-to-consumer advertising of prescription drugs, and in Chapter 14, we will examine the only type of advertising messages that have complete protection under the First Amendment: political advertising. We will also discuss advertisers that use a type of strategy called socially responsible marketing in Chapter 15 and then closely evaluate the newest advertising channel—the Internet—in Chapter 16.

DISCUSSION QUESTIONS

1. What are the benefits and detriments of banning advertising from a micro, meso, and macro perspective?
2. What is the difference between banning a specific advertisement (such as an ad for condoms that reads, "To those who use our competitors' products: Happy Father's Day!) and banning an entire product category (like condoms)?

3. Why are many diet pill ads misleading? Find examples of ads that may be misleading and may not be misleading and discuss their differences.
4. Many broadcasters have "place, time, and manner" restrictions for condom advertising. What are some of these restrictions, and what are their purposes? Do you think these restrictions accomplish what they have been anticipated to accomplish?

CASE STUDY

ADVERTISING GUNS

The United States have seen several horrific acts of gun violence in the last decade or so, including massacres in Colorado, West Virginia, and Connecticut. A very powerful lobbying group, the National Rifle Association (NRA), has been successful in limiting any regulations controlling firearms sales. Some groups are calling on, at a minimum, a ban on advertising for firearms and ammunition. The Fox Sports cable network currently bans advertising these products on its broadcasts. The Google and eBay websites do not allow the promotion or sale of weapons through their search engine and shopping platforms, and the city of San Francisco bans the depiction of weapons in any types of ads, even if the ad is not promoting the weapon itself. Currently, several large national retailers (like Cabela's) promote guns in their ads, and magazines like *Guns and Ammo* have many pages of ads in its issues.

1. Should weapon advertising be banned? Why or why not?
2. A Google spokesperson said that running ads and selling weapons was not a match for Google's culture and values. Does this seem like a strong argument?
3. The Federal Trade Comission Act gives the FTC the power to ban advertising messages that are "deceptive" or "unfair." The Center to Prevent Handgun Violence asks that ads that position guns as a defensive tool for homes (one ad refers to guns as similar to a fire extinguisher) be banned as deceptive because gun ownership does not increase safety in the home but, in fact, is very dangerous. Is this a valid argument? Can you find some statistics to back up the claim?
4. Should gun ads carry a warning label? What would it say?
5. Do you think Google's policy will make many people switch to another search engine?

FURTHER READING

Cross, G. (2002). *An all-consuming century*. New York, NY: Columbia University Press.

Halbert, T., & Ingulli E. (2011). *Law and ethics in the business environment*. Independence, KY: South West Publishing.