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Chapter Fourteen

Regulations and Ethical Concerns

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Reebok Pays \$25 Million Settlement

- Easy Tone and Run Tone products
- Sold more than 10 million pairs
- Made specific claims
- FTC investigation
 - Ruled claims were unsupported
 - Reebok disagreed with FTC
- Skechers - \$41 million settlement



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Regulations and Ethical Concerns

Chapter Objectives

1. Which agencies and laws regulate marketing communications?
2. What are the relationships between puffery, deception, and substantiation?
3. What legal remedies can be used to correct deceptive communications practices?
4. How do the three major industry regulatory agencies help keep advertising and business practices from injuring customers or other businesses?

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Regulations and Ethical Concerns

Chapter Objectives

5. What ethical criticisms have been registered against advertising and marketing practices?
6. What marketing tactics raise ethical concerns?
7. How can marketers apply the various ethical frameworks and ethics programs to their activities and actions?
8. What international issues influence the discussions of legal and ethical marketing activities?

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Regulations and Ethical Concerns

Chapter Overview

- Legal environment
 - Regulations
 - Industry oversight
- Ethics and advertising
- Ethics and marketing
- Responding to ethical challenges

FIGURE 14.2

Governmental Regulatory Agencies

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

Federal Trade Commission (FTC)

- Created in 1914 by passage of Federal Trade Commission Act
- Presides over marketing communications
- Originally – enforce antitrust laws
- Given power to
 - Stop unfair and deceptive advertising practices
 - Levy fines
- Granted FTC access to courts to enforce their decisions

Unfair and Deceptive Marketing Practices

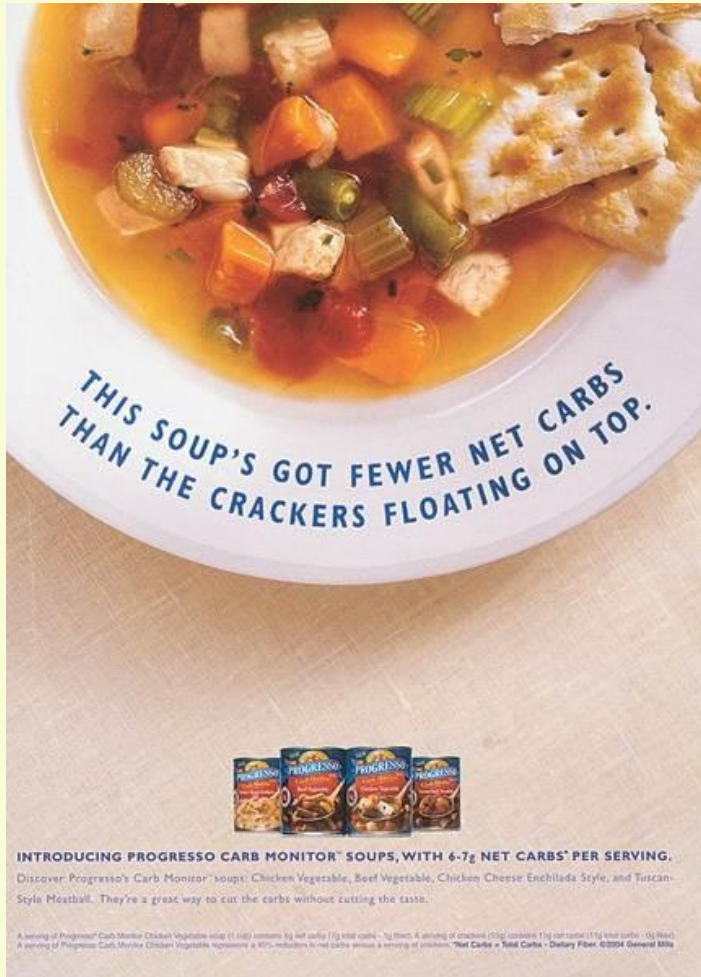
- 1938 Wheeler-Lea Amendment
 - FTC authority to investigate
 - FTC to stop unfair and deceptive practices
 - FTC power to levy fines
- An advertisement or communication is deceptive or misleading if:
 - A substantial number of people or typical person is left with false impression or misrepresentation
 - The misrepresentation induces people or the typical person to make a purchase

Deception versus Puffery

- Puffery
 - An exaggerated statement
 - Not factual statement
- Claim is a factual statement
- Puffery statements include
 - Best, greatest, and finest
 - Better – puffery or claim?
 - Papa John's – "Better ingredients, better pizza"
 - Hunt's – "Only the best tomatoes grow up to be Hunt's"
 - Progresso – "Discover the better taste of Progresso"

Deception versus Puffery

Ad making a claim.

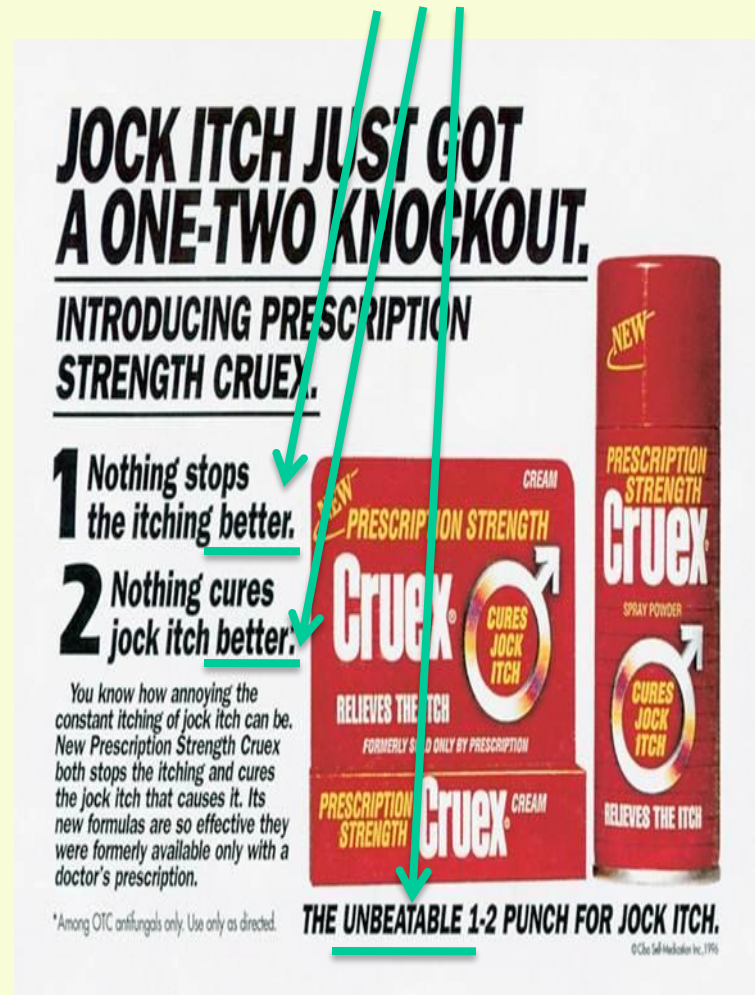


THIS SOUP'S GOT FEWER NET CARBS THAN THE CRACKERS FLOATING ON TOP.

INTRODUCING PROGRESSO CARB MONITOR™ SOUPS, WITH 6-7g NET CARBS* PER SERVING.
Discover Progresso's Carb Monitor™ soups: Chicken Vegetable, Beef Vegetable, Chicken Cheese Enchilada Style, and Tuscan-Style Meatball. They're a great way to cut the carbs without cutting the taste.

A serving of Progresso® Carb Monitor Chicken Vegetable soup (1 1/2 cups) contains 6g net carbs. A serving of Progresso Carb Monitor Beef Vegetable soup (1 1/2 cups) contains 7g net carbs. A serving of Progresso Carb Monitor Chicken Cheese Enchilada Style soup (1 1/2 cups) contains 6g net carbs. A serving of Progresso Carb Monitor Tuscan-Style Meatball soup (1 1/2 cups) contains 7g net carbs. ©2014 General Mills

Ad using puffery?



JOCK ITCH JUST GOT A ONE-TWO KNOCKOUT.
INTRODUCING PRESCRIPTION STRENGTH CRUEX.

- 1 Nothing stops the itching better.**
- 2 Nothing cures jock itch better.**

You know how annoying the constant itching of jock itch can be. New Prescription Strength Cruex both stops the itching and cures the jock itch that causes it. Its new formulas are so effective they were formerly available only with a doctor's prescription.

THE UNBEATABLE 1-2 PUNCH FOR JOCK ITCH.

©2014 S&W Healthcare Inc. 1916

Substantiation of Claims

- Claim or promise must be substantiated
- Endorser must be truthful
- Must represent endorser's personal experience or opinion
- Expert endorsement must be based on legitimate tests

It's softer.
It's thicker.
It's from Kleenex.[®]

650
sheets of
Kleenex[®]
Cottonelle[®]
UltraSoft.

650
sheets of
the leading
premium
brand.

Here's how
Kleenex[®] Cottonelle[®] UltraSoft
stacks up against
the leading bath tissue.

In actual touch tests, people say Kleenex Cottonelle UltraSoft is softer than the leading premium brand. In fact, it's the softest bath tissue of all. And it's thicker, too. It's made with 24% more cottony, soft fiber. If you want to make the comfortable choice in bath tissue, remember three words of comfort: "Soft. Thick. Kleenex!"

© KLEENEX is a Registered Trademark — Marca Registrada of Kimberly-Clark Corporation. COTTONELLE is a Registered Trademark of Kimberly-Clark Tissue Company © 1997 Kimberly-Clark Corporation.

To substantiate its claim that Kleenex is softer the company conducted touch tests involving consumers.

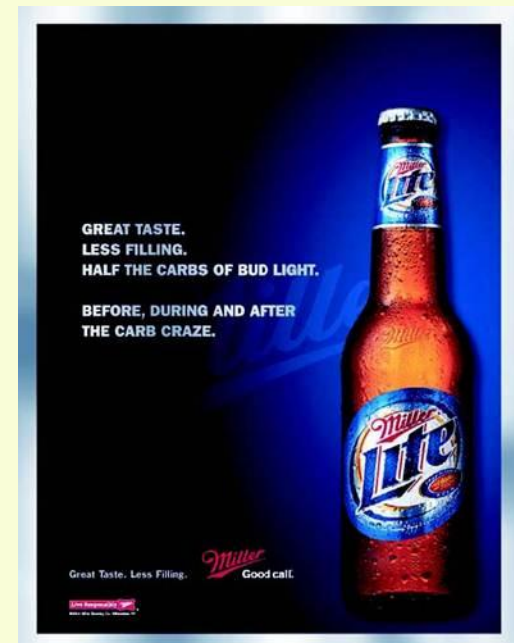
Substantiating that Kleenex is “made with 24% more cottony, soft fiber,” as the ad claims, would require some type of lab test.

Click image to enlarge.

Principles

Substantiation of Claims

- Consumers read ads broadly
- Evidence must be for actual product
- Evidence from accepted experts
- FTC and courts will consider totality of evidence



How Investigation Begins

Complaints can be lodged by any of the following



- Consumers
- Businesses
- Congress
- Media

FTC Process

- **Consent order**
 - Company agrees to stop
 - Does not admit guilt
- **Administrative complaint**
 - Filed if no consent order agreement
 - Formal proceeding
 - Administrative judge
 - Both sides submit evidence
 - **Cease and desist order**
 - Full commission
 - US Court of Appeals
 - US Supreme Court

FTC Process

- **Courts and legal channels**
 - Court system to stop unfair and deceptive practices
 - Company violates a cease and desist order
 - Actions of company so severe immediate action is needed
- Other legal entities – state/federal attorney generals
- **Corrective advertising**
 - Used rarely
 - Used when discontinuing false ads is not enough
- **Trade regulation rulings**
 - Applies to entire industry
 - Holds public hearing
 - Accepts both oral and written arguments

Industry Oversight of Marketing

- **Council of Better Business Bureau**
 - Bureau keeps record of complaints
 - Provide summary report on companies
- Agencies of the CBBB
 - National Advertising Division (NAD)
 - Advertising Self-Regulatory Council (ASRC)
 - Children's Advertising Review Unit (CARU)

National Advertising Division (NAD)

- Receives complaints
- Role is to investigate validity of complaint
- Collects information and evaluates
 - If guilty, requests discontinuation of ad
 - No legal authority
- 95% of companies abide by ruling
- 225-250 cases a year
- Rulings
 - Ad not fully substantiated – 50% to 60%
 - Ad fully substantiated - less than 5%

Advertising Self-Regulatory Council (ASRC)

- Appeal from NAD or not resolved by NAD
- Advertising professionals and civic leaders
- Order similar to “*Consent Order*” of FTC
- Appeals or refusals to accept go to FTC
- Business-to-business disputes common
- Only 4 referrals to FTC in last 25 years

Children's Advertising Review Unit (CARU)

- Cases involving children 12 and under
- Online privacy practices of Web sites
- Operates similar to the NAD
- Prescreens ads directed to children
 - Examine 300 ads per year
- Children under 12 do not have reasoning power

FIGURE 14.4

CARU Guidelines for Advertising to Children

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

Source: Adopted from Wayne Keeley, "Toys and the Truth," *Playthings*, Vol. 106, No. 2 (February 2008), p. 8.

FIGURE 14.5

Advantages of Industry Regulations

- Lower cost
- Faster resolution
- Heard by attorneys and business professionals with experience in advertising

IMC and Ethics

- **Morals** — beliefs or principles individuals hold about what is right and wrong.
- **Ethics** — moral principles that serve as guidelines for individuals and organizations.

FIGURE 14.6

Concerns and Criticisms of Advertising

1. Causes people to buy more than they can afford
2. Overemphasizes materialism
3. Increases the costs of goods and services
4. Perpetuates stereotypes
5. Makes unsafe products, such as alcohol and tobacco, seem attractive
6. Is often offensive
7. Advertising to children is unethical

Ethics and Advertising

- Consumers buy more than they can afford
- Overemphasis on materials
 - Advertising does stress buying materials
 - People still have freedom of choice
- Increases the costs of products
 - Makes people aware of goods and services
 - Widens the base of potential customers
 - Increases repeat purchases
 - Additional sales leads to economies of scale

Ethics and Advertising Perpetuates Stereotypes



- Stereotypes
 - men, women, and minorities
- Is segmentation the same?
- Era of political correctness
- Unethical, bad business or reality?

Ethics and Advertising

- **Advertising unsafe products**

- Alcohol, tobacco and other potentially harmful products
- By 18, teen has seen 100,000 beer ads
- Use of sexuality and social acceptance
- After banning tobacco, switch to sponsorships

- **Offensive advertisements**

- Feminine hygiene, condoms, other personal products
- International arena
- Use of nudity and sexuality in ads
- Freedom of speech
- Ethics, morals, and conscience should guide

Ethics and Advertising

Advertising to Children

- Children represent tremendous buying power
- Critics question tactics
- “No one ad is bad, but 400 a day are” – Mary Pipher
- Marketers – best to get children when young

Is it ethical to advertise to children?

FIGURE 14.7

Ethical Issues in Marketing

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

Ethics and Advertising

- **Brand Infringement**
 - Similar names
 - Brand name becomes generic
 - Domain squatting
- **Marketing of professional services**
 - Medical and legal professions
 - Freedom to advertise services
 - Pharmaceutical companies

Ethics and Advertising

- **Gifts and bribery**

- Business-to-business sales
- Trade shows
- Influence sales
- Bribes part of culture in some countries

- **Spam and cookies**

- Technology allows for collecting pertinent information
- Invasion of privacy
- Allows for Web site personalization
 - 95% of consumers want a company to know them
- Legal issues
- Moral issues

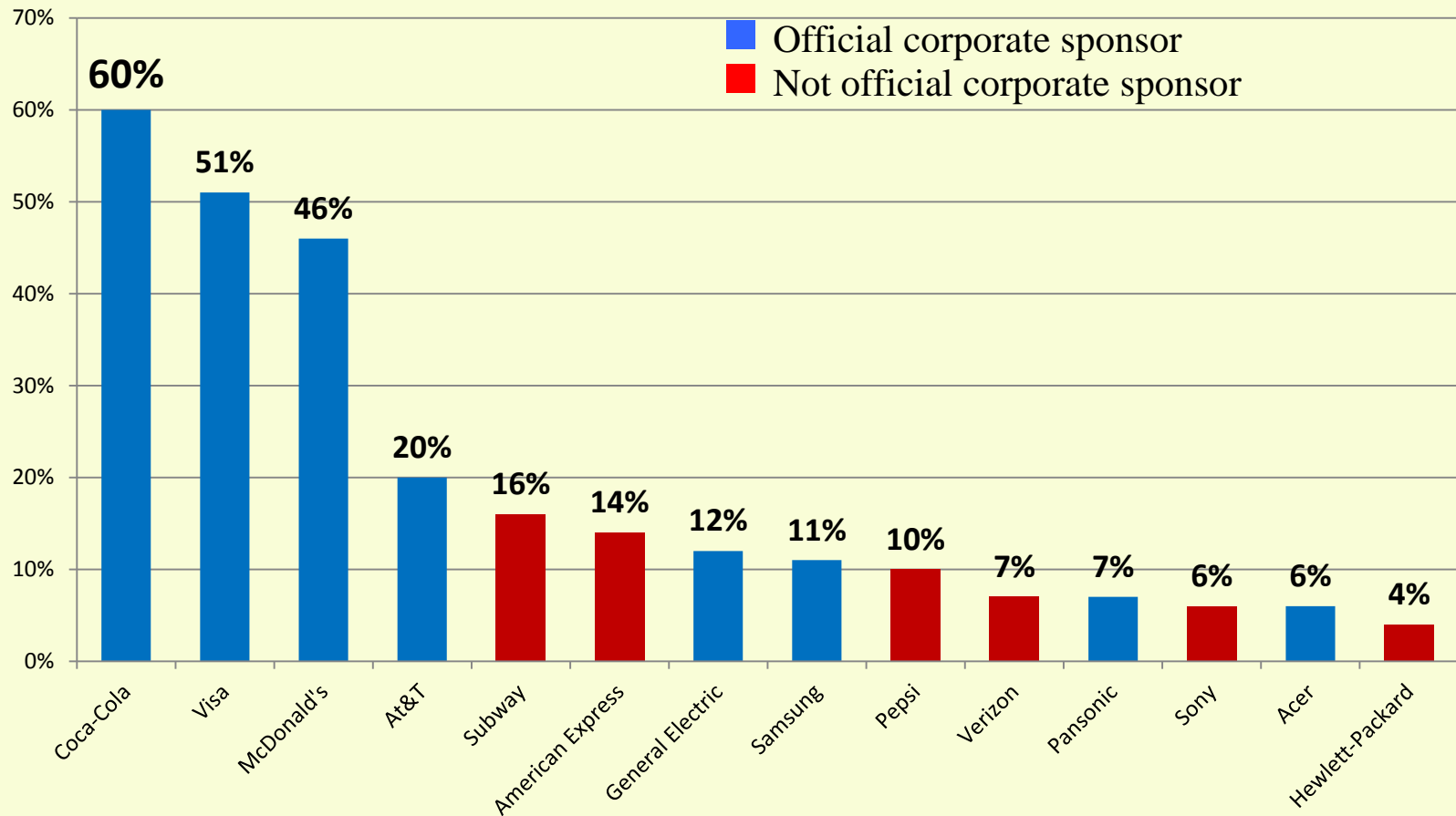
Ethics and Advertising

Ambush Marketing

- Rise in sponsorship dollars being spent
- Brand associated with an event when not a sponsor
- Official sponsorships often costs millions
- Look for ways to capitalize without paying sponsor fee
- Olympics
- Ethical considerations or wise advertising?

FIGURE 14.8

Recall of Official and Nonofficial 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.

Ethics and Advertising

Ambush Marketing

- **Direct ambush marketing**
 - Firm intentionally capitalizes on event
- **Indirect ambush marketing**
 - Firm hints or suggests associated with event
 - Allusion ambushing
 - Distractive ambushing
 - Saturation ambushing
- **Incidental ambush marketing**
 - No intention, indirect effect

Ethics and Advertising

Stealth Marketing

- Entices consumers to look at a product
- Does not identify being a sponsor



Shrewd marketing
or
Unethical deception

Responding to Ethical Challenges

- Hedonism
 - Maximizes pleasure, minimizes pain
- Homeostasis
 - Natural craving for balance
- Law
 - Dictates right and wrong
- Religion
 - Provides a philosophy for living
 - Golden rule
- Common sense
 - Logic and reasoning
 - Gut instinct

FIGURE 14.10

Ethical Frameworks

- Utilitarianism
- Individualism
- Rights approach
- Justice approach

Ethical Frameworks

- **Utilitarianism**
 - Greatest good for greatest number of people
 - Overlooks rights/needs of minorities
 - Judgment call on what is good
- **Individualism**
 - Value society places on individuals
 - Based on personal self-interests
 - Individualism may cause weakest to suffer

Ethical Frameworks

- **Rights approach**
 - Each person has fundamental rights
 - Freedom of speech, privacy, due process
 - Rights of one group conflicts with another
- **Justice approach**
 - Treating all people fairly and consistently
 - Distributive justice – fairness of rewards/punishments
 - Procedural justice – fairness in process
 - Consequences for hurting another person
 - Reward for actions leading to greater good

Ethics Programs

- **Ethics training programs**
- **Codes of ethics**
 - Professional organizations
 - Workplace codes
- **Ethics consulting systems**
 - Ethical hotlines
 - Whistle-blower

International Implications

- Legal systems vary
- Common law
 - United States and western countries
- Civil law
 - European countries
- Theocratic law
 - Based on religious teachings
- Ethics and moral