Associated Press/Robert F. Bukaty

4 Consumers

Learning Objectives

After completing this chapter, you should be able to:

- Describe the nature and history of consumer advocacy.
- Outline the principal issues surrounding product safety.
- Explain the forms of deceptive advertising.
- Describe the problems surrounding the targeting of vulnerable groups.
- Describe the different unfair sales tactics.

Chapter Outline

4.1 Introduction

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4.1 Introduction

The Beech-Nut company manufactured an apple juice for babies that contained no apple juice whatsoever (Hartley, 1993). Exxon advertised that one of its brands of gasoline made engines cleaner and reduced auto-maintenance costs, a claim that it did not substantiate (Federal Trade Commission, 1996). Hundreds of toy products manufactured in China were recalled in a 1-year period for containing toxic lead paint or presenting a choking and strangulation hazard. These are just a few of the hundreds of consumer complaints against businesses that have grabbed headlines over the years.

Let the buyer beware! This is a general word of warning to consumers that we have all heard in our buying experience. The warning alerts us to the fact that the products we buy may not be quality items as the seller claims, and that the burden may fall on us as consumers to research those products before we purchase them. However, although this warning is good advice, it does not apply to an array of products we routinely buy. This is because in the United States we have laws in place that prevent businesses from taking advantage of consumers, and in fact many businesses zealously guard their reputation as manufacturers or retailers of high-quality items.

Indeed, even in bygone eras, consumers had some protection. The ancient Babylonian Code of Hammurabi (which we mentioned in Chapter 1), from around 1750 BCE, gave this stern warning to building contractors: “If a builder build a house for some one, and does not construct it properly, and the house which he built fall in and kill its owner, then that builder shall be put to death” (trans. 1915 by L. W. King, section 229; see http://www.fordham.edu/halsall/ancient/hamcode.asp#text). If we go back further in time, to hunter-gatherer days when people lived in

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small tribes, we can imagine that even then traders would have been under pressure to sell quality goods. Their trading capacity with other tribes might abruptly end if they gained reputations for selling shoddy merchandise, thus isolating the traders and their tribes and putting their very survival at risk.

Thus, whether it is laws or built-in market forces, we have some security that many, if not most, of the products we buy are good ones. Yet despite the reasonable amount of confidence consumers can have in the marketplace, there are still businesses that prey on consumers, unconcerned about the legal consequences or their business reputations. Not knowing when these situations might arise, consumers must indeed be on their guard; each year brings in new examples of businesses that have taken advantage of the trust that buyers place in them. In this chapter, we will look at a cluster of issues often associated with consumer interests, namely product safety, deceptive advertising, exploitation of vulnerable groups, and a variety of manipulative sales tactics.

4.2 Consumer Advocacy

The heart of the consumer-interest issue lies in what is called **consumer autonomy**: the notion that consumers should be in charge of determining what to purchase after being supplied with relevant information. Businesses should not be permitted to conceal important information about their products or manipulate consumers into purchases. If we choose to buy something that is useless or of poor quality, that is our choice as informed consumers. But we should not be forced into that situation by manipulation and deception from companies. For a consumer to make an informed choice, two critical conditions must be met:

- the consumer must know how the product performs, and
- the consumer must know how that performance compares to those of other products.

According to this view, it is not good enough for consumers to get half-truths about a product or be lured into a purchase through advertising hype. What is needed is *relevant* information, about both a given product and alternatives to that product.

But how do we get deceitful businesses to deal fairly with consumers? The answer is **consumer advocacy**, which is an organized effort to protect consumers against dangerous products, unfair pricing, deceptive advertising, and manipulative sales practices. Much consumer advocacy stems from governmental agencies that set standards of responsible dealings with consumers and punish offending businesses. Other efforts at consumer advocacy are spawned by concerned individuals or nongovernmental organizations that draw public attention to abuses and pressure change through negative public reaction, lawsuits, and governmental lobbying. Countries throughout the world typically have their own consumer-advocacy organizations, but the movement itself is a relatively recent phenomenon.

History of Consumer Advocacy

In the United States, consumer advocacy began in the early 1900s during what is known as the progressive era, a period of social activism and reform that focused heavily on rooting out fraud and corruption in politics and business. Journalists played a large role at the time—"muckrakers,"

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as they were called—by drawing attention to wrongdoing of all sorts, such as the predatory business practices of Standard Oil. The journalist Upton Sinclair vividly depicted the exploitation of American workers and the unsanitary conditions in the meatpacking industry in his novel *The Jungle* (1906). His most sensational description was of workers falling into lard tanks, being ground up with animal fat, and ultimately being sold as lard. Public reaction to the book was so strong that the government was pressured into creating legislation to correct the problems in the meat industry. This resulted in the **Pure Food and Drug Act of 1906**, the stated aim of which was to prevent "the manufacture, sale, or transportation of adulterated or misbranded or poisonous or deleterious foods, drugs, medicines, and liquors" (Federal Food and Drugs Act of 1906, 1906).

Governmental Agencies Established

Within this historical context, two important governmental agencies were set up to protect consumer interests: the *FTC* and the *FDA*. The **Federal Trade Commission (FTC)** was established in 1914 to prevent businesses "from using unfair methods of competition in commerce." The agency's scope broadened over the years and now includes the Bureau of Consumer Protection, whose aim is to "protect consumers against unfair, deceptive, or fraudulent practices" (Vladeck, n.d.). Figure 4.1 lists the top 10 consumer complaints reported to the FTC in 2010. The FTC's top 10 list changes slightly from year to year, but for the past decade, identity theft has consistently been at the top.

Figure 4.1: Top 10 consumer complaints reported to the FTC, 2010

1. Identity Theft (19%)
2. Debt Collection (11%)
3. Internet Services (5%)
4. Prizes, Sweepstakes, and Lotteries (5%)
5. Shop-at-Home and Catalog Sales (4%)
6. Imposter Scams (4%)
7. Internet Auctions (4%)
8. Foreign Money/Counterfeit Check Scams (3%)
9. Telephone and Mobile Services (3%)
10. Credit Cards (2%)

Source: Federal Trade Commission. (2011). Consumer Sentinel Network data book for January–December 2010 *(p. 6). Retrieved from http://ftc.gov/sentinel/reports/sentinel-annual-reports/sentinel-cy2010.pdf*

Next, the **Food and Drug Administration (FDA)** was formed in 1927 for the purpose of carrying out the tasks specified in the Pure Food and Drug Act of 1906. In addition to these two important governmental agencies, in 1936 the nonprofit organization **Consumers Union** formed in response to advertising's first flooding the mass media. As it says in the mission statement of the

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organization's *Consumer Reports* magazine, consumers at that time "lacked a reliable source of information they could depend on to help them distinguish hype from fact and good products from bad ones" (Consumer Reports, n.d.). Since its inception, Consumers Union has conducted quality tests on hundreds of products each year, from breakfast cereals to automobiles, and has published its results in *Consumer Reports*. A negative review of a given product can devastate that product's sales, and manufacturers often take the magazine's assessments seriously.

AP Images for Consumer Reports*/Diane Bondareff*

In this 2011 photo, a *Consumer Reports* employee talks to visitors as they taste test bagels. *Consumer Reports* refers to itself as an "expert, independent, nonprofit organization whose mission is to work for a fair, just, and safe marketplace for all consumers and to empower consumers to protect themselves" (Consumer Reports, n.d.).

Responding to Business Conduct

The consumer-advocacy movement continued to grow in the mid-20th century, often in response to outrageous conduct by businesses. Once such case was the manufacture of an antibacterial medicine called Elixir Sulfanilamide, which in 1937 caused the deaths of over 100 people. The raspberry-flavored product was prepared with a solvent that, unbeknownst to the manufacturers, was poisonous. When the deadly effect of the drug was discovered, government agencies were successful in retrieving most of the distributed supply. The company owner denied responsibility for the tragedy, stating, "My chemists and I deeply regret the fatal results, but there was no error in the manufacture of the product. We have been supplying a legitimate professional demand and not once could have foreseen the unlooked-for results. I do not feel that there was any responsibility on our part" (S. E. Massengill, quoted in "Elixir Sulfanilamide—Massengill," 1938, p. 69). The chemist himself, though, committed suicide while awaiting trial. A consequence of this episode was the passage of the Federal Food, Drug, and Cosmetic Act of 1938, which gave the FDA greater power to regulate the testing, labeling, and marketing of drugs.

Consumer Bill of Rights

President John F. Kennedy propelled consumer advocacy further in a landmark speech in 1962 when he articulated four fundamental consumers' rights, later known as the **Consumer Bill of Rights**:

1. *The right to safety*—to be protected against the marketing of goods which are hazardous to health or life.
2. *The right to be informed*—to be protected against fraudulent, deceitful, or grossly misleading information, advertising, labeling, or other practices, and to be given the facts necessary to make an informed choice.

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3. *The right to choose*—to be assured, wherever possible, access to a variety of products and services at competitive prices; and in those industries in which competition is not workable and government regulation is substituted, an assurance of satisfactory quality and service at fair prices.
4. *The right to be heard*—to be assured that consumer interests will receive full and sympathetic consideration in the formulation of government policy, and fair and expeditious treatment in its administrative tribunals. (Kennedy, 1962)

These rights, according to Kennedy, required support through governmental regulations and agencies. Through them, he argued, food, drugs, and automobiles would become safer, financial markets would become more secure, and deceptive trade practices would be curtailed.

Consumer Product Safety Commission

In 1972, the **Consumer Product Safety Commission (CPSC)** was founded for the purpose of protecting the public "against unreasonable risks of injuries and deaths associated with consumer products" (Consumer Product Safety Act of 1972, Section 2). The CPSC has jurisdiction over about 15,000 types of consumer products, including coffeemakers, toys, lawn mowers, and fireworks. The commission sets product-safety standards, oversees product labeling, and orders recalls of unsafe or defective products. It also requires businesses themselves to report any product that "contains a defect which could create a substantial risk of injury to the public or presents an unreasonable risk of serious injury or death" (U.S. Consumer Product Safety Commission, n.d.). The CPSC provides step-by-step guidelines for issuing product recalls and alerting the public to the problem. The biggest year for recalled items was 2007—nearly 500 items were recalled, over half of them products from China, and many were toys (Lipton & Barboza, 2007). As a result of the 2007 recall crisis, Congress passed the Consumer Product Safety Improvement Act of 2008, which gave more power and resources to the CPSC.

Associated Press/Jose Luis Magaña

This photo shows toys that were recalled by the U.S. Consumer Product Safety Commission in 2009.

U.N. Guidelines for Consumer Protection

In 1985, the United Nations enacted a set of **Guidelines for Consumer Protection**. The 1999 expanded version of the guidelines specified the following seven fundamental consumer needs that should be met:

A. The protection of consumers from hazards to their health and safety;
B. The promotion and protection of the economic interests of consumers;

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C. Access of consumers to adequate information to enable them to make informed choices according to individual wishes and needs;
D. Consumer education, including education on the environmental, social and economic impacts of consumer choice;
E. Availability of effective consumer redress;
F. Freedom to form consumer and other relevant groups or organizations and the opportunity of such organizations to present their views in decision-making processes affecting them;
G. The promotion of sustainable consumption patterns. (United Nations Conference on Trade and Development, 2001, p. 3)

Although these guidelines are not binding on the member nations of the United Nations, they offer a model for how each member nation might implement those ideals within its own government.

4.3 Product Safety

A major focus of consumer advocacy—whether governmental or nongovernmental—is product safety. Some consumer items are by their nature unavoidably unsafe products, in the sense that if they were made safe they would not be useful for their intended purpose. Lawn mowers, kitchen knives, drain cleaners, nail-polish remover, and firearms are examples; in each of these cases, making them completely safe would make them useless. What is of concern is not whether the product is inherently unsafe, but whether it has a substandard design that makes it less safe than an alternative and more acceptable design. The CPSC lists three hazard levels of products:

> Class A hazard: Exists when a risk of death or grievous injury or illness is likely or very likely, or serious injury or illness is very likely.
>
> Class B hazard: Exists when a risk of death or grievous injury or illness is not likely to occur, but is possible, or when serious injury or illness is likely, or moderate injury or illness is very likely.
>
> Class C hazard: Exists when a risk of serious injury or illness is not likely, but is possible, or when moderate injury or illness is not necessarily likely, but is possible. (U.S. Consumer Product Safety Commission, 1999)

The more serious the hazard, the higher the priority for notifying the public and issuing recalls. The CPSC has a "fast track product recall program" designed for companies that can move quickly with a voluntary recall of their product. This eliminates some procedural steps in the recall process, specifically the need for a preliminary determination by the CPSC about whether the product contains a defect that presents a substantial hazard.

Safety and User Reviews

With the rapid increase of online retail stores, buyers have had access to countless user reviews of various products, which forewarn them of difficulties with those items. This body of information is an invaluable resource to consumers today that was simply unavailable in previous generations. It has thus created a new public forum for individuals to voice their objections to products and

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business practices. For example, the expression "cheap piece of junk"—and similar wording—appears in over 10,000 user reviews on Amazon.com. The products in question include alarm clocks, money clips, toy magic wands, computer-game controllers, bongo drums, heart-rate monitors, and paper shredders. The expression "dangerous product" is found in several thousand reviews, including those of chairs, toasters, gas cans, lawn mowers, weight-loss drugs, pet chew toys, oven liners, seat-belt adjusters, exercise weights, outlet adapters, and toy mirrors. A common phrase in reviews of computer and other electronic devices is "unreliable product."

Cheng quan qd/Imaginechina

In this 2011 photo, workers in China damage a Lamborghini. The workers were hired to destroy the car by its disgruntled owner, who wished to stage a public protest over what he felt was inadequate service and a violation of his consumer rights by the Lamborghini dealer. According to the car's owner, the dealer refused to fix the car's engine, which quit starting 6 months after he purchased it.

User reviews not only help buyers sort out good products from bad ones, but they allow retailers and manufacturers to monitor them for indications of what the product does right and wrong. Negative reviews are sources of embarrassment for companies, and they forecast financial problems as a result of decreased sales, product returns, and perhaps even product recalls and lawsuits.

The government itself has gotten on board with grassroots consumer activism and has created a Web site—**SaferProducts.gov** (run by the CPSC)—where consumers can report unsafe products. Businesses also have the opportunity to post responses to complaints. Here is a posted complaint of a malfunctioning refrigerator light bulb, with the manufacturer's response:

> Complaint: "The light bulbs in my refrigerator failed to turn off. The bulb housing melted and sagged, the roof of the refrigerator has bubbled, and the bulb sockets appear scorched. It appears the manufacturer is aware of this problem, but did not notify me."
>
> Response: "Sears Holdings takes product safety issues very seriously. We investigate each CPSC database incident report. We encourage our customers to provide additional information about incidents to our Customer Care Network, by calling 800-549-4505." (SaferProducts.gov, 2011)

Sears's response is a general statement that they use in many of their comments on this Web site; other companies use similar stock responses to reported problems. Here is a more serious complaint about a child choking on a toy:

> Complaint: "My four year old son put a small toy in his mouth. The toy went back into his throat and was lodged in his esophagus. Initially, he had trouble

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breathing. Then, it got lodged down farther. He was transported to the hospital after calling 911"

Response: "Spin Master Ltd was very concerned to learn of this incident with the Wal-Mart exclusive Action Dragon figure produced for the Train Your Dragon movie. The product is no longer in production as the toys were related to the movie release. When we work on a toy, we diligently assess the designs, and production products, using external, qualified third party labs. This product was reviewed, tested and assessed for all applicable toy standards and age grade. The product has passed all testing with no issues. The product is marked clearly with a warning for choking hazard due to small parts, and age graded for 5 plus years. Despite passing all safety testing, when we learn of an incident, we take it very seriously and will incorporate the knowledge into our design assessments for future products" (SaferProducts.gov, 2011).

Unlike Sears's response, Spin Master's comment is particular to the customer's specific complaint. In the excerpt quoted here, they express concern over the choking but maintain that their product was safe.

An objection that has been voiced about the SaferProducts.gov site is that it does not filter out consumer complaints that may be inaccurate. Representative Mike Pompeo even attempted to shut down the site by eliminating its funding, on the grounds that it would harm U.S. businesses. He argued that the site's managers do not sufficiently weed out false or inaccurate claims, the presence of which will mislead consumers and damage the reputation of innocent and safety-conscious manufacturers (Pompeo, 2011). On the other side of the debate, however, unfiltered customer reviews are so commonplace on the Internet now that there is nothing unique about what the site is doing—other than the fact that it is run by a government agency. Further, the CPSC stated that it would not post reports that have missing or clearly untrue information, so it is not entirely unfiltered.

Associated Press/Anonymous

This 2011 photo shows the CPSC's new Web site, SaferProducts.gov, where consumers can report unsafe products. Businesses also have the opportunity to post responses to complaints.

Unsafe Automobiles

One product that qualifies as "unavoidably unsafe" is the automobile, which today accounts for over 30,000 deaths in the United States per year. The automobile is an inherently unsafe product because it is designed to hurl us down the road at such high speeds that, upon collision, the human body cannot withstand impact. The responsibility of auto manufacturers is to seek out ways to make their vehicles safer, even though the risk can never be fully eliminated. That is

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precisely what has occurred in automobile manufacturing over the past half century. The most important of the design changes have been seat belts, crash crumple zones, collapsible steering columns, air bags, stronger roof supports, rollover bars, and antilock brakes.

With these safety improvements, the number of automobile fatalities per year in the United States has been dramatically decreasing—and this is while, at the same time, the number of hours that the population spends on the road each year has been increasing. But automobile manufacturers have often resisted making changes for the simple reason that safety costs money. The changes that have taken place were largely the result of external pressure by legislators, governmental agencies, and consumers. Two important cases are connected with increased public consciousness about automobile safety.

Ralph Nader and the Chevrolet Corvair

The case that kicked off the safety revolution in automobile manufacturing involved Ralph Nader and the Chevrolet Corvair. In 1960, General Motors introduced the Corvair as a small, sporty, and comparatively low-cost vehicle. But a design flaw with the car's suspension caused the rear tire to tuck under in sharp turns and flip the car. Such accidents prompted over 100 lawsuits against GM. A redesign of the vehicle in 1964 addressed the problem with the inclusion of an anti-sway bar, but GM decided not to recall the earlier vehicles, to avoid repair costs of $25 million.

Associated Press/Susan Walsh

In this 2006 photo, Ralph Nader is shown with his book *Unsafe at Any Speed*, which celebrated the 40th anniversary of its publication that year.

In 1965, Nader, a young attorney, published his book *Unsafe at Any Speed*, which criticized automobile manufacturers for resisting safety improvements to save money. The book's first chapter, titled "The Sporty Corvair—The One-Car Accident" described how GM persistently dodged the safety issue with the early Corvairs. Nader also accused the manufacturer of "one of the greatest acts of industrial irresponsibility in the present century." In response, GM attempted to discredit Nader through a campaign of investigation that included surveillance, late-night harassing phone calls, and questioning of associates about his lifestyle. Nader sued GM for $26 million but settled for just under a half million. GM finally discontinued the Corvair as sales of the vehicle dropped to 13,000 in its final year of production, compared to 230,000 in its first year. The public attention that Nader drew to this issue helped bring about the National Traffic and Motor Vehicle Safety Act of 1966 and the subsequent creation of the National Highway Traffic Safety Administration (NHTSA), whose stated mission is to "save lives, prevent injuries, and reduce economic costs due to road traffic crashes" (n.d.).

The Ford Pinto

The case that most represents automobile manufacturers' resistance to safety changes is the Ford Pinto. Introduced in 1970, the Pinto, like the Corvair, was a compact and comparatively inexpensive

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car. Preliminary tests of the vehicle showed that it could not withstand a 20-mph rear-end collision without rupturing the gas tank. Ford nevertheless put the car into production and made no changes to its gas-tank design in subsequent years. The decision was based on a cost-benefit analysis. While the estimated costs of improving the Pinto's safety were comparatively low, at $11 per vehicle, the total cost would outweigh the benefits: $138 million to fix the problem versus $50 million in injury costs. In what is now called the "Ford Pinto Memo," the company laid out estimated injury costs. First, the NHTSA had itself calculated that the total cost of a death from an automobile accident was around $200,000 in the year 1972. NHTSA's analysis is here:

Future productivity losses

Direct: $132,000

Indirect: $41,000

Medical costs—Hospital: $700; Other: $425

Property damages: $1,500

Insurance administration: $4,700

Legal and court expenses: $3,000

Employer losses: $1,000

Victim's pain and suffering: $10,000

Funeral: $900

Assets (lost consumption): $5,000

Miscellaneous accident costs: $200

Total cost per fatality: $200,425

What Would You Do?

You are the CEO of an automobile company. Your research and development department has a safety design that will improve passenger protection in side-impact collisions. If it is implemented in all of your company's vehicles, an estimated 100 lives will be saved each year. However, the design change will increase the cost of each vehicle by $500, which will put you at a competitive disadvantage and decrease company profits by 10%.

1. Would you implement the design change on all of your vehicles, only some, or none?
2. Suppose that the change would save 1,000 lives per year. Would that make a difference in your decision?
3. Your marketing department tells you that car buyers are mainly motivated by the appearance, comfort, and performance of a vehicle, and safety is typically a low priority. Would that marketing fact impact your decision?
4. Suppose that your company had a patent on the design change. Would you make it available to your competitors for free, knowing that it would save more lives if you did?

The Ford Pinto Memo took this figure of roughly $200,000 and included it in the following cost-benefit analysis, based on an estimated 180 burn deaths and 180 burn injuries per year:

Benefits

180 burn deaths, 180 serious burn injuries, 2,100 burned vehicles

Unit cost: $200,000 per death, $67,000 per injury, $700 per vehicle

Total Benefit: (180 × $200,000) + (180 × $67,000) + (2,100 × $700) = $49.53 million

Costs

Sales: 11 million cars, 1.5 million light trucks

Unit cost: $11 per car or truck

Total cost: 12.5 million × $11 = $137.5 million

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Associated Press

This photo shows a 1973 Ford Pinto after a rear-end crash. In 1976, Ford was forced to redesign the Pinto's fuel tank to meet new safety standards, and issued recalls on all previous models.

The upshot is that the company would save $85 million by *not* fixing the problem, and simply paying damages from burning deaths and injuries. However, starting in 1976, the NHTSA required that vehicles pass a 30-mph collision test. Ford redesigned the Pinto's fuel tank to meet that standard and issued recalls on all previous models. Ford's costs from the recall and design changes completely eliminated any savings they might have otherwise gained by neglecting the problem for so many years. Further, the Ford Pinto Memo painted the company as a heartless and cynical institution that put a low value on human life and cared more about cutting costs than about preventing its customers' being burned alive in its poorly designed vehicle. The bad publicity that Ford received from this episode has itself become a lesson in business ethics about insensitivity towards product-safety issues. Automobiles today are still regularly recalled, but the system for doing so is more reliable, and the stories of the Corvair and the Pinto stand as warnings to car manufacturers who resist corrective action (Dowie, 1977).

4.4 Deceptive Advertising

As consumers, we are inundated with advertising messages on TV, radio, billboards, and almost every page of the Internet. Some are overt pleas to buy products. Others are sneaky product placements, such as in movies when a character laces up a pair of name-brand tennis shoes. The hype in these ads is relentless, as each one attempts to compete with others for our attention. We learn to psychologically block out most ads, just so we can get through the day without being immobilized from distraction. We also automatically tone down the exaggerated claims that sound too good to be true, and selectively pick out information from ads that we find relevant.

At the same time, though, we know that advertisers often go too far in their claims and make outright lies about their products. **Deceptive advertising**—also called *false* and *misleading advertising*—is advertising that intentionally misleads or confuses consumers. The deception may involve ambiguity, concealment of facts, gross exaggeration, or outright false statements. In each case, though, it contains a substantial falsehood such that consumers would not buy the product if they knew the truth about it. Advertisers are not required to present *all* the facts about their products to escape the charge of deceptive advertising. In fact, the very nature of advertising is the use of selective information to get a person to identify and select a given product on the store shelf. Advertising is deceptive, however, if false information is the fundamental cause for a person to select one product over another.

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From a moral standpoint, deceptive advertising is wrong for three reasons:

1. It involves a lie, either a direct one through a blatantly false statement or an indirect one through a subtly misleading statement.
2. It is morally wrong, since relevant information is covered up that is essential for making a genuinely rational choice. Suppose I am interested in losing weight and am looking at a nutritional supplement called Fat Dissolver. The advertiser knows the kind of information I need to make a rational choice to buy a weight-loss product, but also knows facts about Fat Dissolver that will not meet that standard of information. The advertiser, then, misrepresents the information about the product so that it meets my threshold for making a rational decision. By concealing the true nature of the product, the advertiser is mistreating me as a rational being and essentially swindling me into a purchase I otherwise would not have made.
3. It is morally wrong, since it is a type of unfair competition. Suppose there are five competing weight-loss products on the market, four of which make truthful claims in their advertisements. Advertisers of Fat Dissolver, however, make their product more appealing by misrepresenting the facts about it. They have beaten the competitors but have done so unfairly through deceit.

Figure 4.2 shows FTC commissioner Roscoe Starek's list of "Myths and Half-Truths About Deceptive Advertising" as warnings to potentially deceitful advertisers. The underlying theme of these myths is that advertisers should not be lazy in the fact-gathering process. There are scientifically respectable standards for determining what counts as a factual claim about a product, and those are the standards upon which advertisers should rely.

Figure 4.2: Myths and half-truths about deceptive advertising

1. If a couple of studies support your claim, it is substantiated.
2. If your product has some benefits, your ads won't be challanged.
3. Testimonials are substantiation.
4. So long as endorsers really use the product, and really like it, you can safely use their endorsements.
5. If you contradict a deceptive claim with a disclosure, you immunize yourself from liability.
6. "Results may vary" is an adequate disclosure.
7. Dietary supplement ads are not regulated.
8. If all you do is produce the informercial, you are not responsible for deceptive claims.
9. No rules apply to advertising on the internet.

Source: Starek, R. B., III. (1996, October). Myths and half-truths about deceptive advertising. Presented at the National Infomercial Marketing Association, Las Vegas, NV. Retrieved from http://www.ftc.gov/speeches/starek/nima96d4.shtm

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Deceptive Food Packaging

Statements about the health benefits of food products are an area where advertisers have been notoriously negligent about backing up their claims with scientific evidence. For example, Dannon settled a $21 million class-action lawsuit for misleading claims that bacteria in its Activia yogurt help relieve irregularity and that its DanActive drink boosts immunity. According to the FTC, the evidence was not there to back up the claim. The FTC's chairman stated, "Consumers want, and are entitled to, accurate information when it comes to their health. Companies like Dannon shouldn't exaggerate the strength of scientific support for their products" (Federal Trade Commission, 2010).

Associated Press/byline withheld

Dannon recently settled a $21 million class-action lawsuit for misleading claims that bacteria in its Activia yogurt help relieve irregularity. According to the FTC, the evidence was not there to back up the claim.

Even when nutritional claims on food packages are, strictly speaking, true, they can be fundamentally misleading. A mother of a 4-year-old girl filed a class-action lawsuit against the manufacturers of Nutella hazelnut spread for deceptive advertising. She purchased the product based on advertisement claims that it was a healthy and nutritious breakfast food. However, when learning of its high fat and sugar content, she concluded that it was "the next best thing to a candy bar" (Weiss, 2011). Nutella is clearly not alone in broadcasting nutritional claims in ads and packaging. Statements such as "high in vitamins" "low in carbohydrates," and "an excellent source of calcium" create the illusion that a product is, on the whole, healthy, when the selective information presented may be irrelevant to the buyer's actual health needs. One study of this subject concluded that claims on food packaging should speak directly to the most critical health issues of buyers:

> Nutrition rating systems and symbols on the fronts of food packaging would be most useful to shoppers if they highlighted four nutrients of greatest concern—calories, saturated fat, trans fat, and sodium. . . . These food components are routinely overconsumed and associated most strongly with diet-related health problems affecting many Americans, including obesity, heart disease, high blood pressure, Type 2 diabetes, and certain types of cancer (Institute of Medicine of the National Academies, 2010).

According to this study, major public-health issues could be better addressed if product packaging focused on calories, saturated fat, trans fat, and sodium rather than on less important nutritional claims. This would eliminate much of the nutritional hype on food packaging and prominently display the health information that consumers need most.

However, the problem is that comparatively few prepared foods would qualify for these kinds of labels. There is a natural human craving for fatty, salty, and high-calorie foods, which were

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important for sustaining human survival in hunter-gatherer days. With food supplies being scarce, early humans' next meal needed to meet their most urgent physiological demands. Although food supplies are not scarce for most of us today, we nevertheless retain our prehistoric cravings, and food producers are quick to supply us with products we desire. Modern consumers, then, are sending mixed messages to food manufacturers: We crave fatty, salty, and high-calorie foods, while at the same time we would like to know that what we are eating is healthy. The manufacturer, then, obliges. So far, the FDA forbids only false nutritional claims. It remains to be seen whether they will require packaging to proactively address the health risks of fatty, salty, and high-calorie foods.

Deception Versus Puffery

What we have seen so far is that advertising that blatantly makes false claims is both morally wrong and legally prohibited. But what about exaggerated claims like "the best dishwashing liquid of all time," or "the world's richest cup of coffee," or "the number 1 best tasting," or "the most delicious way to eat healthy"? Although these statements are not, strictly speaking, true, are they misleading?

In the advertising world this is called **puffery**, and there are two distinct elements to it:

- It involves an exaggeration that no reasonable person would take as factual. If I claim that my product is the best and greatest creation on the planet, you would not believe me. You would see it as just my attempt to get your attention. No one believes that the Energizer Bunny literally keeps on going and going.
- The claim is too vague to be provable. What sort of scientific test could we devise to prove that a specific brand of hot dog is "the finest in the world"? The word *finest* is so vague that we cannot establish a clear criterion to determine whether something does or does not count as the finest. The term *world* is also vague. Does it include all nations and cultures on earth? Does it include homemade hot dogs throughout the world, or just mass-produced ones? A claim cannot count as factual when there is no method we can devise to prove or disprove its truth.

This point is illustrated in a case involving American Italian Pasta Company, which placed "America's favorite pasta" on its packaging of Mueller's-brand dried pasta. A rival manufacturer, New World Pasta Company, challenged the company, arguing that the phrase constituted false and misleading advertising. The judge ruled that the slogan was not deceptive since "'America's Favorite Pasta' is not a specific, measurable claim and cannot be reasonably interpreted as an objective fact." He further explained the distinction between puffery and factual statements:

> Puffery and statements of fact are mutually exclusive. If a statement is a specific, measurable claim or can be reasonably interpreted as being a factual claim, i.e., one capable of verification, the statement is one of fact. Conversely, if the statement is not specific and measurable, and cannot be reasonably interpreted as providing a benchmark by which the veracity of the statement can be ascertained, the statement constitutes puffery (quoted in Hoffman, 2004)

In short, if a claim is puffery, then it cannot be a measurable statement of fact.

Sometimes exaggerated claims in advertising might appear to be mere puffery, but they still contain a factual element that can be tested, such as "Our coffee is even better than Starbucks." In this

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statement, a direct comparison is being claimed between two products, and this requires factual confirmation. FTC commissioner Roscoe Starek makes this point here:

> The FTC does not pursue subjective claims or puffery—claims like "this is the best hairspray in the world." But if there is an objective component to the claim—such as "more consumers prefer our hairspray to any other" or "our hairspray lasts longer than the most popular brands"—then you need to be sure that the claim is not deceptive and that you have adequate substantiation *before* you make the claim. (1996, paragraph 4)

This is precisely what happened in a lawsuit against Papa John's Pizza for use of its slogan "Better ingredients. Better pizza." Pizza Hut sued, arguing that within the context of Papa John's overall advertising campaign, the slogan was making a comparison with other companies and thus constituted false advertising. In one of its ads, for example, Papa John's made the comparative claim that its pizza "won big time" in taste tests over Pizza Hut. Papa John's responded that its slogan was mere puffery and not a factual statement. However, the judge agreed with Pizza Hut: By directly comparing the ingredients of rival pizza chains in its ads, Papa John's Pizza had created a context that no longer qualified as puffery. And within that larger context, Papa John's could not prove that its fresher ingredients resulted in better tasting pizza. The company was then prohibited from using the word *better* to describe its pizza.

On appeal, however, Papa John's was permitted to continue using its slogan, since Pizza Hut did not prove that the slogan itself improved Papa John's sales. But the appeals court did agree with the critical point that the slogan was misleading within the context of its ad campaign. This case illustrates what is known as the **puffery legal defense**: When charged with false advertising, a company claims that it was only engaging in puffery. As a legal strategy, it aims to protect advertisers whose speech is not strictly factual. In this case, the strategy did not work for Papa John's Pizza.

Punishment for Deceptive Advertising

When companies do engage in deceptive advertising, what sorts of punishments might they face, either unofficially or officially?

Unofficial Punishment

Unofficially, consumers themselves can seek vindication in their product reviews when a purchased item does not live up to claims in advertisements. Also, journalists and consumer-advocacy organizations can embarrass companies by bringing public attention to deceptive ads. For example, *Consumer Reports*, on the last page of each issue, has a segment called "Selling It," which shows pictures of misleading advertising and labeling such as:

- Large boxes of food that contain only a tiny amount of product.
- An advertisement for Internet services boldly proclaiming that prices are "guaranteed to never go up," while tiny fine print in the same ad states "rates increase after two years."
- Packaging on a frozen juice bar that states "orange" and "naturally flavored juice bar," but the only juice listed in the ingredients is apple.
- A piece of junk mail from a car company that comes in an envelope that at first glance looks like an important letter from the IRS.

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- A car-dealership billboard that has the words "Below cost!" in enormous letters, but just above it is almost unreadable small print which makes the full sentence read: "With prices so low, you'll think we're pricing them . . . below cost!"
- An advertisement for a car-rental company that prominently displays a picture of an expensive sports car, but the fine print states that the rental company does not currently have that car in its fleet.

All of these examples are for famous name-brand products, and it is humiliating for any of these companies to have their conduct placed on public display like this.

Official Punishment

There are also more official ways of punishing deceptive advertisers. For example, when an advertisement makes an unfair comparison with a competitor's product, the competitor can sue for damages, just as Pizza Hut did with Papa John's. Also, individual citizens can file class-action lawsuits against companies with deceptive ads, just as the mother did against Nutella. In both of these cases, the company might have to pay damages.

An alternative to using the legal system is a mechanism of **self-regulated advertising**, where the industry monitors and corrects false advertising by itself, without reliance on government agencies and courts. The National Advertising Review Council (NARC) is the primary self-regulatory body for the advertising industry in the United States. It sets policies and procedures for advertisers and seeks to minimize governmental involvement in the advertising business. The rationale behind self-regulation in advertising is that each business is sufficiently motivated to monitor the false advertising of its competitors. Suppose that you and I manufacture rival brands of hot dogs, and in your ads you make outrageous health claims about yours, such as your hot dogs cure heart disease. To prevent you from unfairly getting a larger share of the hot-dog market, I will want to stop your ads.

Government regulation, NARC argues, is costly and burdensome, and they offer businesses an arbitration system to resolve disputes with competitors without the involvement of courts. NARC will also address consumer complaints about misleading claims in national advertisements, such as those about product performance, superiority against competitive products, and technical facts. Armed with these consumer complaints, NARC itself can approach businesses to correct the problems, without involving the government.

The FTC is the final governmental authority on deceptive advertising. It has a long-standing policy of encouraging advertising self-regulation programs such as NARC's. As one FTC commissioner stated, "In a rapidly-evolving marketplace, a responsive self-regulatory body may be more nimble than government regulators at addressing changes and correcting problems" (Harbour, 2005, p. 2). However, the FTC believes that self-regulation has not been effective in curbing advertising abuses in some very specific areas. These include weight-loss claims in advertisements, food advertising to children, alcohol advertising to youth, Internet advertising through spam and spyware, and advertising regarding violent or explicit movies, music, and electronic games. In these cases, the motive for self-regulation is compromised because the products themselves are often morally questionable.

Suppose that you and I sell rival weight-loss drugs that are virtually worthless, and we each make bogus claims about how great our respective products are. I will not complain to the FTC or NARC

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about your deceptive advertising, since I am doing the same thing and do not want to ruin things for myself. So, too, with exploitive advertising of unhealthy snack foods and violent video games, as well as the usual products associated with Internet spamming and spyware—namely financial scams and worthless software products. If there is a moral taint to the product itself, the company has already crossed a moral line and will likely lack moral convictions when advertising its products. In these cases, then, competition will not create self-regulation.

Law enforcement through the FTC is the last line of defense against deceptive advertising, and when user reviews, consumer magazines, lawsuits, and self-regulation fail, the FTC must step in. When prosecuting deceptive advertising, the FTC can order the termination of deceptive advertisements; file civil lawsuits against companies, involving tens of millions of dollars in damages; and, in extreme cases, file criminal charges through the Department of Justice, which can involve prison time for company executives. This is what happened to the infomercial company ITV Direct, which advertised a nutritional product that it falsely claimed could prevent, treat, and cure cancer, heart disease, arthritis, and diabetes. The company was ordered to stop running the ads and to pay upwards of $50 million in restitution, and the company president faced up to 3 years in prison on criminal charges.

Corrective Advertising

One controversial form of punishment used by the FTC is **corrective advertising**—requiring companies to publish notices that correct consumers' mistaken impressions created by deceptive advertisements in the past. There are three objectives of corrective advertising:

- eliminating the lingering effects of deceptive advertisements,
- helping return competition to the condition it was in before the deceptive ads influenced the market, and
- taking away from companies the profits they improperly acquired through their deceptive ads.

The concept behind corrective advertising was first suggested in 1968 when the FTC charged the Campbell Soup Company with deceptive advertising. In its television ads, the company placed marbles in a bowl of soup to make it appear meatier. A group of concerned law students who were familiar with the case argued that merely requiring Campbell to remove the ads was not a sufficient remedy for the offense. They posited that the company needed to go further and correct the false public impression created by the ads. Although the FTC did not require corrective advertising in this case, it accepted the principle behind the idea and has used it on occasion in the decades since.

The FTC specifically considers corrective advertising in cases where consumers are likely to continue to buy a product based on erroneous beliefs. The following are some of the cases in which corrective advertising has been ordered:

- The STP company, manufacturers of the motor-oil treatment by the same name, made a series of unsubstantiated claims about the benefits of their oil-thickening additive.
- Warner-Lambert, makers of Listerine mouthwash, had a 51-year advertising campaign making the unsubstantiated claim that Listerine mouthwash was effective in treating colds and sore throats.

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- Novartis, makers of Doan's Pills, made the unsubstantiated claim that the product was more effective than other analgesics.
- Bayer, manufacturers of Yaz contraceptives, made the unsubstantiated claim that the product would improve women's moods and clear up acne.

In each of these cases, the companies made claims they either did not or could not prove through scientific testing. Although the FTC only rarely orders corrective advertising as a form of punishment, it has been required enough times to serve as a deterrent for particularly egregious acts of deception.

4.5 Targeting Vulnerable Groups

A normal marketing technique in business is to focus advertisements on customers who are most likely to buy one's product. This is **target marketing—**namely breaking the market for one's product into segments and then focusing marketing activities on one or a few major segments. The segmentation is commonly based on factors such as gender, age, education level, income, geographical location, or lifestyle preferences. This in and of itself is morally unobjectionable and makes good business sense. If you sell sporting goods, you obviously want to focus your advertising on people who have some interest in athletics.

Problems occur, however, when the targeted group has a vulnerability that compromises their consumer autonomy. Vulnerable groups include children, the elderly, the disabled, and the poor. For these people, their mental, physical, or economic conditions may make them easily susceptible to persuasive advertising and motivate them to buy products that can cause them harm. With at least some of these groups, target marketing can be done responsibly, especially when the product meets a genuine need—for example, marketing fiber supplements to the elderly. But it is the potential harm from products that makes the targeting of vulnerable groups a problem. The elderly are prime targets for financial scams such as time-shares and living trusts. The poor are targets for quick credit and rent-to-own financial services, which frequently compound their economic problems.

Another prominent example is the marketing of malt liquor to inner-city Blacks, a group that has a disproportionally high level of alcohol-related health problems, including cirrhosis of the liver. Malt liquor is essentially beer with a higher alcohol content. However, for a drink to be legally called beer, its alcohol level cannot be above 5%; If it is, the drink must go by another designation, such as malt liquor, ale, or lager. Although malt liquor was initially aimed at the middle class, it has become especially popular among low-income groups, and particularly with inner-city populations. Part of it is marketing. As one article stated:

> Malt liquor brands . . . are used by the alcohol industry to connote power and machismo and lure youth and young adults into the market. Rap artists have been popular images in malt liquor advertising and "gangsta" rap performers portray malt liquor as a sign of masculinity. (Jones-Webb & McKee, 2008)

One particular malt liquor is closely associated with this controversy. In 1991, the G. Heileman Brewing Company launched a new product, Power Master malt liquor, which had an alcohol content of 5.9%, unusually high at the time. Its initial market was Chicago, and its advertisements featured rap singers, which created a firestorm of criticism that the company was targeting young inner-city Blacks. Concerned citizens, led by local Black clergy, publicly protested Heileman's tactics. The U.S. surgeon

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general stated that the company was socially irresponsible and, on a subconscious level, thought that their young Black consumers were "expendable" (Farhi, 1991). The U.S. Bureau of Alcohol, Tobacco, and Firearms then stepped in and announced that it was withdrawing approval of the product since the product violated a law prohibiting the promotion of a beer's strength on its label. The very term *Power Master*, the bureau argued, did this. Heileman capitulated and discontinued the product because of the "economic burden a legal contest would entail" (Eichenwald, 1991).

Child Advertising

Another instance of companies targeting a vulnerable group is with **child advertising—**directing an advertisement toward either a young child under age 8 or an older child between ages 8 and 12. With young children, the basic advertising strategy is to first create a desire in a child for a particular product, and then have the child coax his or her parents into buying the product. The parents are essentially harassed into buying the product, and this violates their autonomy to make informed choices as consumers. But even when advertising is directed at older children, who may have allowances and know how to interact with cashiers, the problem remains that their decision-making abilities differ from those of adults. They lack a sense of time and do not understand basic finances, such as what it means for something to be too expensive. Further, developmental psychologists often assist advertisers in illuminating how young minds work. For example, through them advertisers understand that children under 8 like to play dress-up and those 8 or over like to collect things. This enables advertisers to more carefully tailor their pitches to meet the desires of the children and thus exploit their weaknesses.

Associated Press/Ted S. Warren

In this 2009 photo, consumer advocate Blair Anundson holds a popular *Toy Story* toy that he says is small enough to pose a choking hazard to young children.

While several countries around the world have laws that regulate child advertising, the approach in the United States has been one of self-regulation. The principal guidelines have been set by the Children's Advertising Review Unit (CARU), a branch of NARC. Their guidelines for child advertising include these:

- Advertising should not stimulate children's unreasonable expectations about product quality or performance.
- Products and content inappropriate for children should not be advertised directly to them.
- Advertisers are encouraged to capitalize on the potential of advertising to serve an educational role and influence positive personal qualities and behaviors in children, e.g., being honest and respectful of others, taking safety precautions, engaging in physical activity.
- Although there are many influences that affect a child's personal and social development, it remains the prime responsibility of the parents to provide guidance for children. Advertisers should contribute to this parent-child relationship in a constructive manner. (Children's Advertising Review Unit, 2009, p. 5)

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The theme of these guidelines is that advertisers need to recognize that children are impressionable. An irresponsible ad can make children have unreasonable expectations about a product, whereas a responsible one can reinforce virtues and contribute to the parent–child relationship. Within these guidelines, though, there is great latitude, and several instances of child advertising have spawned public discussion.

With young children, there is the controversy over the inclusion of toys with kids' meals at fast-food restaurants. The toys in these meals, critics argue, are extra incentives for children to desire them, but the meals themselves are typically high in salt, sugar, fat, and calories and contribute to childhood obesity. San Francisco and a neighboring county have taken the bold step of banning kids'-meal toys, and restaurants that violate the ordinance face stiff fines.

A controversy with older children is that involving direct advertising in public schools. For decades, older schoolchildren have been exposed to national-brand products and corporate logos in school newspaper ads and on athletic scoreboards and textbook covers. Added to that now is *Channel One News*, a 12-minute current-events program for teens that is broadcast to over one third of the middle and high schools in the United States. The news shows carry 2 minutes of commercials. In all of these cases of advertising in schools, advertisers benefit by having an opportunity to instill brand loyalty in consumers at early ages. The schools benefit from the income or equipment they receive through the ad sponsorship. The larger question, however, is how the students benefit. Many of the ads are for food products, such as fast foods, soft drinks, chips, and candy, which, again, touches on the issue of childhood obesity. A documentary film on this subject described the recent surge in classroom advertising and its impact on children (Jhally, 2003). One expert in the film stated that "children are being described as objects, whose primary purpose is to be manipulated for some benefit to an adult." Another said that "the values and goals of education are very different than the values and goals of advertising."

Associated Press/Eric Risberg

San Francisco and a neighboring county banned free kids'-meal toys in various parts of the county. However, McDonald's restaurants in San Francisco have been able to skirt the law by charging 10 cents for the toys that come with Happy Meals. The company says the money paid for the toys will go toward Ronald McDonald House Charities (Conley, 2011).

With all of these cases of child advertising, the critical issue is whether the ad seriously undermines the child's autonomy. In some cases, there may be room for debate. Concerning toys in kids' meals, some parents in the California case have protested that the ban on kids'-meal toys compromises their autonomy as parents. They prefer to have the opportunity to buy the meals with toys, and in any event, parents always have the option to tell the cashier to leave the toy out. With direct advertising in public schools, a critical question is whether those ads have an added brainwashing effect on the children, or whether they are simply part of the modern marketing landscape that children have already become used to, and to at least some degree already phase

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out. If it's the latter, then cluttering the school with advertisements may be more an issue of aesthetics and interior decorating than one of autonomy. It is unreasonable to ban ads in school simply because they are ugly.

4.6 Unfair Sales Tactics

Businesses use an array of sales strategies that effectively motivate consumers to buy products—free samples, discount coupons, promotional items, rebates, closeouts. Many of these are perfectly acceptable. Others, though, can be unfair and predatory. We will look at some that are particularly infamous.

Perhaps the most well-known example of an unfair sales tactic is the **bait and switch**: Customers are attracted into a store to buy an artificially low-priced product and then are persuaded to buy a more expensive one. This practice is prohibited by the FTC, which states, "No advertisement containing an offer to sell a product should be published when the offer is not a bona fide effort to sell the advertised product" (n.d.).

Bait-and-switch tactics should not be confused with other sales techniques that are acceptable, particularly **loss-leader** strategies, where a product is sold below cost to generate customer traffic but no pressure is put on the customer to buy anything else. As examples, two separate lawsuits were filed against Dell accusing them of bait-and-switch tactics. According to a 2005 lawsuit in California, Dell allegedly advertised low-priced computers, but when some buyers tried to purchase them at the advertised price, they found that the computers were no longer available for that price. Dell had substituted them for either a more expensive computer or one of lesser quality. According to the complaint,

> Dell baits consumers with advertisements for computers and computer products at rock-bottom prices. Then, when the consumer contacts Dell to purchase a Dell product via the internet or telephone, Dell makes the switch, substituting lesser quality components, increasing the purchase price without notice, canceling orders Dell is unwilling to honor, or steering the unsophisticated consumers to other higher priced computer systems which Dell wants to unload, based on inventory control considerations. (Weber v. Dell, 2005)

What Would You Do?

You are a floor salesperson at a major consumer-electronics store, and you receive commission on your sales. Your company has advertised an inexpensive laptop for $300, and you have plenty in the stockroom, but none on the display shelf. A customer comes in asking for one.

1. Do you get one right away, or point out some of the higher priced ones first?
2. Do you point out all the disadvantages of the inexpensive one, making it seem virtually worthless?
3. Suppose that the customer says the computer is really just for checking e-mail from the grandchildren and playing computer solitaire. You know that the inexpensive one will serve the customer's needs perfectly. Do you still redirect the customer to more expensive ones with features that will never be used?
4. Your manager advises you that when a customer asks for the inexpensive computer, you should vaguely say, "We don't have any on display right now." Although the statement is technically true, it will make the customer think there are none left in the store. Do you follow your manager's direction?

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In a 2008 New York lawsuit, Dell's financing operation was accused of luring customers with advertised "no interest" or "no payment" financing, while, according to the complaint, the vast majority of consumers, even those with very good credit scores, were denied these deals.

Another infamous sales tactic is **loan packing**, which occurs when loans for a product include charges for additional items—or "add-ons"—that are concealed from the consumer. Common examples of this are automobile loans that might be packed with extra charges for loan insurance, extended warranties, window tinting, fabric protection, and rustproofing. The costs for these extra items are added onto the cost of the car and included in the loan without telling the customer. Typically, the car dealer first quotes the customer an inflated monthly loan payment, and when the customer agrees to that amount, the dealer adds the extra items to the loan contract. All the while, the buyer assumes that the extra items are free bonuses included with the car purchase rather than options that cost extra. California—a leader in consumer protection—passed a law called the Car Buyer's Bill of Rights that, among other protections, prohibits loan packing. The law includes a requirement for dealers to itemize in the sales contract any add-ons, to let buyers decide whether they want to buy them.

Misuse of Legal Tactics

Bait and switch and loan packing are both inherently unfair sales tactics, and there are laws against them. There are other types of sales techniques, however, which are not wrong in themselves but have led to abuse in the marketplace.

Sales Commissions

One misused sales technique is the sales commission—paying employees an amount of money based on their level of sales. Sometimes the commission supplements fixed wages and salary; other times the commission is the sole financial compensation for the employee. In either case, the basic formula for commission compensation is simple: The more the employee sells, the more he or she gets. The rationale is that it motivates employees to perform at their best. At the same time, however, this can put pressure on salespeople to make sales by deceiving customers, using scare tactics, exaggerating the benefits of the product, and exploiting weaknesses in customers.

This is especially prevalent in areas where consumers are at the mercy of the salespeople for their expertise. A classic case of this was Sears, which in 1992 was charged with systematically defrauding customers at its auto centers by performing unnecessary service and repairs. Sales goals were set, and repair people were paid commissions that encouraged phony diagnoses. Sears initially denied the charges and argued that replacing good parts before they fail was simple preventive maintenance and a common practice in the industry. Later, however, it accepted responsibility and restructured its automotive division, eliminating the commissions. It agreed to a settlement of $8 million and to make restitution to nearly 1,000,000 customers in the United States.

Direct-to-Consumer Advertising

Another misused sales tactic is **direct-to-consumer advertising**, a form of advertising, used principally by pharmaceutical companies, where patients are targeted rather than health-care

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professionals. Companies began the practice in 1982. The FDA is responsible for overseeing this type of advertising and has a series of conditions that must be met:

- The ad must make clear that "only a prescribing healthcare professional can decide whether the product is appropriate for a patient."
- It must also present "a fair balance between information about effectiveness and information about risk"; and while it does not need to list all of the drug's risks, it must present "the product's most important risk information in consumer-friendly language."
- Finally, it must make provisions for consumers to access the full label of the drug through the Internet, by mail, or by phone (U.S. Department of Health and Human Services, Food and Drug Administration, 1999).

In spite of these safeguards, direct-to-consumer advertising is controversial. A common complaint is that physicians feel pressured by patients into prescribing a drug they might not otherwise have recommended. One study showed that direct-to-consumer advertising does indeed influence what physicians recommend: A 10% increase in direct-to-consumer advertising for a drug results in a 1% increase in sales within that specific drug class (Henry J. Kaiser Family Foundation, 2003, p. 1).

There is also controversy about using direct-to-consumer advertising for drugs that have a high potential for abuse. The policy has been for the pharmaceutical industry itself to voluntarily refrain from this type of advertising. However, in 2001 the U.S. Drug Enforcement Administration (DEA) issued a letter of complaint to a pharmaceutical company for its direct-to-consumer magazine ads of a psychostimulant drug, methylphenidate, which the DEA classifies as a Schedule II controlled substance. In the letter, the DEA stated that direct-to-consumer advertising of controlled substances "is contrary to the spirit of the [Controlled Substances Act] and contrary to the public health and safety" (U.S. Department of Justice, Drug Enforcement Administration, 2001). Such advertising, it argued, is problematic "because of the inability of patients to understand medical information and make a rational, informed choice of medication from an array of drugs making similar claims." The DEA was further concerned about "the messages conveyed to our youth" through such advertising.

Default Opt-In

A final example of a misused sales tactic is the **default opt-in**. This is a feature of contracts where the customer is automatically enrolled in some unnecessary and costly secondary service, typically without knowing about it. In the past, banks routinely used default opt-in to enroll customers in credit-card overcharge protection and debit-card overdraft protection services. Suppose, for example, that your credit card has a $1,000 limit, and you are at $998. You go to a restaurant and buy a cup of coffee for $3 with your card. You might expect your card to be rejected, since you are now overcharged by $1. However, your credit-card company would allow the purchase to go through since you have "overcharge protection," but they would charge you a fee of up to $40. Your $3 cup of coffee has in essence cost you $43. You were not asked if you wanted the overcharge service; the credit-card contract had you opt in by default.

Why would you ever want such a service that is so costly to you? The explanation that banks and credit-card companies give is that it is a service to consumers that saves them the embarrassment of having their credit cards rejected at the checkout counter. However, the economic truth behind these default opt-in policies on credit and debit cards was that it was a major source of

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revenue—an estimated $37 billion per year for banks through debit-card overdraft fees. As public outrage against these practices grew, Congress passed laws against them, and since July of 2010, the default enrollment policy has been "opt-out." Consumers can still get overdraft protection, but they have to request it.

4.7 Conclusion

At the outset of this chapter we made note of the famed expression "let the buyer beware" and its contemptuous message that consumers always need to be on guard against abusive business practices. There is, however, a counterpart to this expression, namely "let the seller beware." The message here is that businesses need to be on guard against consumer retaliation for abusive practices. Whether for subpar product safety, deceptive advertising, targeting vulnerable groups, or predatory sales tactics, businesses may pay a hefty price. None of this should come as a surprise to businesses. We've seen that the Consumer Product Safety Commission has clear guidelines about dangerous products, and the Federal Trade Commission about deceptive advertising. The National Advertising Review Council and its various self-regulatory branches also have clear principles of responsible advertising. Added to that are the ethical codes of professional businesses associations. The American Marketing Association, for example, has a code of ethics that includes six fundamental ethical values for marketers:

1. *Honesty*, which includes offering "products of value that do what we claim in our communications."
2. *Responsibility*, which includes recognizing "our special commitments to vulnerable market segments such as children, seniors, the economically impoverished, market illiterates and others who may be substantially disadvantaged."
3. *Fairness*, which includes avoiding "false, misleading and deceptive promotion," and rejecting "manipulations and sales tactics that harm customer trust."
4. *Respect*, which includes avoiding "stereotyping customers or depicting demographic groups (e.g., gender, race, sexual orientation) in a negative or dehumanizing way."
5. *Transparency*, which includes disclosing "list prices and terms of financing as well as available price deals and adjustments."
6. *Citizenship*, which includes protecting the environment, making charitable donations, and ensuring fairness for "producers in developing countries." (American Marketing Association, n.d.)

We see in this list references to many of the abuses described in this chapter—deceptive advertising, unfair sales tactics, and targeting vulnerable groups. Similar principles are espoused by the Organization for Economic Co-operation and Development (OECD), an international group that advises governments on business issues. A section of their *Guidelines for Multinational Enterprises* is devoted specifically to serving consumer interests, including recommendations that businesses:

1. Ensure that the goods or services they provide meet all agreed or legally required standards for consumer health and safety, including health warnings and product safety and information labels.
2. As appropriate to the goods or services, provide accurate and clear information regarding their content, safe use, maintenance, storage, and disposal sufficient to enable consumers to make informed decisions.

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3. Provide transparent and effective procedures that address consumer complaints and contribute to fair and timely resolution of consumer disputes without undue cost or burden.
4. Not make representations or omissions, nor engage in any other practices, that are deceptive, misleading, fraudulent, or unfair.
5. Respect consumer privacy and provide protection for personal data.
6. Co-operate fully and in a transparent manner with public authorities in the prevention or removal of serious threats to public health and safety deriving from the consumption or use of their products. (Organization for Economic Co-operation and Development, 2008, p. 22)

Added to all of these laws, regulations, and guidelines are codes of ethics and best practices that individual companies devise for themselves. The bottom line: Businesses that engage in abusive consumer practices cannot plead ignorance. If their own consciences will not tell them what is expected of them, countless agencies and organizations have already broadcast loud and clear what consumers expect in a fair marketplace.

Summary

At the outset of this chapter, we introduced the concept of consumer advocacy, which is an organized effort to protect consumers against dangerous products, unfair pricing, deceptive advertising, and manipulative sales practices. In the United States, consumer advocacy took hold in the first decades of the 20th century with the creation of the Pure Food and Drug Act, the Federal Trade Commission, the Food and Drug Administration, and Consumers Union. A major concern for consumers is product safety, which to a large degree is monitored by the Consumer Product Safety Commission (CPSC). The CPSC oversees consumer-product recalls and runs the Web site SaferProducts.gov, where consumers can lodge complaints. Automobiles, since their inception, have presented safety concerns; the cases of the Chevrolet Corvair and Ford Pinto illustrate automobile manufacturers' resistance to safety improvements that carve into company profits.

Another area of concern for consumers is deceptive advertising, which intentionally misleads or confuses consumers. Though not, strictly speaking, deceptive, puffery involves exaggerated claims in advertising that no reasonable person would take as factual and that are too vague to be provable. The puffery legal defense is a tactic used by companies when they are charged with false advertising, where they claim to be only engaging in puffery. Unofficially, companies can be punished for deceptive advertising by consumers, journalists, and consumer-advocacy groups by bringing offenses to public attention. Officially, companies can be punished for deceptive advertising with criminal prosecution, lawsuits, and correction by a self-regulated advertising organization, particularly the National Advertising Review Council (NARC). Corrective advertising is a punishment that requires companies to publish notices that correct consumers' mistaken impressions created by deceptive advertisements in the past.

Advertising can also run afoul of consumer-protection interests when it targets vulnerable groups, as occurred with the marketing of Power Master malt liquor to inner-city youth. Child advertising is a sensitive subject; it can manipulate young children into nagging their parents, and with older children it takes advantage of their undeveloped decision-making abilities. Some sales tactics are outright illegal, such as the bait and switch, where customers are attracted into a store to buy an

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artificially low-priced product and then are persuaded to buy a more expensive one. So too with loan packing, which involves loans for a product that include hidden charges for additional items. Some legal sales tactics can be abused, such as sales commissions, direct-to-consumer advertising, and default opt-in policies.

Discussion Questions

1. Consumer autonomy is the notion that consumers should be in charge of determining what to purchase after being supplied with relevant information. Consider, though, how much information any of us can truly have with most of our purchases. We do not fully know how the products are made, how long they will last, or whether they have hidden harms. Pick an example, such as a food product or an electronic device, and discuss the kind of information that you would need in order to have a reasonable amount of consumer autonomy.
2. A major political controversy involves the degree to which the government should regulate business activities. The conservative position is that governments should leave businesses to regulate themselves, whereas the liberal position is that government regulation is needed to force businesses to act responsibly. Consider all the laws and government agencies discussed in this chapter that are devoted to protecting consumers from unethical business practices. Is there too much government involvement with consumer advocacy? Explain why or why not.
3. A critical point of distinction between deceptive advertising and mere puffery is whether a claim is a measurable statement of fact. Think of some examples of each and explain why they are or are not measurable statements of fact.
4. Kids'-meal toys at fast-food restaurants are a major marketing draw for families with young children. Santa Clara County in California banned such toys, suggesting that it is a case of targeting a vulnerable group. Do you agree? Explain.
5. Explain the difference between bait-and-switch and loss-leader marketing tactics, using examples of each.

Key Terms

bait and switch An illegal sales strategy where customers are attracted into a store to buy an artificially low-priced product and then are persuaded to buy a more expensive one.

child advertising The marketing strategy of directing an advertisement toward either a young child under age 8 or an older child between ages 8 and 12.

consumer advocacy An organized effort to protect consumers against dangerous products, unfair pricing, deceptive advertising, and manipulative sales practices.

consumer autonomy The notion that consumers should be in charge of determining what to purchase after being supplied with relevant information.

Consumer Bill of Rights Four consumer rights articulated in a 1962 speech by President John F. Kennedy: (1) the right to safety, (2) the right to be informed, (3) the right to choose, and (4) the right to be heard.

Consumer Product Safety Commission (CPSC) U.S. federal agency founded in 1972 for the purpose of protecting the public "against unreasonable risks of injuries and deaths

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associated with consumer products."

Consumers Union Nonprofit consumer-advocacy organization founded in 1936, publisher of *Consumer Reports* magazine.

corrective advertising A punishment that requires companies to publish notices that correct consumers' mistaken impressions created by deceptive advertisements in the past.

deceptive advertising Advertising that intentionally misleads or confuses consumers.

default opt-in A feature of sales contracts where the customer is automatically enrolled in some unnecessary and costly secondary service, typically without knowing about it.

direct-to-consumer advertising An advertising strategy, used especially by pharmaceutical companies, where patients are targeted rather than health-care professionals.

Federal Trade Commission (FTC) U.S. Federal agency established in 1914 to prevent businesses "from using unfair methods of competition in commerce" and to "protect consumers against unfair, deceptive, or fraudulent practices."

Food and Drug Administration (FDA) U.S. federal agency formed in 1927 for the purpose of carrying out the tasks specified in the Pure Food and Drug Act of 1906.

Guidelines for Consumer Protection Guidelines established by the United Nations in 1985, which include seven fundamental consumer needs that require protection.

loan packing A sales strategy in which loans for a product include charges for additional items—or "add-ons"—that are concealed from the consumer.

loss leader A product that is sold below cost to generate customer traffic, with no pressure put on the customer to buy anything else.

puffery Exaggerated claims in advertising.

puffery legal defense A legal strategy where, when charged with false advertising, a company claims that it was only engaging in puffery.

Pure Food and Drug Act of 1906 U.S. law that aimed to prevent "the manufacture, sale, or transportation of adulterated or misbranded or poisonous or deleterious foods, drugs, medicines, and liquors."

SaferProducts.gov Web site run by the U.S. Consumer Product Safety Commission where consumers can report unsafe products.

self-regulated advertising The practice in which the advertising industry monitors and corrects false advertising by itself, without reliance on government agencies and courts.

target marketing The marketing strategy of breaking the market for one's product into segments and then focusing marketing activities on one or a few major segments.

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