
EDITORIAL POSTLUDE

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Desires Versus the Reality of Self-Regulation

By now everyone interested in consumer research has heard the often-repeated news that there is an epidemic of obesity in the United States. In addition, numerous people who are not grossly overweight wish they were thinner. While some people are overweight as a result of genetics or metabolic disorders, most are simply slothful gluttons. Thus, although the intuitively obvious way to lose weight is to eat less and exercise more, it should surprise no one that most overweight Americans hope to lose weight while still spending their free time on the couch, driving cars instead of walking, and overfilling their plates at all-you-can-eat buffets.

To satisfy this widespread consumer “need,” a plethora of products are available that promise consumers quick-and-easy, exercise-free weight loss. No longer buried in small, almost-hidden classified mail order advertising or late-night infomercials, these products are now prominently advertised in many major media vehicles and have their own huge display section in many stores. Since the products are “supplements” and not drugs, Congress has limited the Food and Drug Administration’s powers to regulate their advertising or sale. The products are not screened by the government to be certain they can perform as claimed—the most “honest” of these television commercials will include an almost invisible disclaimer that the FDA has not screened their advertising for accuracy—and as evidenced by the death of prominent celebrities using or abusing ephedra, the products can be dangerous even when used as directed on the label.

For over a decade, the Federal Trade Commission has seemed to start new investigations or issue new complaints against another weight loss advertiser almost every month. But there are just too many of these companies. Despite its best efforts, the FTC seems incapable of ending the deceptive television, newspaper, and magazine advertising, with a large quantity of deceptive advertising appearing even in otherwise reputable vehicles.

A logical solution would be to call on the media managers of the mass media to help in the cause of consumer protection. After all, no U.S. mass media vehicle is required to accept any commercial advertising material it does not wish to carry. On November 19, 2002, I participated in an FTC workshop that was intended to encourage greater media self-regulation of deceptive weight loss advertising.

For the entire morning, a Science Panel of ten distinguished medical experts discussed a list of common advertising or label claims made for these weight loss products. The panelists sometimes debated the marketing point of view, as to what is "significant weight loss" to consumers, or if any products on the market might generate some short-term reductions. Yet in the end, for virtually every common claim for these ubiquitous products, the panelists gave unanimous agreement that such claims can't be true, with a rare single panelist noting an exception under certain technical conditions.

For slightly over an hour after a lunch break, a second Industry Panel talked of the importance of self-regulation and touted their own activities. Some firms have implemented noteworthy internal codes of ethics, some industry trade associations have written guidelines for members, and every association presents its code of good practices as a strong force for consumer protection. Left unstated, however, is the reality that even if a code is followed by some "leading" firms in a business, many other competitors probably consider it irrelevant for their daily operations (Rotfeld 1992). Some companies and trade associations will want to do the right thing, but the Jenny Craig company or National Nutritional Foods Association, for example, can't force another business to cease its claims that a pill alone will enable a now-overweight woman to soon be able to wear a bikini and have staring men walk into walls.

The workshop ended with a Media Panel, which consisted of media managers, representatives of media trade associations, Frederick Schauer, from the Harvard University Kennedy School of Government, and me. The media people talked of their deadlines and the large number of advertising submissions, making it hard to provide a thoughtful review of every claim. I countered by noting that many of these deceptive claims appear repeatedly. They said it was hard to spot the deceptions since they are not experts, to which I pointed to the morning session which provided a list of clear never-true often-repeated product claims. After all, I said, none of them would accept virtually every advertising submission. While they would screen out all advertising with offensive words or images or derisive references to religion, the media panelists did not appear eager to assert a desire for themselves or the trade association members to strongly screen for deceptive weight loss claims.

At least one Commissioner later expressed her disappointment with the media panel (Anthony 2003), but the FTC's own experiences would have shown how such an outcome should be expected.

In the late 1990s, I participated in similar workshops run by the FTC Bureau of Consumer Protection for media managers around the country. Like the 2002 Weight Loss Workshop, the purpose of the meetings was to encourage the men and women from the vehicles to do more to screen out deceptive advertising from their broadcasts. However, a speaker at one meeting showed us that the FTC's goals were not the same as those of the media managers. When he asked how many of the people were there to learn about ways to spot misleading claims, only one or two hands went up. But when he asked how many of them were concerned with avoiding lawsuits by advertisers based on their acceptance policies, almost everyone raised a hand (Rotfeld 2001).

Some media companies might be very concerned with potential harm to their audience members, but it would be a gross error to presume that their practices are typical. Actually, they are almost rare. The single most common reason for advertising rejections by vehicles has always been a fear of offending the audience. To be pragmatic, the vehicle managers' job performance is evaluated on the basis of company revenue, i.e., the business's profitability, so even the most socially conscious manager's policy is driven by a mix of greed and fear, wanting the revenue and not wishing the advertising style or content to drive away the audience. Not accepting a company's advertising results in a direct loss of income, whereas carrying too much advertising that drives away the audience could mean that the vehicle would have a hard time attracting future advertisers and also would have to charge less to those it retains (Rotfeld 1992; 2001). And, unfortunately, these vehicles' audiences *want* to hear about weight loss products.

When I made similar statements at the panel, the media people quickly rebuffed my assertions by saying, "I'm not like that." Of course, I was talking about the typical manager, not the business leaders willing to come to Washington for the workshop. Yet instead of saying they could take a leadership role in not accepting the deceptive advertising, they gave excuses (for example, see Teinowitz 2002).

As I said in my final words on the panel, if the FTC commissioners really want to see greater screening by the vehicles, they need to give the managers a strong incentive for such screening: hold the media companies liable for knowingly carrying deceptive claims. The FTC should send the claims list from the morning session to print publishers and broadcast managers, inform them that these claims were false, and tell them that they will be held legally liable if they publish these known deceptions.

Of course, this is what I said the FTC *should* do. In his article in this issue of *JCA*, Professor Galloway shows how they legally *could*. As I am typing this, the FTC is about to publish its list of deceptive claims and continue efforts at moral suasion of the managers. But without the threat of liability as an incentive, few media vehicles' practices will change.

REFERENCES

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