Chapter 12
The Selling Office: Advertising and Consumer Protection

Chapter Overview

Chapter 12 "The Selling Office: Advertising and Consumer Protection" considers the ethics of selling by examining advertising, and the ethics of buying by examining conceptions of the consumer.

12.1 Two Kinds of Advertising

LEARNING OBJECTIVES

1. Define and characterize informational advertising.
2. Define and characterize branding advertising.

Old Spice

One reason guys like to have the controller when couples are watching TV is so they can flip the channel fast when ads like this come on:

> *Viewed from the waist up, you see a perfectly bodied man wrapped in a low-slung towel. With gleaming eyes locked on the camera he intones, "Hello, ladies, look at your man, now back to me, now back at your man, now back to me." While guys at home cringe, he comes to an indisputable conclusion, "Sadly, he isn't me." After letting the reality sink in, he soothes his female viewers with the information that "He could at least smell like me if he switched to Old Spice body wash." Next, he asks us to "Look down," and while everyone's eyes drop to his towel, some green screen magic allows him to seamlessly appear on a romantic sailboat in the Caribbean. His hand overflows with diamonds, then a bottle of Old Spice arises along with them, and we learn that, "Anything is possible when your man smells like Old Spice."*

Advertising is about enticing consumers. It comes in many forms, but the two central strategies are (1) informational and (2) branding.

Ads: Information and Branding

There are more and less sophisticated ways of enticing consumers. At the lowest level, there are product-touting ads and comparisons giving straight information. When Old Spice set aside some money to sell their body wash, they could have gone that route, they could've dabbed some product on a shirt and asked random women to stop, take a sniff, and report on the scent. Then magazine spreads could be produced announcing that "three out of four women like the Old Spice scent!" A bit more aggressively, women could be given a blind sniff test featuring Old Spice and Axe products, or Old Spice and some "leading brand," one probably chosen because it fares particularly poorly in the comparison test. In any of its forms, this is informational advertising. It presents facts and hopes that reasonable consumers buying body wash will choose Old Spice.

Other kinds of informational advertising include price comparisons (Old Spice costs less than Axe) and quality comparisons (the Old Spice scent lingers eight hours after showering, and Axe is gone after only six). Naturally, different kinds of products will lend themselves to different kinds of factual and informational claims. Sometimes, finally, this kind of advertising is called transactional because it's directly about the exchange of money for a good or service.

Moving toward more sophisticated—or at least less rational and direct—advertising, there's branding, which is the attempt to convert a product into a brand. In the advertising and marketing world, the word *brand* has a very specific meaning. It's not the name of the company making the product, not the words Old Spice or Kleenex. Instead, a brand is a product or company's *reputation*; it's what you think of when you hear the name and it's the feelings (good or bad) accompanying the name. Technically, a brand is what a product or company is left with when you take everything away. Exemplifying this in the case of Old Spice, imagine that tomorrow all their production factories burn down, their warehouses flood, and their merchandise sells out at every store. Basically, the company has nothing left, no factories to make product, no stock to ship out, and no items left to sell on any shelf. Now, if you were a wealthy investor, would you *buy* this company that has nothing? You might.

You might because it still has its brand, it still has a reputation in people's minds, and that can be worth quite a bit. Frequently, when we visit a store and stand in front of shelves packed with different versions of a single kind of item, we don't have time or the patience to carefully go through and compare price per ounce or to Tweet questions to friends about what they recommend. We choose one body wash—or one style of underwear or Eveready batteries instead of Duracell—because of an idea about that product planted in our mind. Maybe we don't know exactly where the idea came from, or exactly what it is, but it's there and guides us to one choice instead of another. It makes a product seem like it's *our* kind of product (if it's the one we end up buying) or not our kind of product.

The Old Spice commercial is an exercise in branding. It's funny, sexy, embarrassing, and extremely sophisticated. Looking at the commercial, the first question to ask is "in the most literal terms, what's the message?" Is it that Old Spice is a good value? No, there's no talk about price. Is it that Old Spice smells good? No, the only claim is that it can make you smell like an attractive actor. Is it that the actor (and former pro football player) Isaiah Mustafa uses Old Spice? No, he says he does, but that's not the message. If anything, *his* message to potential consumers is that, if he wanted to, he could steal their girlfriends. This is not the kind of information that wins market share.

Fortunately for Old Spice, branding isn't about facts or truths; it's about producing an attitude and connecting with a specific sense of humor and outlook on life. Like a style of clothes or a preference for a certain kind of music, Old Spice is conveying a personality that you appreciate and like or, just as easily, dislike. That's why the whole commercial comes off as a kind of joke about a certain vision of attraction and romance and sex. Do you enjoy the joke? If you don't, then Old Spice is going to have to find a different way to get into your (or your boyfriend's) wallet. If you *do* like it, if the whole thing seems zany and funny and you wouldn't mind pulling it up on YouTube to watch again, then you've been branded. Old Spice has found a way to get past all the defenses we usually set up when we see advertising, all the skepticism and cynicism, and gotten us to feel like we're part of something that includes that company's products.

In broad strokes, finally, there are two kinds of advertising, two strategies for influencing consumption choices. One works by appealing to facts and provides information; the other appeals to emotions and creates a lifestyle. Both kinds of advertising raise ethical questions.

1. Informational ads provoke questions about truth and lies.
2. Branding efforts provoke questions about the relation between our products and who we are as individuals and a culture.

KEY TAKEAWAYS

- Informational advertising employs facts to persuade consumers.
- Branding advertising attempts to attach a personality and reputation to a product.

REVIEW QUESTIONS

1. Can you think of an example of an informational ad? What information is provided, and how does it persuade consumers?
2. Can you think of an example of a branding ad? What personality and attitude are attached to the product? How might those characteristics persuade consumers?

12.2 Do Ads Need to Tell the Truth?

LEARNING OBJECTIVES

1. Delineate different types and degrees of deceitful advertising.
2. Discuss legal and regulatory responses to deceitful advertising.
3. Map the ethical issues surrounding deceptive ads.

Types of Deceitful Advertising

An initial way to distinguish informational advertising from branding is by asking whether consumers are supposed to ask whether the claims are true. In the case of the Old Spice body wash TV spot, there's no question. The actor asserts that "anything is possible with Old Spice" as diamonds flow magically from his hands. But no one would buy the product expecting to receive diamonds. They wouldn't because branding ads are neither true nor false. Like movies, you enjoy them (or you don't) without worrying about whether it could really happen. Informational ads, on the other hand, derive their power from selling consumers hard facts. When the ad claims the product costs less than similar offerings from rivals, the first question is "really?" When the answer is "no," the advertising is deceitful.

There are four ways that informational advertising can be deceitful:

1. False claims directly misrepresent the facts. For example, an Old Spice body wash ad could announce that it costs less per ounce than Axe. When you go to the store, however, the opposite is true. It may be that the manufacturer's suggested retail price is less, or Axe is on a special sale, but if the ad says Old Spice is cheaper and it's not, that's a false claim.
2. Claims that conceal facts are more common than directly false ones because they're not flatly untrue and so can't be easily disproven. A body wash, for example, may conveniently leave out the fact that chemical scents frequently react differently with different skin types and body temperatures, meaning a product may smell great on one man but come off as nauseating when used by most others. Another set of examples surround the infamous *fine print* on contracts. Every day, someone somewhere receives an offer for a free issue of a magazine and sends the business reply card in. It's not until a few months later;

however, that they realize that getting the free one also committed them to buying a year's worth. Another example of a concealed fact is a juice made from "natural ingredients," and it turns out the natural ingredient is sugar, which is natural, but not the fruit juice from real oranges you were expecting.

3. Ambiguous claims resemble concealed facts in not being directly untrue. Where claims that conceal facts manipulate consumers by leaving something out, ambiguous claims mislead by putting too much in. For example, a body wash may announce that it "kills the smelly bacteria that women hate most," and that may be true, but the implication that *only* Old Spice does that is misleading because *all* soaps and washes wipe out some bacteria. Just water washes a good bit away. Similarly, Viagra announces that before using the product, men should check with their doctor to "ensure that you are healthy enough to engage in sexual activity." The misleading idea is that the rock and rolling will be so intense it could be life threatening. The truth is that the drug itself may be dangerous for the unhealthy. Finally, cigarette companies use a similar strategy when they advertise light cigarettes as (truly) containing less cancer-causing tar, but they leave out the fact that the lower nicotine levels cause many smokers to light up more often and so take in as much, or even more, than they otherwise would have. In every case, the ad's claim is technically true, but it leads consumers toward possibly false assumptions that just happen to make the product more attractive.
4. Puffery is a technical term in the advertising world. It signifies expressed views that are clearly subjective exaggerations or product slogans, and not meant to be taken literally. In the Old Spice ad, the actor's claim that "anything is possible with Old Spice" is actually an ironic joke about puffery: the ad is poking fun at those other personal care products that in essence claim the women (or men) will come running. Here are two standard examples of puffery: Budweiser is "The King of Beers" and Coke is "The Real Thing." More generally, any product labeled "The Finest," and all services that announce them "Can't be beat!" are engaging in the practice. Of course these kinds of slogans can be harmless with respect to their violation of strict truth telling, but they do place a burden on consumers to be wary.

Deceitful advertising, finally, is not the same as false advertising. All false ads are also deceitful, but there are many ways of being deceitful that don't require directly false claims.

Legal Responses to Deceptive Advertising

Created in the early 1900s, the Federal Trade Commission (FTC) was originally tasked with enforcing antitrust laws. With time, its responsibilities have expanded to include consumer protection in the area of marketing and advertising. Today, many legal conflicts over truth and sales run through its offices.

The act authorizing the FTC to begin regulating advertising declares that "unfair and deceptive practices" are illegal, and the agency is charged with the responsibility to investigate and prevent them.[1] In judging what counts as deceptive, two models are frequently used. The reasonable consumer standard is the looser of the two. It presumes that protections should only be extended to cover advertising that would significantly mislead a thoughtful, moderately experienced consumer. One advantage of this stance is that it allows the FTC to focus on the truly egregious cases of misleading advertising, and also on those products that most seriously affect individual welfare. Very close attention is paid to advertising about things we eat and drink, while fewer resources are dedicated to chasing down garden-variety rip-offs that most consumers see through and avoid.

One borderline case is the *FTC v. Cyberspace.com*. In that case, and according to their press release, the FTC charged that the defendants

> *engaged in an illegal scheme to deceive consumers by mailing $3.50 "rebate" checks to millions of small businesses and consumers. The check came with an attached form that looked like an invoice and used terms like "reference number," and "discount taken," making it look like there was a previous business relationship. By cashing the checks, the FTC alleged that many small businesses and consumers unknowingly agreed to allow the defendants to become their Internet Service Provider. After the checks were cashed, the defendants started placing monthly charges of $19.95 to $29.95 on the consumers' telephone bills. According to the FTC, the defendants then made it very difficult to cancel future monthly charges and receive refunds.*[2]

The judge sided with the FTC.

Whether or not these businesspeople should have seen through the free-money scam and thrown the "check" in the trash, it's certain that the FTC should have stepped in under the ignorant consumer standard. Within this framework—which is much stricter than the reasonable consumer version—consumers are protected even from those scams and offers that most people recognize as misleading. One point to make is that the "ignorant consumer" isn't synonymous with dumb. Though the category does catch some people who probably should've tried a bit harder in school, other ignorant consumers may include immigrants who have little experience with American advertising practices and customs. The elderly too may fall into this category, as might people in situations of extreme or desperate need. One example would be late-night TV commercials appealing to people in deep debt. Some ads promise that loan consolidation will lower their overall debt. Others imply that filing for bankruptcy will virtually magically allow a start-over from scratch. Both claims are false, but when creditors are calling and threatening to take your home and your car, even the most reasonable people may find themselves vulnerable to believing things they shouldn't because they *want* to believe so desperately.

The federal government, finally, through the FTC has the power to step in and protect these consumers. Strictly from a practical point of view, however, their resources are limited. The task of chasing down every ad that might confuse or take advantage of someone is infinite. That factor, along with good faith disagreements about the extent to which companies should be able to shine a positive light on their goods and services, means (1) the ignorant consumer standard will be applied only sparingly by government regulators, and (2) borderline cases of advertising deceit will be with us for the foreseeable future.

The Ethics of Deceitful Advertising

One way to enter the ethical debate about dubious product claims is by framing the subject as a conflict of rights. On one side, producers have a right to talk sunnily about what they're selling: they're free to accentuate the positives and persuade consumers to reach for their credit card. On the other side, consumers have a right to know what it is that they're buying. In some fields, these rights can coexist to some significant extent. For example, with respect to food and drink, labeling standards imposed on producers can allow consumers to literally see what's in their prospective purchase. Given the transparency requirement, companies can make a strong argument that they should be allowed to advocate their products with only minimal control because consumers are free to check exactly what it is they're buying.

Even these clear cases can become blurry, however, since some companies try to stretch labeling requirements to the breaking point to suit their purposes. One example comes from breakfast cereal boxes. On the side, producers are required to list their product's ingredients from high to low. At the top you expect to see ingredients including flour or similar, as quite a bit of it goes into most dry cereals. At the bottom, there may be some minor items added to provide a bit of flare to the taste.

One specific ingredient many parents worry about is sugar: they don't want to send their little ones off to school on a massive sugar high. So what do manufacturers do? They comply with the letter of the regulation, but break the spirit by counting sugar under diverse names and so break up its real weight in the product. Here are the first few lines of the ingredients list from Trix cereal:

> *Corn (Whole Grain Corn, Flour, Meal), Sugar, Corn Syrup, Modified Corn Starch, Canola and/or Rice Bran Oil, Corn Starch, Salt, Gum Arabic, Calcium Carbonate, High Fructose Corn Syrup, Trisodium Phosphate, Red 40, Yellow 6, Blue 1.*

Sugar is sugar, corn syrup has a lot of sugar, high fructose corn syrup has even more sugar. We'd have to get a chemist to tote up the final results, but it's clear that a reasonable consumer should figure this is a sugar bomb. Is it fair, though, to assume that an immigrant mother—or *any* mother not well versed in sugar's various forms—is going to stop and do (or be able to do) a comprehensive ingredient investigation? The question goes double after remembering that the first image consumers see is the product's advertising on the box featuring a child-friendly bunny.

More generally, in terms of a pure rights-based argument, it's difficult to know where the line should get drawn between the right of manufacturers to sell, and the right of consumers to know what they're buying. The arguments for pushing the line toward the consumer and thereby allowing manufacturers wide latitude to make their claims include the following:

1. Free speech. The right for people to say whatever they want doesn't get suspended because someone is trying to sell a product. Further, on their side, consumers are completely free to buy whatever they want, they're free to listen to pitches from competing merchants, and they can consult the Consumer Reports web page and talk to friends. Ours is, after all, a *free* market, and advertisers participate in it. The right to make whatever advertising claims one wishes is justified on principle, on the ideal of a liberal (in the sense of free) economic world.
2. Marketers have a moral responsibility to do everything they possibly can to sell because they're obligated to serve their employers' interest, which is to make money, presumably. In this case, deceitful advertising may be morally objectionable but less so than failing to turn the highest profit possible.

3. Within the context of an open market economy, one way to help it function efficiently, one way to get products and services sent where they're supposed to go in a way that benefits everyone, is by maximizing the amount of information consumers have before they purchase. And one way to maximize information, it could be argued, is by letting competing sellers advertise freely against each other. They can say whatever they like about themselves and point out exaggerations and untruths in the claims of competitors. This is similar to what happens in courtrooms where plaintiffs are allowed to say more or less whatever they want and defendants can do that too. Both sides cross-examine each other, and in the end, the jury weighs through it all and decides guilt or innocence. Returning to the economic realm, the argument is that the best way to get the most information possible out to consumers is by allowing a vibrant advertising world to flourish without restriction.

   On the other side, distinct arguments are frequently proposed to defend the position that sellers should operate within tight restrictions when advertising the virtues of their goods and services. The consumer should be vigorously shielded; the reasoning goes, from claims that could be deceptive. Arguments include the following:

1. Consumers have a fundamental ethical right to know what they're buying, and even mildly ambiguous marketing techniques interfere with that right. If a box of breakfast cereal is marketed with a harmless and helpful bunny, then the ingredients of Trix cereal better be harmless and helpful (and not sugar bombs). Everyone agrees, finally, that advertisers have a right to free speech, but that right stops when it conflicts with consumers' freedom to purchase what they really want.
2. Advertisers are just like everyone else insofar as they're bound by an ethical duty to tell the truth. That duty trumps their obligation to sell products and help companies make profits.
3. *Both* advertisers *and* the manufacturing companies are duty bound to treat everyone including consumers as ends and not as means. The basic ethical principle here is that no one should be treated as an instrument, as a way to get something else. There's no problem with advertising a product and allowing consumers to decide whether they want it, but when the advertising becomes deceptive, consumers are no longer being respected as dignified human beings; they're being treated as simply means to ends, as *ways* the company makes money. Consumers become, in a sense, indistinguishable from the machines in the factory, nothing more than cogs in the process of making owners wealthy.

4. Purchasing a product is also the signing of an implicit contract between producer and consumer. The consumer gives good money and expects a good product, one in line with the expectations raised by advertising. Just as companies are right to apply drug tests to workers because those companies have a right to a full day's good labor for a full day's pay, so too when the consumer pays full price for a product it should fully meet expectations.
5. Though the *idea* of allowing marketers to say whatever they want may sound good because it allows consumers to maximize information about the products that are out there, the theory only works if consumers have massive amounts of time to study the messages from every producer before making every purchase. In reality, no one has that much time and, as a result, advertisers must be limited to making claims that are clearly true.

Conclusion. There's a lot of space between truths and lies in advertising; there are many ways to not quite tell the whole truth. Both legally and ethically, the limits of the acceptable can be blurry.

KEY TAKEAWAYS

- Deceitful advertising occurs along a range from exaggerations to direct falsehoods.
- Legal responses to deceitful advertising may be organized through the FTC.
- The degree of consumer legal protection depends on premises about the marketplace sophistication of the consumer.
- Ethical debates concerning deceitful advertising pit the rights of marketers to sell against the rights of consumers to know what they are purchasing.

REVIEW QUESTIONS

1. What's the difference between deceitful advertising and direct falsehoods?
2. Define the *reasonable consumer standard* for consumer protection. How is it different from the *ignorant consumer standard*?
3. What are two arguments in favor of granting marketers wide latitude to promote their products?
4. What are two arguments in favor of forcing marketers to stay very close to the pure truth when promoting their products?

[1] Section 5, Federal Trade Commission Act.

[2] “Bogus ‘Rebate’ Offers Violate Federal Law,” Federal Trade Commission, August 5, 2002, accessed June 2, 2011, http://www.ftc.gov/opa/2002/08/cyberspace.shtm.

12.3 We Buy, Therefore We Are: Consumerism and Advertising

LEARNING OBJECTIVES

1. Define consumerism.
2. Discuss the power and problems surrounding advertising that creates desires.
3. Consider special issues surrounding advertising and children.
4. Investigate the penetration of advertising in life.

What Is Consumerism?

The word *consumerism* is associated with a wide range of ideas and thinkers, ranging from American economist John Kenneth Galbraith and his book *The Affluent Society* to the French postmodern philosopher Jean Baudrillard. While definitions of the word and responses to it vary, consumerism in this text is defined in two parts:

1. We identify ourselves with the products we buy. Consumerism goes beyond the idea that our brands (whether we wear Nike shoes or TOM's shoes, whether we drive a Dodge Charger or a Toyota Prius) are *symbols* of who we are. Consumerism means our products aren't just things we wear to make statements. They *are* us; they incarnate the way we think and act.
2. If we are what we buy, then we need to buy in order to be. Purchasing consumer items, in other words, isn't something we do to dispatch with necessities so that we can get on with the real concerns of our lives—things like falling in love; starting a family; and finding a satisfying job, good friends, and fulfilling pastimes. Instead, buying becomes the way we do all those things. The consumption of goods doesn't just dominate our lives; it's what we do to live.

The subject of consumerism goes beyond business ethics to include every aspect of economic life and then further to cultural studies, political science, and philosophy. Staying within business ethics, however, and specifically with advertising, the subject of consumerism provokes the following questions:

- Does advertising create desires (and is there anything wrong with that)?
- Do advertisers have a responsibility to restrain their power?

- Should there be different rules for advertising aimed at children?
- Is advertising too intrusive in our lives?

Does Advertising Create Desires (and Is There Anything Wrong with That)?

Our society is affluent. With the exception of marginal cases, all Americans today eat better, enjoy more effective shelter from winter cold and summer heat, are healthier, and live longer than, say, the king of France in 1750. In fact, necessity in the sense of basic life needs hardly exists. We struggle heroically to afford a better car than our neighbor, to have a bigger home than our high-school classmates, to be thin and pay the doctor for a perfectly shaped nose, and so on, but no one worries about famine. Our economic struggles aren't about putting food on the table; they're about eating in the most desirable restaurant.

How do we decide, however, what we want—and even what we want desperately—when we don't truly *need* anything anymore? One answer is that we create needs for ourselves. All of us have had this experience. For our entire lives we lived without iPhones (or even without cell phones), but now, somehow, getting halfway to work or campus and discovering we left our phone at home causes a nervous breakdown.

Advertising plays a role in this need creation. Take the Old Spice body wash ad. Body wash as a personal grooming product was virtually unheard of in the United States until only a few years ago. More, as a product with specific characteristics, it's hard to see how it marks an advance over old-fashioned soap. This absence of obvious, practical worth at least partially explains why the Old Spice ad provides very little information about the product and nothing by way of comparison with other, similar options (like soap). Still, the Old Spice body wash is a hit. The exact techniques the ad uses are a matter for psychologists, but as the sales numbers show, the thirty-second reel first shown during the Super Bowl has herded a lot of guys into the idea that they need to have it.[1]

Is there anything wrong with that? One objection starts by pointing out that corporations producing these goods and selling them with slick ad campaigns aren't satisfying consumer needs; *they're trying to change who consumers are* by making them need new things. Instead of fabricating products consumers want, corporations now fabricate consumers to want their products, and that possibly violates the demand that we respect the dignity and autonomy of others. The principle, for example, that we treat others as ends and not means is clearly transgressed by any advertising that creates needs. First, guys out in the world *aren't* being respected as "ends," as individuals worthy of respect when corporations stop producing their required products better or more cheaply. Second, guys out in the word *are* being treated as means—as simple instruments of the corporations' projects—when their desires are manipulated and used to satisfy the *corporations'* desire to make money.

Another argument against this kind of desire-creating advertising starts from a rights approach. According to the theory that freedom is the highest good, we're all licensed to do whatever we want *as long as* our acts don't curtail the freedom of others. The argument could be made that using sophisticated advertising campaigns to manipulate what people want is, in effect, curtailing their freedom at the most fundamental level. Old Spice's advertising strategy is enslaving people to desires that they didn't freely choose.

A final argument against need creation with advertising is the broad utilitarian worry that consumers are being converted into chronically, even permanently unhappy people because they have no way to actually satisfy their desires. If you work to attain something you've been told you're supposed to want, and the second you get it some new company enters with the news that now there's something else you need, the emotional condition of not being satisfied threatens to become permanent. Like mice trapped on a running wheel, consumers are caught chasing after a durable satisfaction they can't ever reach.

On the other side of the argument, defenders and advocates of desire-creating advertisements like the one Old Spice presented claim (correctly) that their announcements *aren't* violating the most traditional and fundamental marketing duty, which is to tell the truth. The Old Spice ad, in fact, doesn't really say anything that's either true or false. Given that, given that there's no attempt to mislead, the company is perfectly within its rights to provide visions of new kinds of lives for consumers to consider, accept or reject, buy or pass over.

Stronger, advocates claim that consumers are adults and attempts to shield them from ads like those Old Spice produced *don't* protect their identity and dignity; instead, they deny consumers options. Consequently, ethical claims that ads aiming to generate new desires should be constrained actually *violate* consumer dignity by treating them like children. We should all be free, the argument concludes, to redefine and remake ourselves and our desires in as many ways as possible. By offering options, advertising is expanding our freedom to create and live new, unforeseen lives.

Do Advertisers Have a Responsibility to Restrain Their Power?

The Old Spice ad didn't end after its thirty seconds of fame on the Super Bowl broadcast. The actor Isaiah Mustafa went on to became a Twitter sensation. By promising to respond to questions tweeted his way, he effectively launched a second phase of the marketing effort, one designed to stretch out the idea that body wash is big and important: it's what people are talking about, and if you *don't* know about it and what's going on, you're out of the loop, not relevant. The tone of the invitation to Twitter users to get involved stayed true to the original commercial. Mustafa asked people to "look for my incredibly manly and witty and amazing responses" to their questions.[2]

On YouTube, Mustafa's status went to instant legend: not only has his commercial been viewed about *20 million* times (by people who actually *want* to watch and pay attention and at zero cost to Old Spice), there's also a long list of copycat videos, derivative videos, spoof videos, and on and on. The depth of the advertising campaign is now virtually infinite. You could pass years watching and listening and reading the social media generated and inspired by the original commercial.

All that is advertising. It's not paid, it's not exactly planned, but it is part of the general idea. When Old Spice spent big money to get a Super Bowl slot for their ad, they weren't only trying to reach a large audience; they were also hoping to do exactly what they did: set off a firestorm of attention and social media buzz.

Called viral advertising, this consumer-involved marketing strategy drives even further from traditional, informational advertising than the activity of branding. Where branding attempts to attach an attitude and reputation to a product or company independent of specific, factual characteristics, viral ads attempt to involve consumers and exploit *them* to do the company's promotional work. When viral advertising is working, the activity of branding is being carried out for free by the very people the advertising is meant to affect. In a certain sense, consumers are advertising to themselves. Of course, consumers aren't rushing to donate their energy and time to a giant corporation; they need to be enticed and teased. The Super Bowl ad with its irresistible humor and sex-driven come-on does that—it provokes consumers to get involved.

Viral ads—and the techniques of public enticement making them spread contagiously—come in many forms. One ethical discussion, however, surrounding nearly all viral advertising can be framed as a discussion about knowledge and resource exploitation. Two critical factors enabled Old Spice, along with its advertising agency Wieden+Kennedy, to generate so much volunteer help in their endeavor to get the body wash buzz going:

1. Knowledge of consumer behavior
2. Tremendous resources—especially money and creative advertising talent—that allowed them to act on their knowledge

Compared with the typical person watching a TV commercial, the raw power of Old Spice is nearly immeasurable. When they aim their piles of money and sharp advertising experts toward specific consumers, consumers are overwhelmed. Without the time required to learn all the skills and strategies employed by today's advertisers, they literally don't even know what's hitting them. From that fact, this ethical question arises: Don't today's sophisticated marketers have a responsibility to *inform* consumers of what they're up to so that potential purchasers can at least begin to defend themselves?

Making the last point stronger, isn't the economic asymmetry—the huge imbalance in monetary power and commercial knowledge favoring today's professional advertisers—actually *an obligation* to restraint, a responsibility to *not* employ their strongest efforts given how comparatively weak and defenseless individual consumers are? The "yes" answer rests on the duty of fairness—that is, that we treat equals equally and un-equals unequally. In this case, the duty applies to companies just as it does to people. Frequently people say to large, muscle-bound characters caught up in a conflict with someone smaller, "Go pick on someone your own size." It's simply unfair to challenge another who really has no chance. This duty comes forward very graphically on a video snippet from MTV's *Jersey Shore* when a thin girl attacks the physically impressive Ronnie. He just shoves her aside. When her boyfriend, however, who's about Ronnie's size and age, shows up and starts swinging, he ends up getting a good thumping. Leaving aside the ethics of fistfights, it doesn't take profound thought to see that Ronnie understands his superior physical power is also a responsibility when harassed by a comparative weakling to hold himself in check.[3]

While the case of Old Spice and Wieden+Kennedy isn't quite as transparent as Ronnie on the street, it does obey the same logic: all their power and marketing expertise is both a power over consumers and an equally forceful responsibility not to exercise it. Compare that situation with the famous "I'm a Mac, I'm a PC" advertising campaign. No one objects to powerhouse Apple taking some figurative swings at powerhouse Microsoft since that company clearly has the means to defend itself. When a corporation manipulates innocent and relatively powerless individual consumers at home on the sofa, however, it's difficult to avoid seeing something unfair happening.

The argument on the other side is that consumers *aren't* powerless. There's no real imbalance of might here because consumers today, armed with their Twitter accounts and Facebook pages, are perfectly capable of standing up to even the mightiest corporations. Viral messaging, in other words, goes both ways. Old Spice may use it to manipulate men, but individual men are perfectly free and capable of setting up a Facebook group dedicated to recounting how rancid Old Spice products actually are. Beneath this response, there's the fundamental claim that individuals in the modern world are free and responsible for their own behavior, and if they end up voluntarily advertising for Old Spice and don't like it, they shouldn't complain: they should just stop tweeting messages to Isaiah Mustafa.

Further, the proposition that consumers need to be *protected* from Old Spice is an infringement on the dignity of those who are out in the world buying. Because today's consumers connected to social media are alert and plugged in, because even a solitary guy in pajamas in his basement running his own YouTube channel or Facebook group can be as influential as any corporation, attempts to shield him are nothing less than disrespectful confinements of his power. Protection, in this case, is just another word for condescension.

Should There Be Different Rules for Children?

The discussion of knowledge and resource exploitation leads naturally to the question about whether children should be subjected to advertising because the knowledge imbalance is so tremendous in this particular case.

According to a letter written by a number of respected psychologists to their own professional association, children should receive significant shielding from advertising messaging. The first reason is a form of the general concern that advertising is creating desires as opposed to helping consumers makes good decisions about satisfying the desires they have: "The whole enterprise of advertising is about creating insecure people who believe they need to buy things to be happy." [4]

The problem with advertising that creates insecurity is especially pronounced in the case of society's youngest members because once that attitude of constant need and consequent unhappiness is bred into these consumers, it's difficult to see how it will be removed. Since they've known nothing else, since they've been taught from the very start that the natural condition of existence is to not have the toys and things that are needed, they have no way of escaping into a different (non-consumerist) way of understanding their reality. Finally, if this entire situation is set inside a utilitarian framework, it's clear that the ethical verdict will fall somewhere near reprehensible. If, as that ethical theory affirms, moral good is just any action contributing to social welfare and happiness, then advertisements consigning children to lifetime dissatisfaction must be prohibited.

The second part of the psychologists' argument elaborates on the condition of children as highly vulnerable to commercial message techniques. Children aged three to seven, for example, gravitate toward the kind of toys that transform themselves (for example, Transformers). Eight- to twelve-year-olds love to collect things. Armed with these and similar insights about young minds, marketers can exploit children to want just about anything. The virtual defenselessness of children, the point is, cannot be denied.

Still, there is a case for child-directed advertising. It's that where children are defenseless, parents have a responsibility to step in. First, they can turn off the TV. Second, no young child can buy anything. Children depend on money from mom and dad, and to the extent that parents enable children to live their advertising wants, its parents who are at fault for any feelings of insecurity and dissatisfaction affecting their kids.

Whether advertising aimed at children is right or wrong, the stakes are certainly high. Children under twelve are spending around $30 billion a year, and teenagers are hitting $100 billion in sales. [5]

Are Ads Too Intrusive in Our Lives?

Another sentence from that letter written by concerned psychologists indicates a distinct area of ethical concern about advertising: "The sheer volume of advertising is growing rapidly and invading new areas of childhood, like our schools." [6]

It's not just children in their schools. We all go to concerts at the American Airlines Center, our shirts and shoes are decorated with the Nike swoosh, public parks are sponsored by corporations, the city bus is a moving billboard, the college football championship will be determined at the FedEx Orange Bowl. Every day it's harder to get away from ads, and each year the promotions and announcements push closer to those parts of our lives that are supposed to be free of economic influence. Maybe someday we'll attend

Mass at the Diet Coke Cathedral, weigh guilt and innocence in the Armor All courthouse, elect senators to vote in the Pennzoil chamber.

And maybe that's OK. The push of advertising into everything is a proxy for a larger question about the difference between business life and life. It could be that, at bottom, there is no difference. We are Homo economics'. The anti-romanticists were right all along: love can be bought with money, fulfillment is about consuming, and that bumper sticker "He who dies with the most toys wins" is true.

Since serious thought about what really matters in life began in Greece 2,500 years ago, people have promoted the idea that there are more important things than money and consumption. Those usually ill-defined but nonetheless more important things have always explained why most poets, artists, priests, and philosophy professors haven't had much in the way of bank accounts. Possibly, though, it's the other way. Maybe it's not that there are more important things in life that lead some people away from wealth and consumption; maybe it's that some people who don't have much money and can't buy as much as their neighbors explain away their situation by imagining that there are more important things.

Who's right? The ones, who say money and economic life should be limited because the really important things are elsewhere, or the ones who say there are no other things and those who imagine something else are mainly losers? It's an open question. Whatever the answer, it will go a long way toward determining the extent to which we should allow advertising into our lives. If there's only money and consumption, then it's difficult to see why the reach of the branding factories and viral marketers should be significantly limited. If, on the other hand, there's life outside the store, then individuals and societies wanting to preserve that part of them may want to constrain advertising or require that it contribute to noneconomic existence.

KEY TAKEAWAYS

- Consumerism places our entire life within the context of consumer goods and services.
- Advertising can create desires.
- Advertising creating desires raises questions about whether ads violate consumers' dignity and rights.
- The knowledge and financial power of companies (and their ad agencies) may also be an obligation for restraint.
- Children are especially vulnerable to sophisticated advertising and may require special protections.

- Discussion of the advertising that creates needs is a proxy for a larger discussion about the role of money and consumption in our lives.

REVIEW QUESTIONS

1. Put into your own words the definition of consumerism.
2. How can an ad create a desire?
3. Why might an advertiser seek to create a desire?
4. Make the case that ads that create desires violate a consumer's basic rights.
5. Why might a consumer want advertisers to create desires?
6. What is a viral ad?
7. With reference to the concept of economic asymmetry, why is advertising aimed at children the subject of special concern?
8. Why might an advertising company feel obligated to limit the places in which its work appears in the name of protecting the noneconomic parts of our lives?
9. Why might someone want advertising to be everywhere?

[1] Noreen O'Leary and Todd Wasserman, "Old Spice Campaign Smells Like a Sales Success, Too," July 25, 2010, *Adweek*, accessed June 2, 2011,http://www.adweek.com/news/advertising-branding/old-spice-campaign-smells-sales-success-too-107588.

[2] Meena Hartenstein, "Old Spice Guy Takes Web By Storm in Viral Ad Campaign, Creating Personalized Videos for Fans, Celebs," *New York Daily News*, July 14, 2010, accessed June 2, 2011, http://www.nydailynews.com/entertainment/tv/2010/07/14/2010-07-14_old_spice_guy_takes_web_by_storm_in_viral_ad_campaign_creating__personalized_vide.html.

[3] Nicholas Graham, "Jersey Shore Fight: Ronnie Gets Into Vicious Fight," *Huffington Post*, August 1, 2010, accessed June 2, 2011,http://www.huffingtonpost.com/2010/01/08/jersey-shore-fight-ronnie_n_416259.html.

[4] Rebecca Clay, "Advertising to Children: Is it Ethical? *Monitor On Psychology* 31, no. 8 (September 2000), 52, accessed June 2, 2011,http://www.apa.org/monitor/sep00/advertising.aspx.

[5] Rebecca Clay, “Advertising to Children: Is it Ethical? *Monitor On Psychology* 31, no. 8 (September 2000), 52, accessed June 2, 2011,http://www.apa.org/monitor/sep00/advertising.aspx.

[6] Rebecca Clay, “Advertising to Children: Is it Ethical? *Monitor On Psychology* 31, no. 8 (September 2000), 52, accessed June 2, 2011,http://www.apa.org/monitor/sep00/advertising.aspx.

12.4 Consumers and Their Protections

LEARNING OBJECTIVES

1. Delineate the issue of consumer protection from defective goods and services.
2. Outline five conceptions of the consumer.
3. Consider the ethics of consumer protection surrounding each conception of the consumer.

Google Search: Make Money on the Stock Market

One of the top results of a Google search for "make money on the stock market" links you to a page called 2stocktrading.com. It claims, "If you just follow my technique, then I guarantee you will be able to turn $2000 into $1.7 Million in just 1.9 years!"

People turn small amounts into large amounts fast on Wall Street. It happens every day. Many of those people, however, have spent years in school studying economics and business and then decades more studying data and preparing for a speculative opportunity. That studious patience may be a good way to find success, but it isn't the 2stocktrading.com recommendation. According to them, "You don't need to spend hours reading charts, doing technical analysis and stuff like that."

So what *do* you do to prepare for sudden riches? You've got to buy a special book that they sell on the website. Then,

> *you follow 5 simple steps explained in the book. Within 10 minutes, you have found a stock trade that is bound to make you money in any market condition…Go make coffee. Have a little breakfast. And wait for the market to open…Call your broker to place an order.*
>
> *That's it…Your job is done for today.*
>
> *Trust me.*

Of every one hundred people who read the pitch from 2stocktading.com in this business ethics textbook, how many do you think will take a second to check out the site? And of that group, what percentage will actually spend some time reading through the whole page? And of that group, which percentage will end up sending in money?

Everybody would like to know the answer to that last question for this reason: everyone has been ripped off, and afterward, everyone has looked at themselves and asked, "Well, was it *my* fault?" Sometimes the answer is disagreeable, and it's comforting to know that at least *some* people out there—like the ones sending in money to 2stocktrading—are even more gullible.

The business ethics surrounding the consumer mainly concerns gullibility, mistreatment of the consumer, and responses to the mistreatment. The questions are about how much freedom consumers should have to spend their money and how much responsibility suppliers should take for their goods and services. One way of organizing the answers is by considering five conceptions of the consumer, five ways of arranging the rights and responsibilities surrounding the act of spending money:

1. The wary consumer
2. The contracting consumer
3. The protected consumer
4. The renegade consumer
5. The capable consumer

The Wary Consumer

Caveat emptor is Latin; it translates as "Let the buyer beware." As a doctrine, caveat emptor means the consumer alone is responsible for the quality of the product purchased. If, in other words, you send your money to 2stocktrading.com and you end up losing not only that but also the cash invested in disastrous stock choices, that's your problem. You don't have any claim against this particular get-rich-quick scheme. And if you don't like the results, that only means you should have been a more careful consumer.

The doctrine of caveat emptor entered the American legal lexicon in 1817 (*Laidlaw v. Organ*). Since then, the legal tide has flowed in the other direction: toward consumer protection and the idea that offering a good or service for sale is also, implicitly, the offer of some kind of guarantee. If a product doesn't do what a reasonable person expects, then there may be room for a legal claim against the seller.

On the ethical front, caveat emptor sits at one extreme of the buyer-seller relation. It's what you have when you buy a used car marked *As Is*. Even if it's a lemon, you're stuck with it. As far as justifying this view of the consumer and mounting an argument that our economic life ought to be organized by the idea that when buyers hand over their money, they get their item and nothing else, there are several routes that may be followed:

- Caveat emptor maximizes respect for the consumer. By placing *all* responsibility in the consumer's hands, a high level of dignity and freedom is invested in those who buy. It's true that when there's a rip-off, there's no recourse, but it's also true that the consumer is allowed to make decisions based on any criteria he or she sees fit. The case of 2stocktrading.com is a good example. Reading about the scheme, it's normal to be tempted to say, really, these guys shouldn't be allowed to advertise their service. What they're claiming is clearly untrue (if their stock-picking system really worked so well, they'd spend their time picking stocks, not trying to sell other people ideas about how to pick stocks). And it's true that were consumers banned from sending money in, more than a few would be better off. But do we really want a society like that, one where we don't get to make our own choices, even if they're bad ones? A critical component of showing respect for others is allowing them to mess up. Its worth, the argument closes, allowing those mess ups if what we get back for them is consumers endowed with the dignity of making their own decisions.
- Another argument justifying caveat emptor is that it maximizes a certain kind of economic efficiency. When deals are done, they're done and everyone moves on. This allows two kinds of savings. First, there are no expensive lawsuits where everyone pays and mainly lawyers walk away with the cash. Second, though it's impossible to put a number on the cost, it's certain that a huge amount of resources are devoted in our economy today to warnings and similar that are meant to protect companies against consumer claims of fraud and abuse and lawsuits. Take, for example, the TV ads we see for prescription drugs. Sometimes it seems like half the airtime is devoted to reciting warnings and complications associated with the medication. In a world of pure caveat emptor, those kinds of efforts could be minimized because sellers wouldn't have to worry so much about getting sued. With respect to ethics, finally, it may be possible to argue here that maximizing economic efficiency is also the best way to maximize a society's happiness, and if it is, then the doctrine of caveat emptor is sanctioned by utilitarian theory.

On the other side, there are also solid ethical arguments against envisioning consumers as protected only by their own wariness.

- An ethics of care sets the maintenance of a community—of its relationships and unity—as the highest value. If that's the final definition of good, if what we seek in the business world is smooth and continuing cooperation everywhere along the line from the production to the sale and finally to the use of products, then it's difficult to see how sellers could wash their hands after a transaction, or why buyers would be restrained from complaining when things don't work out the way they were supposed to.
- In our society, an ethics based on virtue also stands against the caveat emptor model of consumption. Proponents of virtue ethics typically cite senses of fairness and civility as key components of a good ethical life. If they are, it seems clear that customers who don't receive what they honestly thought they were getting should be listened to and compensated, not ignored and spurned.

In conclusion, caveat emptor envisions consumers as free and empowers them to do as they wish. However, by freeing sellers to be as unscrupulous as they like, it may create an economic society that seems more savage than civil.

The Contracting Consumer

The contractual view of the consumer sees transactions as more than a simple passing of money one way and a good or services the other. The transaction is also the creation of an implicit contract. It's true that nothing may be written on a piece of paper or signed, but the contract's terms may nonetheless be deduced from the transaction itself. In order to begin deducing, the nature of a contractual relationship should first be summarized in general form. Entering into a contract implies the following three requirements:

1. *Freedom*. Neither party may be forced into the agreement. One of the memorable scenes from the *Godfather* movies involves the mafia's attempt to win a movie role for young Frank Sinatra. The Hollywood executive resists the casting, until he wakes up one morning with the severed head of his favorite horse in his bed. A contract is quickly sent out. That's not a true story, but it's an example of entering a contract under duress. A more subtle violation of contractual freedom occurs on the 2stocktrading web page. If you scroll to the bottom you find the price of the product is about $200, *but* if you buy immediately you're eligible for a half-price discount. The aim here is to limit the consumer's freedom to think things through before entering into a purchasing contract by forcing a yes-no decision right now.

2. *Information*. Both buyers and sellers must have reasonably complete knowledge of the agreement they together enter. The issues here range from simple to complicate. If the price, for example, is set in dollars, does that mean US dollars or the Canadian version? More thorny would be the question as to what exactly you receive when you send in your money to 2stocktrading.com. They claim you'll get the stock-picking secrets, but what exactly does that mean? Is it a textbook in economics, a subscription to the *Wall Street Journal*, a crystal ball? If you go through the company's web page carefully, you get the idea that a set of books will be mailed your way, but again, exactly how these books convey secret knowledge is harder to see.
3. *Honesty*. Both sides have to tell the truth. Consumers who send in checks must have money in their accounts. Sellers who promise stock tips that will make you rich must, in fact, send you good stock tips. The vision of the consumer as entering a contractual relationship essentially moves ethical questions into the legal realm. What's *morally* right or wrong becomes a matter of contract law, and decisions made on the ethical front loosely parallel those that would be taken in the courts.

   The ethical work that needs to be done here occurs in the deduction of exactly what terms and clauses make up the implicit contract as it's implied by the circumstances of the agreement. In the field of law, of course, we know what the contract's terms are because they're actually spelled out on a piece of paper. In the case of the contractual view of the consumer, it will be necessary to start with a specific ethical theory, and move from there to the conceiving of an agreement entered into by both sides.

   An ethical theory of traditional duties, which values honesty highly, may move all the claims made on the 2stocktrade.com web page directly over to the implicit contract. If, it follows, the people selling the stock-picking service say you'll get rich in two years by following their recommendations and you follow them and you don't get rich, the sellers have not fulfilled their contract. Both economically and ethically, they haven't held up their end of the bargain. At this point, the concept of an implied warranty activates. An implied warranty, just like an implicit contract, elaborates what consumers may claim from sellers if the good or service fails to meet expectations. In this case, one where the implicit contract guaranteed wealth, it seems obvious that consumers who don't make any money should get their original purchase price back. They may also be able to claim that any money lost on the stock market should be refunded because it was invested underneath the assumption that it would produce a gain. At the outside extreme, they might be able to demand the wealth they were supposed to receive for their investments.

Looking at this situation differently—which means using a different ethical theory to produce the terms of an implicit contract between 2stocktrading.com and a consumer—a culturalist ethics may not be quite so stringent. A culturalist ethics accords right and wrong with the habits and customs of a society. And in America today, there's a common understanding that in a free market, sellers are sometimes going to get a little overenthusiastic about their products. Of course consumers have a right to expect some truth from advertisements, but there's also an agreement that exaggerations occur. In this case, the implicit contract would require that stock-picking tips actually be delivered, but it might not require that the people who use them actually get rich or make any money at all. If, in other words, reasonable people in our society who read the web page don't come away believing they'll really rake in the cash by using the stock-picking techniques, then the implicit contract arising between seller and buyer doesn't include that guarantee.

Regardless of how the implicit contract—and consequent implied warranty—are construed, there's a significant disadvantage to this approach: ambiguity. Law firms earn their entire income by disputing what *written* contracts actually mean in the real world. If even perfectly explicit and signed agreements between buyers and sellers don't yield easy determinations about the obligations imposed on the two sides, then answering those questions for implicit contracts, ones where nothing is written, is going to be tremendously difficult. The theory of the consumer as entering a contractual relationship with the seller certainly makes sense, but in practice, it may not help resolve problems.

The Protected Consumer

Most economic transactions don't threaten grave losses even when they go wrong. You buy a half gallon of milk at the grocery store, bring it home, and find the package was slightly punctured so the milk is curdled. You buy a pen and no ink flows. You pay for a nice haircut and get butchered. These kinds of economic hiccups occur all the time and the defects normally don't matter too much. The defect definitely *does* matter, however, when you buy a car and a design error causes the gas pedal to get stuck, leading to wild, unbreakable speeding and entire families are dying in flaming wrecks. While it's unclear how many people have been victims of Toyota's gas pedal manufacturing error, it has become stuck at full acceleration on multiple occasions and has caused real human suffering completely incomparable with the kinds of petty losses typical consumers absorb every day. [1]

Another important aspect of buying a Toyota, or any car, is that it's a complex transaction. That means there's a large distance between the individual who actually takes your money, and the people in faraway plants who physically made the car. In the case of 2stocktrading.com, it may well be that the people who invented the stock-picking system get the money directly when you hit the Internet "Buy" button. A car, however, is typically purchased in a dealership from a salesman who may not even know where the car he's selling is made. Even if he does know, he certainly can't tell you where all the components came from. In today's interconnected world, more and more products are like cars—they're composed of parts that come from all over the place and then they're shipped halfway across the country (or the world) for sale by people who have nothing to do with any design or manufacturing flaws.

These two factors—the possibility of severe injury coupled with the difficulty in locating who, exactly, is to blame—support the proposal that in some cases ethics may not be enough to protect consumers. Legal protections with sharp teeth could work better. These protections generally move along two lines: manufacturer liability and government safety regulation.

Manufacturer liability is the consumer right to sue manufacturers—and not just the local dealership with which a sales contract is signed—for injuries caused by a defective product. As for specific types of defects incurring liability suits, there are three:

1. Design defects are errors in the product's blueprint. The physical manufacturing, in other words, may be perfect, but because the design isn't, consumers may be harmed.
2. Manufacturing defects are part of the production process. In this case, a product may be generally safe but dangerous in a specific instance when it comes off the assembly line missing a bolt.
3. Instructional defects involve poor or incomplete instructions for a product's safe use. The product may be designed and built well, but if the instructions tell you it's OK to use the blow-dryer in the shower, there could be problems.

The legal origin of manufacturer liability is *MacPherson v. Buick Motor Company*. In that 1916 case, Donald MacPherson was injured when his Buick veered out of control. A defective wheel caused the accident, one that Buick purchased from another company. Buick argued that they weren't liable for MacPherson's injury for two reasons: a quasi-independent dealership, not Buick itself, sold the car, and Buick didn't even make the wheel that failed. The court ruled against both arguments. The result was a concept of legal liability extending beyond explicit contracts and direct manufacturing: the concept of due care recognizes that manufacturers are in a privileged position to understand the potential dangers of their products and have, therefore, an obligation to take precautions to ensure quality. Those obligations remain in effect regardless of who ultimately sells the product and no matter whether a subcontractor or the larger corporation itself made the defective part.

Over the last century, the notion of due care has strengthened into the legal doctrine of strict product liability. This holds that care taken by a manufacturer or supplier—no matter how great—to avoid defects is immaterial to court considerations of liability. If a product is defective and causes harm, liability claims may be filed no matter how careful the manufacturer had been in trying to avoid problems.

Proponents of these legal protections argue that social welfare is improved when companies exist under the threat of serious lawsuits if their products cause damage. Critics fear that liability suits can be unfair: companies may act in good faith to produce safe products, but nonetheless fail, and be forced to pay massive amounts even though they took all precautions they honestly believed necessary.

Government safety regulation is the second main legal route toward a protected consumer. As is the case with liability protection, government regulation has expanded over the last century. Key moments include the establishment of the National Highway Traffic Safety Administration in 1970 and the Consumer Product Safety Commission in 1972. These federal agencies are charged with advocating for consumers by imposing regulations, and then enforcing them through the agencies' legal arms. In actual practice, the agencies frequently act in cooperation with manufacturers to ensure public safety. For example, when news broke that Toyota gas pedals were sticking, causing runaway vehicles, the NHTSA pressured Toyota to redesign the gas pedal and then recall the malfunctioning vehicles to have their pedals replaced.[2]

Regulatory action resembles the extension of liability protection in that proponents believe the measures serve the social welfare. People live better when governmental forces work to ensure protection from defective products. Almost inevitably, the argument in the background is a version of utilitarianism; it's that the ethical good equals whatever actions serve the public welfare and happiness. If society as a whole lives better with strict regulations in effect, then imposing them is good.

Critics fear that the cost of these regulations may become burdensome. In straight economic terms, an argument could be mounted that the dollars and cents spent by corporations in their attempts to comply with regulations are actually superior to the social cost of letting some defective goods out into the marketplace. There's a possibility, here, to meet advocates of regulation on their own ground by claiming that at least in monetary terms, society is better off with less regulation, not more. It's much easier, however, to put a price tag on the cost of complying with safety rules than it is to measure in terms of dollars the cost of injuries and suffering that could have been avoided if more stringent safeguards had been in place. (Of course, if you happen to be one of those few people who gets a seriously defective item—like a car that speeds out of control—then for you it's pretty clear that the regulations are recommendable no matter the cost.)

Another argument cautioning against regulatory action is that bureaucratic overreach threatens legal paternalism. Legal paternalism is the doctrine that, just as parents must restrict the freedom of their children in the name of their long-term welfare, so too regulators in Washington, DC (or elsewhere) must restrict the freedom of citizens because they aren't fully able to act in their own self-interest. One simple example is the seatbelt. In the late 1960s, federal action required the installation of seatbelts in cars. Subsequently, most states have implemented laws requiring their use, at least by drivers. Society as a whole is served by these regulations insofar as injuries from traffic accidents tend to be reduced. That doesn't change the fact, however, that people who are alone in their cars and presumably responsible for their own welfare are being forced to act in a way they may find objectionable. Parallel discussions could be followed on the subject of motorcycle helmets, bicycle helmets, and similar.

Conclusion. Liability lawsuits against manufacturers, together with government regulations, protect consumers from dangerous goods and services. The protections cost money, however, and regulations may seem intrusive or condescending to some buyers.

The Renegade Consumer

The best defense can be a good offense. That's probably the idea the owner of a chronically breaking-down Range Rover had when he parked his car on a public street in front of the dealership where he bought it and pasted bold letters on the side announcing that the car is a lemon. Probably, the display put a dent in the dealership's business.[3]

It was work and sacrifice for the car owner, though. Whoever it was had to hatch the plan and then go out and buys stick-on lettering to spell the message on the Range Rover's side. Then it was necessary to give up use of the car for the duration of the protest. (It also might have been necessary to constantly plug a parking meter with coins.) Regardless of the cost, the renegade consume seeks justice against product defects by going outside the system. Instead of making ethical claims against producers based on the idea of an implicit contract, and instead of seeking refuge underneath governmental protection agencies, this kind of buyer enters a no-holds-barred battle against (perceived) dirty sellers.

Parking a car marked lemon in front of the dealership that sold it is an old—and potentially effective—maneuver. Today's social media, however, allows newer strategies with possibly higher impacts and less inconvenience. One example is Rip-off Report, a website allowing consumers to post complaints for all to see. Browsing the page, it takes only a moment to grasp that the site compiles more or less unedited consumer rebellions. There are stories of being gypped by department stores, robbed by banks, defrauded by plumbers, and nearly everything imaginable. People can add their own comments, and a convenient search box allows anyone to get a quick check on any company they may be considering doing business with. The website's tagline, finally, is very appropriate. It reads, "Don't let them get away with it. Let the truth be known!"[4]

These two sentences correspond well with the two ethical categories into which the renegade consumer naturally falls:

- The imperative "don't let them get away with it" fits the conception of the renegade consumer as acting in the name of retributive justice.
- The imperative "let the truth be known!" fits the conception of the renegade consumer as a consumer advocate.

Retributive justice proposes that it's ethically recommendable to seek revenge against those who have wronged you. "You cost me time, money, and trouble," the logic runs, "and now I'll return the favor." The notion is probably as old as humanity, and it appears in many of history's oldest texts. (The Bible's Matthew 5:38 contains the proverbial "An eye for an eye and a tooth for a tooth.")

Two aspects of retributive justice are significant. First, there's a strong sense of *proportionality* in the idea. The code isn't "A life for an eye" because the goal of retributive justice is to make things even again; it's to restore a balance that was there before the problematic transaction. Retributive justice is a theory of proportional revenge. In the case of the lemon Range Rover, it seems about right that a dealership that refuses to fix (or replace or refund) a client's defective car should in turn see losses to its business that approximately equal the money they save by mistreating consumers. The second point to make about the notion of retributive justice is that it fits within and is a subset of the duty to fairness. What drives retributive justice is a notion that the two sides of an economic exchange should be treated in the same way, equally.

These two characterizations of retributive justice are important because they separate the calculated act of vengeance from being nothing more than a blind and angry outburst. It's normal when we've been wronged to want to simply strike out at the one who's mistreated us. Probably, there's a good bit of that anger behind the Range Rover owner and many of the rip-off reports. What makes those acts also ethically respectable, however, is their containment within the rules of proportionality and the duty to fairness.

The renegade consumer can also find an ethical slot in the category of consumer advocate. When the Rip-off Report asks contributors to let the truth be known, reports are enlisted not as individuals seeking revenge but as wronged consumers performing a public service. Here, the rule of fairness is not in effect; instead, it's the utilitarian idea of the general good. If what ought to be done is just that which brings the greatest happiness to the greatest number, then the public calling out of car dealerships that don't stand behind their product becomes a public utility or good. Renegade consumers become consumer advocates when they help others avoid their fate.

Conclusion. Renegade consumers are the mirror image of caveat emptor consumers. Both place extremely high levels of responsibility in the hands of the buyer. The difference is that the caveat emptor vision places that entire responsibility in the consumers' buying judgment and so disarms them: it places an ethical restriction against consumer complaints because the entire transaction process is wrapped in the idea that before anything else the consumer should be wary about what's being purchased. Renegade consumers also take full responsibility, but their obligations come at the end of the process, not the beginning: they rebalance the scales after a seller tries to get away with taking money for a defective product. Instead of swallowing their loss, renegade consumers act to make sure that the seller who cheated them pays a price.

The Capable Consumer

The capable consumer is a free market ideal. The combined economic-ethical notion underneath it is that business functions most smoothly—and thus produces quality of life at a maximum pace—when consumers play their marketplace role efficiently. Their marketplace role is to use purchasing decisions to reward good companies, ones that produce better goods at a lower cost, while penalizing those companies producing inferior goods. As successful companies grow, and as poor performers fall away, the general welfare improves: products do their jobs more satisfyingly, and people gain more disposable income for pleasure spending (because necessities will be less expensive). If, finally, right and wrong in the economic world is about bringing the greatest good and happiness to the most people, then the marketplace economy supports this moral demand: a society should do everything possible to perfect the consumer. The perfected consumer is

- able,
- informed,
- free,
- rational.

The able buyer is sufficiently experienced to manage marketplace choices. Just about everyone has been taken in at one point or another by unrealistic promises like those made on the 2stocktrading.com web page. The difference between the incapable and the capable is the ability to learn; it's a kind of acquired instinct that sets off warning signals when an offer sounds *too* good: it might be too good to be true. Specifically on the stock-picking deal, able consumers don't need to carefully study the whole spiel before realizing that, probably, the best thing to do is close the web page.

The informed buyer is sufficiently knowledgeable about a specific product category to make a good purchasing choice from within the various options. Different types of items, of course, require different levels of expertise. Making a good decision about a garage door opener is much easier than making a good decision about a car because the latter is so much more complicated and filled with highly specialized components. For example, Dodge spends a lot of time lauding their cars and trucks as including a hemi, but not many people understand what the actual benefits of that feature are. In fact, many people don't even know what a hemi is. It's always possible, of course, to learn about the intricacies of car engines, but in the real world of limited time, qualifying as an informed buyer requires only one of these two skills: either you know a lot about what you're buying, or you learn which sources of information can be trusted. The search for a trustworthy source may lead to *Consumer Reports* magazine or Rip-off Report or something else, but the result should be a purchasing decision guided by real understanding.

The free buyer has choices. No amount of education about car quality will help anyone who only has one product to select. Most consumer items, however, do provide choices—abundantly. Standing in front of the shelves in any supermarket shows that the ideal of the consumer as free is, to a large extent, satisfied in our society. Still, there are exceptions. Cable TV and phone services can be limited in certain areas, as can electricity providers and sanitation services.

Rational buyers use their experience and information to make good choices. For the qualities of the ideal consumer to cash out, they must be orchestrated by careful thought. Of course this hardly seems worth mentioning in the abstract. All buyers are perfectly rational when they're reading a textbook section about buying. It's easy to be cold and analytical sitting on a sofa. The problem comes when the actual buying is *happening*. Dealers use all kinds of tricks and techniques to get consumers to, at least momentarily, suspend their good judgment and leap. One of the most common is the disappearing deal, which can be found on the 2stocktrading.com site and almost inevitably appears in the car buying experience. The salesman always has some special opportunity that you can get *now*, but if you wait until tomorrow, well…Sometimes the claim is that there's a sale on, but it's ending tonight. Or there's only one left in stock and another customer has been asking about it. The salesman shakes his pen at you and pushes the contract across the desk and the car right behind him is gleaming and new and in those moments the capable consumer is the one who takes a deep breath.

Conclusion

Most ethical questions surrounding consumers are about how much freedom they should have to spend their money. In the case of the wary consumer—the *caveat emptor* buyer—freedom is maximized, but the dealer takes no responsibility for what's sold. In the cases of the contracting, protected, and renegade consumer, buyers sacrifice some of their freedom in return for the guarantee that if a good is defective, they'll have some recourse against the dealer. In many cases, the freedom that consumers lose is minimal or even positive (most people are happy to not be free to buy a lemon car).

It's inescapably true, however, that when you force dealers to stand behind what they sell, there are goods and services that they won't bring to market. This newspaper story, for example, relates how it came to pass that holiday season cookie makers in California had to make do one December without those little silver ball sprinkles that frequently decorate the season's cookies. A crusading lawyer had decided the balls might be harmful, and the threat of a lawsuit caused the item to be removed from store shelves.[5] Probably, most people were able to enjoy their holiday celebrations just fine without the sprinkles, but the stakes go up when drug manufacturers are forced to consider pulling effective diabetes drugs like Avandia off the market because of a discovery that it may increase the risk of heart attacks.[6]

KEY TAKEAWAYS

- Wary consumers are safeguarded from defective goods and services only by their own caution. They enjoy maximum freedom in the marketplace and suffer minimal protection.
- The contracting consumer is protected from defective goods and services by the affirmation that their purchase is also an implicit contract with the seller guarantying quality similar to expectations.
- The protected consumer is safeguarded from defective goods and services by liability lawsuits and governmental regulatory action.
- The renegade consumer takes individual action to penalize sellers whose products fail to meet expectations.
- The capable consumer minimizes the need for buyer protection while maximizing a market economy's efficient functioning.

REVIEW QUESTIONS

1. What does *caveat emptor* mean?
2. What are some purchases that are typically made within a consumer ethics of caveat emptor?
3. What is an implicit contract? How is it created from a particular transaction?
4. What are the two main ways that consumers are backed up by legal protections?
5. How do renegade consumers create protections against defective products?
6. What characteristics make up a capable consumer?

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12.5 Case Studies

We Can Lie Too

Tappening is run by a couple of guys who don't like bottled water. The liquid is fine, but they worry about those small transparent bottles. First, the air gets polluted when they're fabricated and then, after they've been emptied and tossed in the trash, the plastic doesn't quickly break down and reenter the ecosystem. The Tappening people also notice that bottled-water advertising can be deceitful. The labels and ad campaigns are known to feature mountain streams in forest paradises, breeding the idea that the water is pumped from pristine natural sources when the truth is a lot of it comes from the tap, usually with some filtering applied.

Faced with the distasteful situation—polluting water bottles and deceitful advertising—the Tappening crew could've put together some of their own ads revealing the true source of common bottled waters and the destiny of the containers, but they chose to mount a more aggressive campaign. One effort is a print ad with a crying polar bear drawn at the center, sitting on a melting arctic glacier. Under the title "Bottled Water," the text says, "98% melted ice caps, 2% polar bear tears." At the bottom, in small print, a message reads, "If bottled water companies can lie, we can too." [1]

QUESTIONS

1. In broad strokes, there are four types of deceitful advertising: those that make false claims, conceal facts, make ambiguous claims, and engage in puffery.
   - The Tappening ad makes two apparently false claims. What are they, and what makes them seem false?
   - What are the producers trying to communicate with their claims?
   - Does the fact that the ad admits at the bottom that it's a lie diminish (or entirely eliminate) the fact that false claims are made? Why or why not?
   - The people at Tappening believe that bottled water ads featuring flowing natural streams can be deceitful because frequently the water comes (essentially) from a faucet. What specific kind of deceitful advertising is that? Explain.

- Is there any puffery in the Tappening print ad? If so, where?

2. Here's one thing the Tappening polar bear ad neglects to inform people: Tappening isn't just trying to get us to stop drinking bottled water; they're also trying to sell something. Water bottles. They cost $14.95 (plus $3 shipping and handling). For the money you get a Tappening plastic bottle made for reuse and emblazoned with the company's slogan: "Think Global. Drink Local." You can also buy a message shoulder bag from the company. It announces that it's "Made with 100% post-consumer recycled materials: yesterday's discarded bottles and yogurt containers." That costs $49.95, plus the shipping and handling. [2]

   Make the case that Tappening is engaging in deceitful advertising by concealing facts in its polar bear ad. More broadly, what is the ethical case against Tappening?

3. No one doubts that reusable water bottles can be better for the environment than disposable ones. Does the fact that Tappening's purpose is noble diminish the moral objection to the company's deceitful advertising? Explain.

4. For consumers, water bottles are not high stakes. If some guy reads the Tappening ad, gets caught up in the message that bottled water is environmentally disastrous ("98% melted ice caps, 2% polar bear tears"), visits the web page and, in the passion of the moment, buys ten reusable water bottles and the shoulder bag, he'll be out about $250. It's doubtful that his life will be significantly worsened by that kind of monetary loss. Later on, however, he may feel conned when he realizes that the air was polluted to make his presumably environmentally friendly water bottles, and most of the time when he needs bottled water, it's not foreseen, and so he ends up just buying the disposable bottles anyway. The reusable containers with their enviro-friendly slogans get left at home and forgotten and the only thing that really changes is the guys at Tappening made some money.

- As considered against this background, do you believe the FTC should get involved to rein in Tappening's deceitful advertising? In ethical terms, why or why not?
- The FTC can use one of two standards for deciding whether action is required to combat deceitful advertising: the ignorant consumer standard and the reasonable consumer standard. Could both standards lead to action against Tappening or only the ignorant standard? Explain.

5. Make the case that, in ethical terms, bottled water companies should be allowed to freely label their bottles with flowing, natural streams even though the water is taken from a city supply and filtered.

Consumerism

Image removed due to copyright issues.

Two curious news stories. The first comes from the BBC and tells of a shopaholic, a woman who purchased so much she could hardly fit it all in her apartment. When she passed away from pneumonia, it took more than a day to find her body underneath all the purchases. A friend commented, “It gave her pleasure to buy things, she only bought things she really liked.”[3]

The second story relates that in India, according to a UN report, there are about 560 million cell phone users, but only 360 million people have access to toilets.[4]

QUESTIONS

1. Consumerism replaces the model of the consumer as someone who buys necessities in order to get on with their lives, with the model of the consumer as someone who buys in order to live. Can you put that definition in your own words?
2. How could the story of a woman buried and dead underneath her endless purchases be construed as an example of consumerism?
3. How could the story of India having more cell phones than toilets be construed as an example of consumerism?
4. One way of characterizing much of the work of advertising agencies is as nurturing consumerism. Can you make the ethical case that advertising agencies should be banned from society?

5. In ethical terms, make the case that consumerism is good.

She's Gotta Have It…or Maybe Not

Image removed due to copyright issues.

Statistics aren't available, but the amount of time guys spend spilling seduction lines—and the amount of time women spend dealing with them—is very high. Most women can deal with it coming from most guys, but what happens when the lines come from a powerful corporation?

The giant pharmaceutical company Boehringer Ingelheim has stumbled onto a drug (Flibanserin) that makes women want sex. That's not going to earn them any money, though. To get sales, they've got to convince women that they *want* to want to have sex. The problem is interesting. The drug company has discovered the cure to a disease that, by definition, no one has. If a woman—or a man—doesn't feel like having sex, then she doesn't feel like she's missing something by not doing it. The opposite is the case. She doesn't want to do it, so the fact that she doesn't feel like doing it isn't a problem at all. It's perfect, actually. What the company needs to do, therefore, is create a desire. It has to make women want (or even need) something they didn't know they wanted.

According to the *New York Times*, "Boehringer has been trying to lay the consumer groundwork with a promotional campaign about women's low libido, including a Web site, a Twitter feed and a publicity tour by Lisa Rinna, a soap opera star and former *Playboy* model who describes herself as someone who has suffered from a disorder that Boehringer refers to as a form of 'female sexual dysfunction.'"[5]

That advertising campaign is geared to create a desire for a form of women's Viagra by convincing women that they're supposed to want sex, and there's something wrong with them if they don't. The effort has its critics. Here's one argument: "Boehringer's market campaign could create anxiety among women, making them think they have a condition that requires medical treatment. 'This is really a classic case of disease branding,' said Dr. Adriane Fugh-Berman, an associate professor at Georgetown University. 'The messages are aimed at medicalizing normal conditions, and also preying on the insecurity of the patient.'" [6]

QUESTIONS

1. Dr. Fugh-Berman says that Boehringer's marketing campaign is "aimed at medicalizing normal conditions."
    - What does "medicalizing normal conditions" mean?
    - How does "medicalizing a normal condition" serve Boehringer's purpose?
2. The goal of Boehringer's marketing is to create a desire for a product. There are a number of ethical objections to this kind of campaign.
    - What does it mean to say that trying to convince low-libido women (or men) that they need a drug to want more sex is to treat them as a means and not an end?
    - How could the attempt to sell the idea that women (or men) need to need sex be construed as a violation of their basic right to freedom?
3. Boehringer created a web page dedicated to its sex drug—http://www.sexbrainbody.com—which has since been taken down. On it, a successful actress and *Playboy* model left a testimonial. It concluded with her encouraging readers to learn about sexual health and to feel comfortable talking about it. "Both," she asserted, "play an important role in overall health and well-being. It's time to focus on you!" [7]
    - What are some of the ways this message—and the messenger—create the need for consumers to have sexual health the way the Boehringer pharmaceutical company defines the term?
    - Justify, from an ethical perspective Boehringer's use of these techniques.
    - Boehringer has decided to take the page down. What ethical argument may have convinced them to do that?

4. A *New York Times* article relates that prestigious medical journals have published research affirming that low libido really is a problem, and one suffered by a large number of women. The article also notes that "such studies have been financed by drug companies." [8]
    - What is knowledge and resource exploitation by advertisers?
    - Make the case that the knowledge and resources at the disposal of Boehringer and its advertising company are also an ethical obligation to *not* use that power to sell products.
5. Assume the critics are right. Assume that women (or men) with low libidos aren't suffering any kind of medical problem; they're just not that into sex, and there's no reason why that condition should be "cured." Make the case that even so, Boehringer is ethically justified in trying to create the need for their desire-enhancing pill.
6. A pharmaceutical company stumbles upon a drug that kills the sex drive for men and for women. The company devotes millions of dollars to a seductive advertising campaign designed to convince consumers that they really want to not want sex, and therefore they need this new medication. Make the case that this is not only ethically acceptable but laudable.

Hot Coffee

Image removed due to copyright issues.

In a world of get-rich-quick schemes, few are mentioned more frequently than lawsuits. One of the reasons is the infamous McDonald's coffee case (*Liebeck v. McDonald's Restaurants*). This is what happened in 1992 in Albuquerque, New Mexico. Stella Liebeck, seventy-nine, was riding in a car driven by her grandson. They stopped at a McDonald's drive-through, where she purchased a Styrofoam cup of coffee. Wanting to add cream and sugar, she squeezed the cup between her knees and pulled off the plastic lid. The entire thing spilled back into her lap. The searing liquid left her with extensive third-degree burns. Eight days of hospitalization—which included skin grafts—were required.

Initially, she sought $20,000 from McDonald's, which was more or less the cost of her medical bills. McDonald's refused. They went to court. There it came to light that about seven hundred claims had been made by consumers between 1982 and 1992 for similar incidents. This seems to indicate that McDonald's knew—or at least should have known—that the hot coffee was a problem.

Most of the rest of the case turned around temperature questions. McDonald's admitted that they served their coffee at 185 degrees, which will burn the mouth and throat and is about 50 degrees higher than typical homemade coffee. More importantly, coffee served at temperatures up to 155 degrees won't cause burns, but the danger rises abruptly with each degree above that limit. So why did McDonald's serve it so hot? Most customers, the company claimed, bought on the way to work or home and would drink it on arrival. The high temperature would keep it fresh until then. Unfortunately, internal documents showed that McDonald's knew their customers intended to drink the coffee in the car immediately after purchase.

Next, McDonald's asserted that their customers wanted their coffee hot. The restaurant conceded, however, that customers were unaware of the serious burn danger and that no adequate warning of the threat's severity was provided.

Finally, the jury awarded Liebeck $160,000 in compensatory damages and $2.7 million in punitive damages (about two days' worth of McDonalds' coffee sales). The judge, however, reduced the $2.7 million to $480,000. McDonald's threatened to appeal, and the two sides eventually came to a private settlement agreement.[9]

QUESTIONS

1. What does *caveat emptor* mean?
   - According to this doctrine, who is responsible for Stella Liebeck's burns? Explain.
   - Does the fact that she's seventy-nine years old make it more difficult to justify a caveat emptor attitude in this case?

- One aspect of the caveat emptor doctrine is that it maximizes respect for the consumer as an independent and autonomous decider. Could that be a reason for affirming that a seventy-nine-year-old is a *better* candidate than most for a caveat emptor ethics of consumption?

2. In general terms, what does it mean to claim that an implicit contract arises around a transaction? How does that contract protect the consumer?

3. From the information provided, and from your own experience, what are the main terms of the implicit contract surrounding the purchase of coffee at a fast-food drive-through?
   - What does the restaurant owe the consumer?
   - What does the consumer owe the restaurant?

4. In order for an implicit contract to arise, the following three conditions must be met:
   - Both sides must enter the contract freely.
   - Both sides must be reasonably informed of the agreement's terms.
   - Both sides must be honest.

   Were these three conditions met in the McDonald's coffee case? Explain.

5. Make the case that the original offer by Liebeck—$20,000 from McDonald's to cover the medical bills—is ethically recommendable within the structure of an implicit contract. Use the concept of an *implied warranty*.

6. The concept of manufacturer liability gives consumers the right to sue manufacturers for defective goods. There are three kinds of product defect:
   - Design defects (errors in the product's design)
   - Manufacturing defects (errors in the production of one specific case of a generally safe product)
   - Instructional defects (poor or incomplete instructions for a product's safe use)

   Which (if any) of these defects are applicable in the McDonald's coffee case? Explain.

7. What is the concept of *strict product liability*, and how could it be applicable in this case?
8. In ethical terms, justify the original jury award to Liebeck: $160,000 in compensatory damages and $2.7 million in punitive damages (about two days of McDonalds' coffee sales).

9. Of these three ethical structures for conceiving of the coffee-buying consumer and her protections—caveat emptor, the implicit contract, and manufacturer liability—which do you believe is best? Why?

Cancel the Account

Image removed due to copyright issues.

This is a condensed version of a dialogue between Vincent Ferrari and AOL, an Internet services provider known especially for its e-mail.

AOL Rep:	Hi, this is John at AOL. How may I help you today?
Vincent:	I wanted to cancel my account.
AOL Rep:	OK. You’ve had this account for a long time.
Vincent:	Yep!
AOL Rep:	You’ve used this quite a bit. What was the cause for turning this off today?
Vincent:	I just don’t use it anymore.
AOL Rep:	Do you have a high-speed connection like DSL or cable?
Vincent:	Yep.
AOL Rep:	OK.
AOL Rep:	How long have you had that, the high speed?
Vincent:	Years.

AOL Rep:	Well, actually, I'm showing a lot of usage on this account.
Vincent:	Yeah a long time ago, not recently.
AOL Rep:	I'm looking at this account…
Vincent:	Either way, whatever you're seeing…
AOL Rep:	Well, what's the cause for turning this off today?
Vincent:	I don't use it.
AOL Rep:	Well, OK. Is there a problem with the software itself?
Vincent:	No. It's just I don't use it. I don't need it. I don't want it. I don't need it anymore.
AOL Rep:	So when you use it, the computer, is it for business or for school?
Vincent:	Dude, what difference does it make? I don't want the AOL account anymore. Can you please cancel it?
AOL Rep:	Well, on June second this account was signed on. It's been on for seventy-two hours.
Vincent:	I don't know how to make it any clearer.
AOL Rep:	Last year was five hundred fou—last month was 545 hours of usage.
Vincent:	I don't know how to say this any clearer, so I am just going to say this one last time. Cancel the account please.
AOL Rep:	Well explain to me what's—wha—why?
Vincent:	I am not explaining anything to you. Cancel the account.
AOL Rep:	Wha—what's the matter man? We're just—I'm just trying to help.
Vincent:	You're not helping me. You're not helping me.
AOL Rep:	I am trying to, OK.
Vincent:	Listen, I called to cancel the account. Helping me would be canceling the account. Please help me and cancel my account.
AOL Rep:	No it wouldn't actually.
Vincent:	Cancel my account!
AOL	Turning off your account would be the worst—

Rep:	
Vincent:	Cancel the account! Cancel the account!
AOL Rep:	Is your dad there?
Vincent:	I'm the primary payer. I'm the primary person on the account, not my dad. Cancel the account!
AOL Rep:	OK, 'cause I'm just trying to figure out—
Vincent:	Cancel the account! I don't know how to make this any clearer for you. Cancel the account. The card is mine, in my name. The account is mine and in my name. When I say, "cancel the account," I don't mean help me figure out how to keep it. Cancel the account.

This went on for almost five minutes. Part of the audio can be heard here:

Cancel AOL

Back in the days before Internet, exchanges like this would've been entirely positive for AOL. The worst that could've happened is that the company would lose the client, who they were going to lose anyway. By dragging the cancellation out, they may have convinced him to stay on, so that's what they did.

Today, with Internet, things are different. Ferrari (who, apparently, suspected that AOL would try some shenanigans) taped the conversation and posted it. The Slashdot effect—a website overwhelmed by a huge spike in traffic—followed immediately. It wasn't long before Ferrari and his conversation were appearing on shows like *Today*. The damage to the AOL brand was catastrophic. Revenue plummeted, and with no hope for recovery, the company that owned and controlled AOL at the time, Time Warner, sold off the shriveled remains.

Certainly, the Ferrari tape didn't alone bring down AOL, not even close, but it's difficult for any company to be profitable when recordings like Ferrari's are going out over national TV and available for anyone to hear, twenty-four hours a day, seven days a week, forever, online.

QUESTIONS

1. After listening to the Ferrari tape, what would consumers associate with the AOL brand? How is that brand different from a pure economic understanding of the value of AOL as a company?

2. In broad strokes, what is retributive justice? How did it work in this case? How is *this* case study in *this* textbook involved?

3. As an ethical theory, most conceptions of retributive justice highlight a notion of proportionality.
    - What does proportionality mean?
    - Just in general terms, and from the provided information, did Ferrari's response to AOL satisfy the proportionality requirement? Why or why not?

4. Ferrari couldn't have foreseen the how fast and how much his AOL-bashing would grow. Part of the reason is that much of the negative publicity wasn't provided directly by him. NBC rebroadcast his tape through millions of TV sets. Countless blogs and websites excerpted sections and linked to the original. (Eventually, the transcript even turned up in a business ethics textbook.) Should Ferrari take responsibility for how far things went? Justify.
5. Two ethical values support consumer revenge in the marketplace: fairness and public welfare. Fairness is the idea that the company hurt the consumer, so the consumer ought to hurt the company. Public welfare is the idea that by publicly attacking companies, consumers actually do *other* consumers a favor by warning them away from poor service providers. Sketch an ethical justification for Ferrari's action based on the idea that he's serving the public welfare.
6. In *ethical* terms, what are some advantages of consumer revenge when compared with these other forms of consumer protection: the concept of the implied contract, the legal right to sue?

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