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**ALCOHOL ADVERTISING:
FREEDOM OF SPEECH v. SOCIAL RESPONSIBILITY**

Reona Jack

Research Honors

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INTRODUCTION

In Illinois, 10% of the population, or approximately 800,000 citizens, meet the criteria to be classified as problem drinkers; nationally, one out of four children comes from an alcoholic home; and, alcohol plays a role in nearly half of America's murders, suicides, and accidental deaths, claiming at least 1,000,000 lives per year.¹ Not only do these statistics add up to social problems but they also reflect an increasing economic cost to society. Estimates of the cost of alcoholism and alcohol abuse reach nearly \$117 billion a year, considering premature deaths, reduced work effort, and treatment.²

As a result of the increased awareness of the toll alcohol takes on society, groups such as Mothers Against Drunk Driving(MADD) and Students Against Drunk Driving(SADD) increase their influence on both students and legislators by presenting the serious effects of irresponsible drinking. While the country experiences a greater push toward achieving a solution, alcohol advertising provides the target. This year U.S. Surgeon General Antonia Novello requested that beer companies refrain from sponsoring activities for college students during spring break.³

¹Lighthouse pamphlet, p. 1.

²Ibid.

³Julie Jolin, "A Sober Rx for College Beer Breaks," Chicago Tribune, March 6, 1991, p. 1.

Novello noted that college students spend \$4.2 billion each year on alcohol and that 41% drink heavily, even though large numbers of them are under-age.⁴ Also, in a report released by the U.S. Department of Education, the National Commission on Drug-Free Schools issued a 98-page report calling for an outright ban of alcohol ads, if by 1992 an independent agency concludes those ads target minors.⁵ This report also recommended forcing alcohol advertisers to finance campaigns discouraging drinking by under-age youth.

The public also shows an increased concern about alcohol advertising. In a Gallup poll performed in February of 1989, 39% of the 1,001 adults surveyed responded in favor of a complete ban on beer advertisements.⁶ Thirty-four percent believed beer advertising targets minors.⁷ Perhaps relevant to this display of public opinion, a recent survey by the National Society of Newspaper Editors illustrated the public's "inability to distinguish between what the law protects and what they dislike personally".⁸ According to the survey, only 36% of those polled would allow journalists to keep sources confidential if

⁴Ibid.

⁵Steven W. Colford, "Two Groups Rip Alcohol, Smoke Ads," Advertising Age 60(November 26, 1990): 22.

⁶Steven W. Colford, "Survey Shows 39% Favor Ad Ban," Advertising Age 59(June 5, 1989): 1.

⁷Ibid.

⁸James Warren, "Free Press Survey Bad News to Editors," Chicago Tribune, April 13, 1991, p. 1.

authorities wanted to know them, and only one-third would protect absolutely a citizen's right to buy magazines with nude pictures.⁹ While these issues concern freedom of the press, a constitutionally protected right, alcohol advertising enjoys only second-class status as commercial speech.

When considering alcohol advertising in terms of commercial speech and First Amendment rights, the Supreme Court plays a major role. In 1990, the resignation of Justice William Brennan marked a possible crucial turning point in the movement toward increased legal protection for advertising.¹⁰ The Eisenhower appointee, who had been "considered among the most fervent advocates of granting to commercial speech many of the same constitutional protections enjoyed by political speech," was replaced by Judge David Souter, a conservative from New Hampshire.¹¹ At the time of his appointment, Souter's views on commercial speech remained a mystery; however, he had previously shown a tendency to rely on precedent, a tendency that could work in the advertisers' favor. Nevertheless, the Court had been very divided on this issue in the past, and Souter's opinion will play a vital role in the future.

Due to the increased Congressional and public concern with the effects of alcohol advertising and thus, the shift of focus

⁹Ibid.

¹⁰Steven W. Colford, "Ad Industry Loses Hero in Brennan," Advertising Age 60(July 30, 1990): 1.

¹¹Ibid.

by the industry in response, the purpose of this study is to present informative research concentrating on the issues surrounding alcohol advertising and the advertiser's rights. This research will weigh the supposed negative effects of alcohol commercials against the importance of the advertiser's right to free expression by: (1) examining the role of advertising in the alcohol industry and the differing viewpoints concerning it, (2) comparing the issue of alcohol to that of cigarettes, (3) tracing the history of the advertiser's legal rights in regard to the First Amendment, and (4) presenting research on the real effects of advertising.

These particular areas of study were chosen on the premise that all are essential to the understanding of the advertiser's rights. While the legal rights present the Courts' decisions, the other areas represent major considerations in their holdings. For instance, only by looking at the importance of advertising in the alcohol industry and its actual effects on the consumer can one begin to weigh the issues of free enterprise and social responsibility. Also, by examining the ban on cigarette commercials, one can gain a better perspective on the question of what is involved in protecting the public's health. All of these issues tie together to present a question not only of legality but also one of business ethics, politics, and morality.

PURPOSE OF ADVERTISING AND ITS RELATION TO ALCOHOL

FUNCTION

In order to understand fully the controversy surrounding alcohol advertising, one must understand advertising in general--its function, effects, and role in society. According to James Webb Young, former professor of business and advertising at the University of Chicago, advertising performs five essential functions: familiarizing, reminding, spreading news, overcoming inertia, and adding a value that is not in the product.¹²

First, by familiarizing the consumer with the product, the marketer reduces the fear of the unknown and makes the consumer more comfortable simply by making the product well-known, or at least recognizable. Advertising then serves as a reminder by continually announcing to the public the values of the particular product or brand. The third function, spreading news, involves announcing "new products, changes in existing products, price reductions, new sizes, and new colors to existing and potential customers."¹³ Young isolates this function as the most accepted role of advertising. Next, advertising attempts to overcome inertia, or persuade the consumer to act in some way he knows he should. Many times the cost is immediate and the reward is remote, such as in weight loss programs. By providing the audience with a view of the reward, one can picture it vividly

¹²Mark S. Albion and Paul W. Farris, The Advertising Controversy: Evidence on the Economic Effects of Advertising: Boston: Auburn House Publishing Co., 1981, p. 2. '

¹³Ibid.

and will pay the price willingly. Finally, advertising attempts to add a value not in the product. In this function, an ad turns reality into images: it "creates quite genuine and real values that are, nevertheless, purely subjective."¹⁴ Perhaps the most controversial function, creating images plays a major role in alcohol advertising and serves as a major target for criticism.

EFFECTS

Not only does advertising perform certain functions but it also creates important effects. First, advertising differentiates products. According to E.H. Chamberlin, author of The Theory of Monopolistic Competition, "a product is differentiated if any significant basis exists for distinguishing the goods (or services) of one seller from those of another. Such a basis may be real or fancied."¹⁵ However, other experts hold different definitions of product differentiation: many believe that products are differentiated if consumers perceive few close substitutes for a brand and are not very likely to switch on the basis of a small price difference.¹⁶ Consumer behavior researchers rely on the concept of attribute salience to explain product differentiation; however, attribute salience, or the importance of certain aspects, varies among consumers and may vary substantially over time, due to either the general environment or advertising itself.

¹⁴Ibid.

¹⁵Ibid., p. 90.

¹⁶Ibid.

Researchers agree that there are two levels of product differentiation: innate and perceived. Innate product differentiation is the degree of difference in product performance along salient product attributes that actually exists, while perceived differentiation is the degree of difference in product performance that consumers believe exists.¹⁷ A problem arises in the subjectivity of distinguishing between the salience, or relative importance, of the attributes and the determination of the level of innate product differentiation. Nevertheless, advertising differentiates products by introducing new attributes into the choice decision. Polyunsaturated fats, for example, brought in a new dimension to products such as cooking oils.

Another effect of advertising is the influence it has on consumers' assessment of the product's performance on a given attribute.¹⁸ This appears usually in the form of immeasurable qualities or those not apparent by inspection or even use. An example of this effect would be fluoride in toothpaste or an aspirin's ability to dissolve quickly. Advertising also affects the combination of attributes regarded as "ideal."¹⁹ For instance, the campaign focusing on the notion that natural foods are better than those with preservatives promotes the sale of natural products as the healthy alternative.

¹⁷Ibid., p. 89.

¹⁸Ibid.

¹⁹Ibid.

ROLE

Perhaps alcohol ads have received so much attention because advertising plays such an important role in the American society. In fact, the main reason why advertising holds such an important position is its high visibility and monetary significance. The average American is constantly bombarded with ads on television, radio, billboards, in newspapers and magazines, and even through direct mail. In 1980 total advertising expenditures exceeded \$55 billion. Second, due to its public nature advertising has been criticized on "ideological and aesthetic grounds." Many people sincerely believe that advertising is insidious in character and a force from which the public needs to be protected. Advertising also arouses concern due to much uncertainty about how it works. Consumers want to know if they are being provided with important information or manipulated into buying unneeded products. In 1976, William Wilkie, consumer behavior researcher, proposed the definition of information as "any stimulus that is relevant to the decision to buy or consume a product or service." If one agrees with this definition, thus believing that even imagery can be considered informative, any separation between information and persuasion seems meaningless.²⁰

ALCOHOL AS AN ADVERTISED PRODUCT

In the case of alcohol, advertising plays an extremely important role because alcohol falls into the category of a convenience product. Anheuser-Busch reports that 60% of beer

²⁰Ibid., preface (xi).

sales are impulsive buys.²¹ As a result, advertising becomes increasingly important. Messages that influence buyer behavior in convenience goods industries are less likely to be based on objectively measurable product attributes, and alcohol presents a classic example. Since consumers do not shop around and gather information on these products, they tend to be swayed by factors that are not objective. Also, physical product characteristics seem less important, thus, they can be overcome through advertising claims. While many beers may actually taste the same, advertisers frequently attach a social status to brands and create a crucial determinant in purchases. In addition, messages promoting convenience products focus less on factual content and more on emotion. For instance, Budweiser commercials show the average working class man enjoying a beer after work and appeal to one's sense of relaxation after a hard day.²²

Michael Porter outlines the characteristics of a convenience product. First, the retailer merely provides display space and actually possesses little power to differentiate the product. In this market the retailer is not needed to provide information, and little or no sales assistance is provided: the manufacturer differentiates the product through advertising. Also, the points of purchase, usually convenience stores, are densely located and differentiated only by their accessibility. Consumers spend little time or effort assessing their purchase because they find

²¹Anheuser-Busch, Fact Book, p.4.

²²Albion and Farris, The Advertising Controversy, p. 139-142.

little to be gained in making price and quality comparisons as compared with saving time. Usually, as a result of advertising, the consumer has already made any quality decisions before entering the store. Moreover, convenience products are generally low priced and frequently purchased, and they represent a small fraction of the consumer's budget; consequently, a "wrong" purchase does not prove disastrous. Because numerous buyers exist, mass media works both efficiently and effectively. As a result of the combination of these characteristics, the main source of information for convenience products such as alcohol is advertising.²³

DIFFERING VIEWPOINTS ON ALCOHOL ADS

FEDERAL GOVERNMENT

On May 31, 1989, former Surgeon General C. Everett Koop released his recommendations emerging from a workshop on drunken driving, many of which directly affect the advertising industry.²⁴ Perhaps the most damaging to alcohol companies would be the elimination of tax deductions for the alcoholic beverage industry. Secondly, he suggested eliminating sponsorship of sporting events by beer companies, which provides the prime advertising time. Furthermore, he recommended the elimination of the use of celebrities who appeal to youth as role

²³Ibid.

²⁴Howard Bell, "Making Our Voice Heard 'for Advertising Freedom," Editor & Publisher, the Fourth Estate 122(July 8, 1989): 8.

models and also suggested the banning of advertising on college campuses. While Koop presented these recommendations as voluntary, he did suggest congressional action if the voluntary measures are not effective. He also recommended that alcohol ads be met with an equal number of pro-health and pro-safety messages. However, roughly one billion dollars in airtime is already spent annually by broadcasters in anti-substance abuse and outreach programs. Seemingly, Koop's suggestions and "official stance" imply that advertising causes alcohol abuse, yet research has not provided scientific support for this conclusion.

In addition to the Surgeon General's recommendations concerning the public's health, the Federal Trade Commission plays a significant role in the government's regulation of business. In 1938, the Wheeler-Lea Amendments to the FTC Act granted the commission responsibility for advertising.²⁵ Before the FTC's intervention, legal help for consumers was restricted largely to court suits instigated by individual citizens, but now the FTC can relieve a problem for the entire public in one action. Previously, according to common law, a buyer was forced to prove he had incurred damages specifically because of his justified reliance upon the seller's intentionally deceptive representation which was heard and understood as a factual assertion. The major change was that the FTC needs only to prove

²⁵Ivan L. Preston, The Great American Blow-Up: Puffery in Advertising and Selling: Madison, WI: The University of Wisconsin Press, 1975, p. 133-145.

that an ad possesses the capacity to deceive in order to call a misrepresentation unlawful--it does not need to prove that the ad was actually relied on, or damaging to, any consumer. In 1942, the decision of Haskelite v. FTC stated that a failure to reveal a fact relevant to the consumer's purchasing decision could be called a deceptive nondisclosure and that the FTC has the right to require certain statements, such as warning labels, as well as prohibit certain statements.

According to the FTC, in order for an advertisement to be illegal, it must be deceptive: if a consumer is not likely to believe a message, then it cannot be considered deceptive.²⁶ In addition, deception means not just that the consumer was fooled or misled but that the seller's message fooled him. Several types of falsity, such as puffery, can be used in advertising and legally produce no deception. In the case of alcohol advertising, social-psychological misrepresentations cause the most criticism.²⁷ A social or psychological misrepresentation is a claim that a product possesses a feature which actually exists only in the consumer's social environment or within his own personality or mental state of mind, such as the idea that alcohol can make one a fun person. The FTC has refrained from regulating this aspect of advertising.

In the past few years, the FTC has experienced increased pressure to regulate more strictly; however, to the alcohol

²⁶Ibid., p. 7-16.

²⁷Ibid., p. 210-217.

industry's advantage, the current commission, under the leadership of chairman Daniel Oliver, has refused to change its laissez-faire approach. Under the Reagan administration, the FTC: 1.completely ceased the use of industry-wide trade regulation rules as a method of enforcement; 2.did not bring a single price-fixing case in 1981-1986; 3.fileed only two Robinson-Patman predatory pricing suits; and 4."spurred a tidal wave of takeovers" by adopting an "anything goes" policy on corporate mergers.²⁸ During the 1980s the caseload of the National Advertising Division of the Council of Better Business Bureaus (NAD) steadily declined, and they handled one-third fewer complaints in 1988 than in 1981. Furthermore, in 1988 only 26% of claims they examined were found to be substantiated, as opposed to 45% in 1981. While Steve Gardner, assistant attorney general of Texas, believes that the "FTC has abandoned the interests of consumers to take up the banner of protecting business," Oliver feels that "[i]n a free society, the primary regulator must always be the consumer through his participation in the marketplace."^{29,30} In fact soon after becoming chairman, Oliver reprimanded NAD for its "regulatory zeal."

ADVERTISING ORGANIZATIONS

On the other side of the issue, Howard Bell, president of

²⁸Paul Harris, "Will the FTC Finally Wake Up?" Sales and Marketing Management 140(January): 57.

²⁹Ibid., p. 58.

³⁰Kenneth Roman, "The Neo-Prohibitionists," Editor & Publisher, the Fourth Estate 122(February 25, 1989): 56.

the American Advertising Federation, opposes any regulation. Believing that advertising plays an important role in society, he sees education as the solution to alcohol abuse and encourages more, rather than less, information provided to consumers. He claims, "no industry has a better record of public service than advertising" and blames parental influence and peer pressure as the two most compelling factors contributing to a youth's choice to drink. Furthermore, he poses the question that if advertising is such a decisive factor in drinking alcohol, how can one explain the pervasiveness of illegal drug use without any advertising?³¹ In a speech to the Association of National Advertisers, R. William Murray, vice-chairman of Phillip Morris Cos., the nation's largest advertiser, "painted an almost Orwellian picture of products that could ultimately be attacked by the government as objectionable, from whole milk to fast food to red meat to detergents with phosphates."³² He also called on the ad community to object strongly to restrictions that prescribe different rules for political and commercial free speech.

The American Marketing Association has responded to the expected increase in pressure by encouraging greater responsibility on the part of its marketers. In 1987, it presented a revision of its code of ethics. The revision states:

³¹Howard Bell, "Making Our Voice Heard for Advertising Freedom," p. 52.

³²Patricia Winters, "ANA Slams States," Advertising Age 59(October 31, 1988): 62.

1. "Marketers shall be honest in serving consumers, clients, employees, suppliers, distributors and the public";
2. "Communications about offered products and services shall not be deceptive";
3. "Marketers are responsible for disclosure of all substantial risks associated with product or service usage, the identification of extra cost-added features, avoidance of false and misleading advertising, and the avoidance of sales promotions that are deceptive or misleading."³³

NAAG

Perhaps the most controversial party involved, the National Association of Attorneys General (NAAG), has taken a very active and firm position on the issue of advertising restrictions. This association, which was organized in 1907, includes Democrats and Republicans, both elected and appointed, from all 50 states and five territories. While the NAAG possesses no law enforcement authority, it can express the opinion of its membership, adopt policy resolutions, and participate in litigation. In recent years the NAAG has become increasingly outspoken; for instance, it has already broken with the anti-trust policies of the U.S. Department of Justice and the Federal Trade Commission. This organization has also lobbied Congress to give state attorneys general the power to enforce the Federal Trade Commission Act, whereas now only the FTC can prosecute; however, this attempt

³³Allan V. Palmer, "Ethics: A Pragmatic View," Marketing & Media Decisions 23(July 1988): 160.

failed.³⁴

While the NAAG's position on regulation of advertising as a whole has been strong, differing opinions exist within the organization. By looking at two opposing state attorneys' general views, one can see the vastly different opinions involved in the issue of such state regulation of advertising. On one side stands James Mattox from Texas and, on the other, Hal Stratton from New Mexico. Mattox sums up the main question of the debate: "Should state attorneys general be involved in the regulation of false advertising, not by fly-by-night con artists, but by some of the biggest companies in the land?"³⁵ Mattox feels that the answer must be in the affirmative because this power would give the states a way of picking up the slack that federal agencies are ignoring. He attributes the failure of the FTC to strictly regulate to the eight years under the Reagan administration in which every attempt was made "to dismantle all semblance of federal consumer protection."³⁶ Though much attention has been given to this recent movement by the NAAG, Mattox points out that state prosecution of false advertising is not a new concept, but only recently have the state attorneys general begun coordinating their enforcement activities to such an unprecedented degree. In compliance with this heightened

³⁴Steven W. Colford, "Abrams: The Name Puts Fear in Marketers' Hearts," Advertising Age 59(March 14, 1988): 13.

³⁵James Mattox and Hal Stratton, "Should States Regulate Ads?" Advertising Age 59(August 8, 1988): 18.

³⁶Ibid.

effort, if one state decides to investigate an advertisement, the others will be contacted.

Attorney General Mattox sees four major advantages to extending regulatory power to NAAG. First, he points out the advantage of uniformity--all advertisers would be treated the same across the country. He also believes that the concerted effort would prove much more effective than that of one state because it would be easier to get the attention of a major advertiser with the force of several states behind a complaint. Next, he states that efficiency is an asset when considering that taxpayer money could be saved by sharing limited resources. Mattox bases his final advantage, certainty, on a benefit to the advertisers. Since the guidelines merely restate state law, he sees this option as a fairer route than simply filing suit without warning because the advertisers would know in advance what they need to do under state law.³⁷

On the other side, Hal Stratton, the attorney general of New Mexico, disagrees with the NAAG's position. While Mattox sees the regulation as pro-consumer, Stratton believes that the major drawback to the plan is the disservice it will do to the consumer. For instance, the NAAG's recent guidelines for airline advertising proposed a voice-over disclosing all the restrictions regarding a special fare, which could take up more than two-thirds of a 30-second commercial. As a result, many airlines have said they will cut down television advertising, thus further

³⁷Ibid.

reducing the amount of information available to consumers and defeating the purpose of advertising. Stratton also appeals to the concept of Federalism to support his opinion, relying on the fact that the Commerce Clause gives the power to regulate interstate commerce to the federal government. If the states are allowed to administer national guidelines, he argues, state officials would be taking on the authority of both the legislative and executive branches of the federal government. Furthermore, by adding new costs, new threats of litigation, and yet another layer of bureaucracy, guidelines will present "massive disincentives" to new entries, thus, discouraging competition and reducing choices for consumers. Therefore, while the concept gives the appearance of an effective consumer protection program, its overall effect is to make life more difficult for the average American.³⁸

THE ALCOHOL INDUSTRY

As a result of the intensified awareness of alcohol advertising, alcohol companies have begun to focus on responsible drinking in their commercials. Anheuser-Busch, the brewer that held 42% of the market share of the U.S. brewing industry in 1989, has launched a full-scale campaign based on the concept "Know When To Say When." This grass roots program is the responsibility of the Department of Consumer Awareness and Education, which works closely with the Industry and Government Affairs Department. A recent publication produced by Anheuser-

³⁸Ibid., p. 18-20.

Busch stated:

Anheuser-Busch is deeply concerned about the abuse of alcohol and the problem of driving while intoxicated. It supports the proposition that anything less than responsible consumption of alcohol beverages is detrimental to the individual, to society and to the brewing industry.³⁹

The "Know When To Say When" program is a model consumer awareness and education campaign to remind consumers to drink responsibly, and it includes an advertising campaign which makes billions of impressions annually. Anheuser-Busch presents this program as an alternative that will "encourage responsible drinking without imposing costs on responsible drinkers or infringing on an individual's rights."⁴⁰

The umbrella of "Know When To Say When" covers ten individual programs. "Family Talk About Drinking," for instance, focuses on combating underage drinking by offering guides which suggest appropriate methods, language and situations for parents to address the topic of drinking. The basic idea of the "I'm Driving" program is that if a group of customers designates one person to refrain from drinking in order to drive, that person may receive free or reduced-price food and soft drinks from the retailer. Another program, "Your Alcohol IQ," consists of a video production that uses well-known entertainers and alcohol experts to discuss alcohol use. The video encourages audience participation by using a question-and-answer format. Anheuser-

³⁹Anheuser-Busch, Fact Book, p. 33.

⁴⁰Ibid.

Busch wholesalers have these videotapes to provide to community groups and colleges. One of the most popular programs has been "Pit Stop," which is "designed to give motorists a place to take a break from driving, to have a free snack and to receive some information about Anheuser-Busch programs that promote responsible drinking." Though it was originally targeted toward college students on spring break, the success of "Pit Stop" has led to expansion to other driving occasions such as three-day weekends. Other programs focus on sporting events, safe rides, and server training.⁴¹

CIGARETTE ADVERTISING BAN: AN ANALOGY

HISTORY

Perhaps one can better understand the issue of alcohol advertising by examining the effects of the cigarette advertising ban from radio and television which took effect in 1970. The ban followed several years of heated debate concerning the public's right to protect its health. In 1965 Congress enacted legislation requiring health warnings on all packages in order to alert the public to documented dangers of cigarette smoking. However, in 1967 U.S. cigarette consumption reached its peak of 549.2 billion packages sold, and in 1969, Congress felt it had convincing evidence that the Labeling Act of 1965 had not

⁴¹Ibid., p. 33-34.

materially reduced the incidence of cigarette smoking.⁴² Also, evidence indicated that the most persuasive advertising was being conducted on radio and television, largely because these media reached such a large audience of young people. Consequently, Congress enacted the Public Health Cigarette Smoking Act of 1969: "Sec.6. After January 1, 1970, it shall be unlawful to advertise cigarettes on any medium of electronic communication subject to the jurisdiction of the Federal Communications Commission."⁴³

In Capital Broadcasting Company v. Mitchell (1971), the Supreme Court upheld the controversial act. Broadcasters brought an action to enjoin enforcement of the statute, but the Court held that enforcement of the statute violated neither the First Amendment rights of broadcasters nor due process, stating that the broadcasters "have lost no right to speak but merely the ability to collect revenue from others for broadcasting their commercial messages."⁴⁴ The Court felt that the act correctly focused on television and radio because "[a] pre-school or early elementary school age child can hear and understand a television commercial, while at the same time be substantially unaffected by an advertisement printed in a newspaper, magazine, or appearing on a billboard."⁴⁵ Prior to this case, Banzhaf v. F.C.C.

⁴²Capital Broadcasting Company v. Mitchell, 333 F.Supp 582, p. 587.

⁴³Ibid., p. 584.

⁴⁴Ibid., p. 583.

⁴⁵Ibid., p. 586.

provided the guidelines for cigarette advertising, and, according to the dissent to Capital, proved much more effective.

ALTERNATIVE

In December of 1966, John F. Banzhaf, III asked WCBS-TV to provide free time in which anti-smokers might respond to the pro-smoking views he believed were implicit in the cigarette commercials it broadcast. His target included all cigarette advertisements which portray youthful or sophisticated people enjoying cigarettes in exciting settings and seeking "to create the impression and present the point of view that smoking is socially acceptable and desirable, manly, and a necessary part of a rich full life."⁴⁶ He believed his point of view raised one side of a "controversial issue of public importance" and concluded that under the FCC's fairness doctrine, WCBS was obligated to "affirmatively endeavor to make [its] . . . facilities available for the expression of contrasting viewpoints held by responsible elements."⁴⁷ In only one prior instance had the Commission held the advertising of a consumer product subject to the rule that broadcasters' presentations of controversial public issues must be fair and balanced. In that case, a station in the temperance belt which advertised alcoholic beverages was forced to accept anti-liquor advertising from temperance groups; hence, the fairness doctrine was adopted.⁴⁸

⁴⁶Banzhaf v. F.C.C., 405 F.2d 1082, p. 1086.

⁴⁷Ibid.

⁴⁸Ibid., p. 1092.

In 1968 Banzhaf v. FCC was decided, and the Court held that the Cigarette Labeling Act of 1965 did not deny the FCC authority to require radio and television stations to devote a significant amount of broadcast time to presenting a case against cigarette smoking. The Court outlined five reasons why this ruling did not abridge the First Amendment freedoms of speech or press: (1) No speech is banned. The only constitutional argument is that it may have a "chilling effect" on the exercise of First Amendment freedoms by making broadcasters more reluctant to carry cigarette advertising. (2) The speech which might be "chilled" barely qualifies as constitutionally protected speech. (3) The danger that even this marginal speech will be significantly "chilled" as a result of the ruling is most likely itself marginal. Few stations will refuse to carry cigarette commercials in order to avoid the obligations imposed by the ruling. (4) The First Amendment gain is greater than the loss even if some valued speech is inhibited. A primary concern in issues of the First Amendment has been to foster the widest possible debate and dissemination of information on matters of public importance. (5) The ruling serves to provide information rather than to repress it.⁴⁹

As a result of Banzhaf, stations carrying cigarette advertising were required to "tell both sides of the story" and present a fair number of anti-smoking messages: soon after the ruling, statistics began to show a sustained trend toward lesser

⁴⁹Ibid., p. 1101-1103.

cigarette consumption. Tobacco companies could not stop advertising for fear of losing their competitive position; yet for every dollar they spent to advance their product, they faced the airing of more anti-smoking advertisements and, hence, lost more customers. While cigarette consumption reached its peak of 549.2 billion packages in 1967, consumption dropped to 545.7 billion in 1968, following Banzhaf and to 528.9 billion in 1969. However, in 1970, when all cigarette ads were banned, consumption climbed to 536.4 billion.⁵⁰ According to Michael Gartner, president of NBC News, even though only one anti-smoking ad aired for every four cigarette commercials, the consumption declined and several surveys indicated that anti-smoking ads were the major reason. Because of this result, tobacco industries agreed to the 1970 ban--when anti-smoking ads were lifted, cigarette consumption began to climb.⁵¹

Nevertheless, the Court in Banzhaf importantly noted that the "[r]uling could not be upheld merely on the grounds that it might reasonably be thought to serve the public interest," but rather because it addressed a unique danger proven by both official and congressional reports.⁵² Perhaps this ruling on cigarette ads can best be differentiated from alcohol advertising by a letter from the FCC to the WCBS station which stated:

⁵⁰Capital Broadcasting Company v. Mitchell, p. 588.

⁵¹Harrison Weber, "Commercial Speech (NBC News President Gartner on Censorship of Advertising)," Editor & Publisher, the Fourth Estate 122(May 27, 1989): 30.

⁵²Banzhaf v. F.C.C., p. 1083.

We stress that our holding is limited to this product-cigarettes. Governmental and private reports ...and congressional action ...assert that normal use of this product can be a hazard to the health of millions of persons....We believe that a station which presents such advertisements has the duty of informing its audience of the other side of this controversial issue of public importance--that, however enjoyable, such smoking may be a hazard to the smoker's health.⁵³

While research proves that normal use of cigarettes is dangerous, alcohol presents a different issue. Alcohol advertisers rely on the fact that they promote normal, or moderate, consumption, which has not been proven dangerous.

In response to the total ban of cigarette ads, researchers have failed to find the expected results. According to experts, by switching to other advertising media, companies have increased their cost effectiveness. Total real advertising expenditures have fallen; many new brands have been introduced by the established manufacturers, and, profits have actually increased.⁵⁴ In other countries where bans on tobacco advertising have been enacted, consumption has not declined, and, in some cases, it has actually risen. While countries without bans have experienced an increase in consumption of low-tar cigarettes, countries in which consumers are deprived of information still see high-tar cigarettes prevailing.⁵⁵

⁵³Ibid., p. 1084.

⁵⁴Albion and Farris, The Advertising Controversy, p. 155.

⁵⁵Howard Bell, "Making Our Voice Heard for Advertising Freedom," p. 52.

COMMERCIAL SPEECH AND ITS PROTECTION

INTRODUCTION

While \$120 billion is spent each year on all types of advertising in the United States, commercial speech has enjoyed only second-class status. For example, it is a criminal offense for any broadcaster to permit the broadcasting of any ad about lotteries except for the official ones run by the state. It is illegal to use the postal system to offer any stock or security for sale. Furthermore, in North Dakota a licensed dealer of pistols is forbidden from placing an ad in his window stating that he sells them, and in New Jersey it is illegal for a doctor's ads to contain testimonials from satisfied patients.⁵⁶

Several issues are involved in the debate concerning the regulation of commercial speech. One of the most prominent arguments is that of economic analysis. According to a survey performed by the American Medical Association, the price of the same amount of the same drug varied up to 1200% in the Chicago area. The prescription drug market did not permit price advertisements at the time this survey was done. Basic economic analysis shows that a prohibition on advertising discourages the workings of a competitive market system and allows prices to increase. Supposedly, an optimal amount of advertising showing the availability of less expensive alternatives of products

⁵⁶Harrison Weber, "Commercial Speech (NBC News President Gartner on Censorship of Advertising)," p. 30.

should lower prices, even with the added cost of the advertising.⁵⁷ The government can regulate many other aspects of the economy, however. To name a few, it has the power to restrict production of a good, determine the prices and conditions of sale, prescribe wages and conditions of employment, and ban certain items from the marketplace. It can even license a monopoly and subsidize public competition to private industry. All of these represent potential restraints on the free market economy and, as some economists believe, encourage an inefficient allocation of resources.⁵⁸

Besides the economic analysis, perhaps the most important argument concerning commercial speech is that of First Amendment rights. While distinguishing commercial speech from political expression presents a major problem, the Courts also have failed to agree upon a precise definition of commercial speech. As a result, they have oscillated back and forth as to whether commercial speech should receive the same amount of protection as political speech does. While some experts believe commercial speech refers to business advertising that does no more than solicit a commercial transaction or state information relevant to such a transaction, others are not quite as restrictive. While the First Amendment protects the "marketplace of ideas," experts

⁵⁷Ronald D. Rotunda, "The Commercial Speech Doctrine in the Supreme Court," University of Illinois Law Forum: Champaign, IL: College of Law, University of Illinois, 1976, p. 1082.

⁵⁸Thomas H. Jackson and John Calvin Jeffries, 'Jr., "Commercial Speech: Economic Due Process and the First Amendment," Virginia Law Review: Atlanta: Darby Printing Co. 65(February 1979): 8.

cannot agree as to whether the market for goods and services is included.

COMMERCIAL SPEECH VS. POLITICAL EXPRESSION

Most experts agree upon two major differences between commercial and political speech. First, commercial speech is more objective because its truth is more easily verifiable than that of political expression. Also, because commercial speech is used to obtain profit, it is supposed to be more durable than noncommercial speech. Consequently, it is less susceptible to being chilled by regulation. A crucial question, however, is whether all commercial speech complies with these differences. For instance, not all commercial messages merely state the price of the item; some, such as "America is turning 7-Up" and those that show someone using a product and leading an exciting life make it difficult to verify the claims.⁵⁹ Furthermore, some kinds of noncommercial speech are just as verifiable as commercial speech, yet they receive First Amendment protection. The speech of scientific expression, tabloids and TV evangelists, for example, can often be labeled true or false. In addition, while commercial speech is distinguished as more durable due to its profit motive, other forms of speech for profit receive protection. Newspapers, film producers, book publishers, and record producers all operate for profit yet receive protection

⁵⁹Alex Kozinski and Stuart Banner, "Who's Afraid of Commercial Speech?" Virginia Law Review: Atlanta: Darby Printing Co. 76(May 1990): 634.

under the First Amendment.⁶⁰

Thomas Jackson and John Jeffries, Jr. draw the distinction between differing notions of the purpose of the First Amendment. Since the amendment states that it "protects the process of forming and expressing the will of the majority according to which our representatives must govern," some view freedom of speech as a tool of representative democracy and as a preservation of self-government rather than a right of individual expression.⁶¹ Others believe that freedom of speech encompasses additional values and that the individual can only experience self-fulfillment through free expression. However, Jackson and Jeffries argue that commercial speech neither contributes to self-government nor encourages the realization of the individual personality; therefore, it falls outside the accepted reasons for protecting the freedom of speech: "the concept of a First Amendment right of personal autonomy in matters of belief and expression stops short of a seller hawking his wares."⁶²

CASE LAW

As experts disagree about the protection afforded commercial speech, the Courts have also failed to take a strong position on the issue. Essentially, the legal history of commercial speech

⁶⁰Ibid., p. 636.

⁶¹Thomas H. Jackson and John Calvin Jeffries, Jr., "Commercial Speech: Economic Due Process and the First Amendment," p. 10-12.

⁶²Ibid., p. 14.

begins in 1942 with the decision of Valentine v. Chrestensen.⁶³

An entrepreneur in New York City distributed leaflets that contained an advertisement for a commercial exhibition of a former Navy submarine. While one side advertised the exhibition, the other protested the city's denial of wharfage facilities for the exhibition. The police claimed that this activity violated the sanitary code provision that forbade the dispensing of advertising matter in the streets; however, ordinances restricting political and religious handbills previously had been invalidated. In Chrestensen the Court held that these handbills constituted purely commercial speech and that such speech received no protection. Chrestensen also established the definition of "primary purpose," which states that if the primary purpose of a message is to convey information on public issues, then it receives full protection, but if the purpose is to generate business profits, then it can be regulated and receives no protection. However, the primary purpose definition was eventually rejected as the Court "recognized that the motives or objectives of the speaker bear no necessary relationship to the value of his expression."⁶⁴

In 1943 a group of Jehovah's Witnesses violated an ordinance by selling religious books without paying a license tax. However, the Court held in Murdock v. Pennsylvania that the sales

⁶³Valentine v. Chrestensen, 316 U.S. 52.

⁶⁴Thomas Merrill, "First Amendment Protection for Commercial Advertising," University of Chicago Law Review: Atlanta: Darby Printing Co. 44(Fall 1976): 207.

were incidental to the purpose of disseminating religious ideas and, according to the primary purpose test, that the state cannot circumscribe the exercise of an established First Amendment right merely because the communication contains an incidental commercial quality.⁶⁵ Later, the case of Breard v. City of Alexandria (1951) presented the issue of door-to-door magazine subscription sales.⁶⁶ In this particular case, the Court ruled that only the press or those orally supporting a philosophy could contend that the First Amendment could protect their speech: the profit motive was sufficient to deprive those sales of at least some protection. However, Ronald Rotunda, author of "The Commercial Speech Doctrine in the Supreme Court," sees this decision as a weak solution to the problem because, in his opinion, the Court came to its conclusion not by a subjective, factual inquiry into motive but by "balancing ...the conveniences between some householders' desire for privacy and the publisher's right to distribute publications in the precise way that those soliciting for him think brings the best results."⁶⁷

The first major turning point after Chrestensen occurred in the case of New York Times Co. v. Sullivan in 1964, an instance in which the Court declined to apply Chrestensen to sustain a libel action against a newspaper that had published an allegedly

⁶⁵Murdock v. Pennsylvania, 319 U.S. 105.

⁶⁶Breard v. City of Alexandria, 341 U.S. 622.

⁶⁷Ronald D. Rotunda, "The Commercial Speech Doctrine in the Supreme Court," p. 1088.

offensive paid political advertisement.⁶⁸ The ad solicited funds for the civil rights movement. The Court, noting that the profit motive of an author or newspaper publisher has no First Amendment significance, found it immaterial that the Times had been paid to print the advertisement. At this point the primary purpose definition of unprotected commercial speech was formally denounced, and a line was drawn between "purely commercial" and "editorial" advertising.⁶⁹ As a result, the focus of consideration of commercial speech began to shift toward the content of the speech rather than the purpose of the advertiser, and speech containing information and opinion on matters of public interest gained full protection, even when it appears in the form of paid advertising. However, in this decision the Court still failed to address the issue of "purely commercial advertising," which Chrestensen had left wholly unprotected. In 1971, Capital Broadcasting v. Mitchell was decided: all cigarette advertising was banned from radio and television.⁷⁰

In 1973, however, the decision in the case of Pittsburgh Press Co. v. Pittsburgh Commission on Human Rights offered new hope for protection of commercial speech.⁷¹ In this case a newspaper had printed employment want ads under columns

⁶⁸New York Times Co. v. Sullivan, 376 U.S. 254, p. 266.

⁶⁹Thomas Merrill, "First Amendment Protection for Commercial Advertising," p. 209-210.

⁷⁰Capital Broadcasting Company v. Mitchell.

⁷¹Pittsburgh Press Co. v. Pittsburgh Commission on Human Rights, 413 U.S. 376.

designated by sex. Consequently, the local government charged the newspaper with violating an ordinance that prohibited sex-designated help-wanted advertisements unless the employer or advertiser would be free to make hiring decisions on the basis of sex. In response, the newspaper argued that the placement of the advertisements reflected the exercise of editorial judgment rather than the promotion of commercial endeavor and, therefore, should receive protection under the First Amendment. Though the Court decided that the newspaper was not protected, the focus of discussion shifted, and the Court relied on the content of the speech rather than the purpose to make its decision.⁷² Part of the rationale behind this shift was that if an activity is illegal, the state may prohibit the advertising or soliciting, which is a part of the unlawful conduct.

The central issue the Court focused on was whether the newspaper's publication of want ads under particular column headings was commercial speech and, if it was, how it should be treated under the First Amendment. The Court decided that since the ads were "no more than a proposal of possible employment," they were "classic examples of commercial speech" and also that the media may be engaging in commercial speech when they accept advertisements that do no more than propose a transaction.⁷³ In this instance the offending speech involved the editorial

⁷²Ronald D. Rotunda, "The Commercial Speech Doctrine in the Supreme Court," p. 1094.

⁷³Pittsburgh Press Co. v. Pittsburgh Commission on Human Rights, p. 385.

arrangement of facially neutral want ads rather than the acceptance of discriminatory ads: the actual ads did not specify sex. In his opinion, however, Justice Powell explained that the close relationship between the information in the column headings and the proposals of employment made the column designations and want ads "an integrated commercial statement" conveying "essentially the same message as an overt discriminatory want ad."⁷⁴

As a standard test, the Court suggested that regulations of advertising for legitimate commercial activity should be assessed by balancing "[a]ny First Amendment interest which might be served by an ordinary commercial proposal" against "the governmental interest supporting the regulation."⁷⁵ The belief in the need for this test indicates an obvious rejection of the view that commercial speech is automatically deemed unprotected. After the Court determines a message is commercial speech, it has the power to weigh the governmental interest behind the regulation against the First Amendment value of the speech. Nevertheless, the Court's decision leaves the definition of commercial speech unclear. While the prototypical case has been defined as speech that does no more than propose a commercial transaction, Pittsburgh Press set the precedent that the "distribution of such speech by the media, and in some circumstances, the distribution of commercial proposals under

⁷⁴Ibid., p. 388.

⁷⁵Ibid., p. 389.

particular editorial formats, will be considered commercial speech as well."⁷⁶

In 1975, two years after Pittsburgh Press, the case of Bigelow v. Virginia overturned the conviction of a Virginia newspaper editor who had violated a Virginia statute by publishing an ad for an abortion referral agency in New York.⁷⁷ The statute made it a misdemeanor to "encourage or prompt the procuring of an abortion" by the sale or circulation of any publication.⁷⁸ Though the ad was published before the Court recognized a constitutional right to abortion, it gained significance since it "pertained to constitutional interests."⁷⁹ Moreover, the advertisement was more likely to receive First Amendment protection because it contained material of public interest in addition to proposing a commercial transaction. However, it is also important to note that the message advertised a service provided in New York, and Virginia's police powers could not actually control the abortions being performed or prevent its citizens from traveling to New York to obtain an abortion. On this point Bigelow differs from Pittsburgh Press in that Pittsburgh Press only legitimized the regulation of illegal employment discrimination, whereas abortions were legal in New York.

⁷⁶Ibid.

⁷⁷Bigelow v. Virginia, 95 S.Ct. 2222.

⁷⁸Ibid., p. 2223.

⁷⁹Ibid., p. 2230.

Although the Court ruled that the ad had First Amendment protection, it did not do so on the grounds that the message was sufficiently editorial or noncommercial in nature to avoid being subject to the decision of Chrestensen. According to Bigelow, Chrestensen is not "authority for the proposition that all statutes regulating commercial advertising are immune from constitutional challenge."⁸⁰ As a result, the impact of Chrestensen was reduced to a "generalized balancing process," and the concept of commercial speech and the rules for protection became even more uncertain.⁸¹

Perhaps the most crucial turning point for commercial speech occurred in 1976 with Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council.⁸² In this case the consumers of prescription drugs brought suit against the VSBP, challenging the validity of a Virginia statute declaring it unprofessional conduct for a licensed pharmacist to advertise the prices of prescription drugs. The Court invalidated the statute. The crucial issue involved was that the Court did not attempt to differentiate the drug price advertising from speech that simply proposes a commercial transaction, but rather found that the advertisements were of substantial importance to consumers. The Court's reasoning focused on elderly consumers who might not have

⁸⁰Ibid., p. 2232.

⁸¹Ronald D. Rotunda, "The Commercial Speech Doctrine in the Supreme Court," p. 1096.

⁸²Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, 96 S.Ct. 1817.

the means for comparison shopping and also the benefit to society as a whole that would result "by facilitating the efficient allocation of resources and providing factual information relevant to public discussion of controversial economic questions."⁸³ Furthermore, in his opinion, Justice Blackmun stated that "the statutory bans on advertising prescription drug prices violated the First and Fourteenth Amendments and could not be justified on the basis of the state's interest in maintaining the professionalism of its licensed pharmacists."⁸⁴ Virginia Pharmacy marked the first time the Court expressly ruled that a purely commercial advertisement should receive some First Amendment protection.

Clearly, the main thrust of the Court's argument was the importance of the availability of information for an efficient economic system. The Court viewed this restriction as an invasion of two basic values of economic liberty: 1. the opportunity of the individual producer or consumer to maximize his own economic utility and 2. the aggregate economic efficiency of a free market economy.⁸⁵ Perhaps applicable to the alcohol advertising controversy, Blackmun stated:

Advertising, however tasteless and excessive it sometimes may seem, is nonetheless dissemination

⁸³Thomas Merrill, "First Amendment Protection for Commercial Advertising," p. 216-217.

⁸⁴Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, p. 1817.

⁸⁵Thomas H. Jackson and John Calvin Jeffries, Jr., "Commercial Speech: Economic Due Process and the First Amendment," p. 36-37.

of information as to who is producing and selling what product, for what reason, and at what price.⁸⁶

He stressed that it is a matter of great public importance that each individual economic decision be well informed. Moreover, he expressed the opinion that the individual's interest in the free flow of commercial information may be more substantial than his interest in the political realm. He also dismissed the argument that the consumer could receive the message by other means, such as by going directly to the pharmacist and asking him the price. Blackmun insisted that the statute limiting commercial speech was paternalistic: the information is not in itself harmful, and the individual's best interests will be served if only he is well informed. He strongly felt that the First Amendment made this clear thus, Virginia Pharmacy established that commercial speech should be treated as any other protected speech.⁸⁷

Justice Rehnquist, the Supreme Court's strongest opponent of efforts to extend First Amendment protection to commercial speech, was the only dissenter to the decision of Virginia Pharmacy. He strongly disagreed with the idea that truth and accuracy should be the only criteria for protected commercial speech, and he stated:

Under the Court's opinion the way will be open not only for dissemination of price information but for active promotion of prescription drugs, liquor, cigarettes, and other products the use of which it has

⁸⁶Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, p. 1827.

⁸⁷Ibid., p. 1820.

been thought desirable to discourage.⁸⁸

Other arguments against Virginia Pharmacy focus on the distinction between legislative and judicial powers. Both Rehnquist and other experts agree that the court overstepped its bounds by overruling the legislative decision made by elected officials.⁸⁹

Although both Bigelow and Virginia Pharmacy did much to advance the rights of commercial speech, neither represents significant progress in defining it. However, they show a clear move away from the premise that commercial speech is a special category with a unique status in constitutional law. Also, both opinions contain language condemning the idea that advertising can be divided into distinct categories of commercial and noncommercial speech. Nevertheless, the majorities of both recognized that in the case of false or deceptive advertising a distinction can be made, and commercial speech would receive less than full protection.⁹⁰

Another case pertinent to the alcohol advertising controversy is that of Linmark Associates, Inc. v. Township of Willingboro in 1976.⁹¹ It presents the question whether the

⁸⁸Ibid., p. 1835.

⁸⁹Thomas H. Jackson and John Calvin Jeffries, Jr., "Commercial Speech: Economic Due Process and the First Amendment," p. 38-39.

⁹⁰Thomas Merrill, "First Amendment Protection for Commercial Advertising," p. 217-218.

⁹¹Linmark Associates, Inc. v. Township of Willingboro, 535 F.2d 786.

First Amendment permits a municipality to prohibit the posting of "For Sale" or "Sold" signs when the municipality is acting to stem what it perceives as the flight of white homeowners from a racially integrated community. The Court ruled that "[c]ommercial speech cannot be banned because of unsubstantiated belief that its impact is detrimental."⁹² Also, the ordinance was not concerned with the time, place, or manner of speech--attributes that can be regulated--but, rather, the content and the possibility that its primary effect would be to cause those receiving the information to act upon it. An important outcome of this decision was that it established that the government may not achieve objectives "by restricting free flow of truthful commercial information."⁹³

Proponents of advertising bans argue that the First Amendment guarantees freedom of speech to "persons." Black's Law Dictionary defines "person" as follows:

'Persons' are of two kinds, natural and artificial. A natural person is a human being. Artificial persons include a collection or succession of natural persons forming a corporation; a collection of property to which the law attributes the capacity of having rights and duties. The latter class of artificial persons is recognized only to a limited extent in our law.⁹⁴

The dictionary also says, however, that generally corporations will be included when statutes refer to persons unless the

⁹²Ibid., p. 787.

⁹³Ibid.

⁹⁴Henry Campbell Black, ed., Black's Law Dictionary, Revised 4th Edition: St. Paul, MN: West Publishing Co., 1968.

intention of the legislature is to exclude them. The case of First National Bank of Boston v. Bellotti in 1978 dealt with this issue.⁹⁵ In this instance national banking associations and business corporations brought action to challenge the constitutionality of a Massachusetts statute that prohibited them from making contributions to influence the outcome of a vote on any question submitted to voters other than questions materially affecting the property, business, or assets of the corporation. The Burger Court decided that a state could not prevent a corporation from spending money on unrelated political issues. It ruled that, when determining First Amendment protection, the "inherent worth of the speech in terms of its capacity for informing the public does not depend on the identity of its source, whether corporation, association, union or individual."⁹⁶ However, Rehnquist dissented again, stating that a corporation is "the mere creature of law" and that "it possesses only those properties which the charter of creation confers upon it."⁹⁷

Finally, in 1980, commercial speech gained yet more protection. The decision of Central Hudson Gas and Electric Corporation v. Public Service Commission of New York provoked Rehnquist not only to dissent but also to declare the

⁹⁵First National Bank of Boston v. Bellotti, 98 S.Ct. 1407.

⁹⁶Ibid., p. 1407.

⁹⁷Ibid., p. 1415.

"devitalization" of the First Amendment.⁹⁸ An electrical utility brought suit to challenge the constitutionality of a regulation of the New York Public Service Commission which completely banned promotional advertising by the utility. The reason for the regulation was that the state was concerned with energy conservation, and it viewed advertising as the promotion of the use of electricity. However, the Court disagreed. First, in his opinion Justice Powell stated that the fact that this utility monopolized its service area did not mean its advertisements were unprotected commercial speech. Also, the state's interest in the fairness of the utility's rates "did not provide constitutionally adequate reason for restricting protected speech where the link between the advertising prohibition and the utility's rate structure was, at most, tenuous."⁹⁹ Finally, even though the state showed a legitimate interest in energy conservation and its regulation directly advanced this interest, the Court ruled that "the complete suppression of speech ordinarily protected by the First Amendment was more extensive than necessary to further the state's interest in conservation" and, thus, violated the First Amendment.¹⁰⁰

In deciding Central Hudson the Court established a standard test to use when weighing a state's regulatory power against the

⁹⁸Central Hudson Gas and Electric Corporation v. Public Service Commission of New York, 100 S.Ct. 2343, p. 2363.

⁹⁹Ibid., p. 2344.

¹⁰⁰Ibid.

speech's First Amendment rights: 1. the speech must not be misleading or unlawful; 2. the restriction must serve a substantial governmental interest; 3. the regulation must directly advance the governmental interest asserted; and 4. the regulation must be no more extensive than necessary to serve that interest.¹⁰¹ While this regulation met most of these requirements, the Court found it too extensive to justify suppressing the information when, most likely, the advertising would cause no net increase in energy use.

RELATED STUDIES

ALCOHOL AS A MATURE MARKET

According to Ogilvy & Mather, one of the largest advertising agencies in the world:

The role of advertising within the marketing mix for an established branded consumer product is to stimulate repeat buying, and to help build up market share by increasing the number of regular, loyal buyers.¹⁰²

Most experts agree that alcohol has reached maturity in the product life cycle and, therefore, the focus becomes brand advertising. When a product is promoted by brand, many factors, such as price, quality, and promotional offers, contribute to the consumer's choice--advertising is only one factor that may influence it. In this case, advertising can speed up

¹⁰¹Ibid., p. 2346.

¹⁰²M.J. Waterson, "Advertising and Alcohol: 'Analysis of the Evidence Relating to Two Major Aspects of the Debate,'" International Journal of Advertising 8(1989): 123.

dissemination of information about new brands and encourage trial purchases; however, not all campaigns collectively can be successful. Brand advertising is primarily competitive in nature; therefore, "for every winner there will be a loser."¹⁰³ For this reason many argue that alcohol advertising has no effect on actual consumption. One example that M.J. Waterson, author of "Advertising and Alcohol: An Analysis of the Evidence Relating to Two Major Aspects of the Debate", uses is that of soap: advertising a brand of soap does not make people wash more.¹⁰⁴

A study in the United Kingdom between the years of 1978 and 1987 illustrates a lack of correlation between advertising expenditures and sales. Beer advertising, for instance, rose in real terms by over 80%, yet consumption fell by 14%. The advertising of spirits rose over 70% while sales fell 4%. On the other hand, sales of wine rose by 65%, but the advertising expenditure fell by 26%.¹⁰⁵ In addition, an FTC study in 1985, conducted by the Bureau of Consumer Protection and Economics, found little or no effect of advertising on the total industry demand.¹⁰⁶ An interesting way of looking at the effects of advertising on consumption is by observing Eastern Europe. Over the past 30 years this area's per capita alcohol consumption rose at the same rate as Western Europe, and the Soviet Union has a

¹⁰³Ibid., p.121.

¹⁰⁴Ibid., p. 124.

¹⁰⁵Ibid., p. 125.

¹⁰⁶Ibid., p. 127.

well-publicized drinking problem--without the influence of advertising. In fact, in per capita consumption of alcohol during the years 1984-1986, the United States placed twenty-first behind such Eastern countries as Hungary, East Germany, Czechoslovakia, and others. In spirits, the five countries with the largest per capita consumption were all Eastern European countries.¹⁰⁷ (See Table 1 and Table 2.)

TESTING RECALL

According to P.P. Aitken, author of "Television Alcohol Commercials and Under-age Drinking", his research conducted with Strathclyde University's Advertising Research Unit in Scotland had three major goals: 1. to examine "the extent to which advertisements for alcoholic drinks employ images which are attractive to the young"; 2. to determine at what age children perceive the imagery in alcohol ads in an adult-like manner; and, 3. to examine "associations between children's perceptions of alcohol advertising and their own experiences with alcohol."¹⁰⁸ In this exploratory study, they interviewed 150 children in groups of approximately equal numbers of boys and girls at each of four age levels--10, 12, 14, 16. The children were told the discussion would focus on mass media rather than alcohol.

When asked what advertising they had seen recently, all but two groups mentioned brands of alcoholic drinks: the older

¹⁰⁷Ibid., p. 128.

¹⁰⁸P.P. Aitken, "Television Alcohol Commercials and Under-age Drinking," International Journal of Advertising 8(1989): 135-136.

children tended to list these at the beginning, earlier than the younger ones. In the assessment of how prominent ads for alcohol are in children's recall of ads they like and dislike, children of 12 and older tended to mention alcohol commercials at the very beginning of their lists of favorites. In an examination of the characteristics of favorite commercials, the results indicated that their descriptions became more differentiated, or less simplistic, over the years of 10-14. All ages agreed that humor is an important aspect, and, when giving examples, children of 12 and above described commercials for alcohol. The only other aspect that the 10-year-olds mentioned was that of brightness and color, and only some of them listed this characteristic. However, more of the 12-year-olds mentioned brightness and color, and some of them listed music and action. The 14- and 16-year-olds listed all of these qualities and also emphasized the importance of style. In addition, in their descriptions of target group characteristics, the 10-year-olds tended to describe only what was specifically shown in the commercials, but the older children alluded to much more complex imagery, such as sociability, sophistication, and attractiveness.¹⁰⁹

In order to test the children's awareness of alcohol commercials, researchers asked them what brands of alcohol they had seen advertised on television and also if they could identify the brands advertised in a set of nine edited photographs of TV commercials. While awareness increased as a function of

¹⁰⁹Ibid., p. 137-138.

increasing age, only 7% of the total were unable to name a brand of alcohol advertised on TV and only 6% were unable to identify correctly at least one of the photos. Sixty-one percent identified four or more.¹¹⁰ In terms of appreciation, the children's answers to questions about specific ads indicated that the majority of children of 10 and above enjoy TV alcohol ads. Also, large proportions in each group said that they liked the commercials shown in seven of the nine photos. The percentages in favor of a ban decreased over the four age groups from 43% of the 10-year-olds to 7% of the 16-year-olds.¹¹¹ Finally, 83% rated alcohol ads as having good music; 71% said they had bright colors; 57% said plenty of action; 54% rated them as having style; and, 51% said humor was prevalent in alcohol ads.¹¹²

Interestingly, this study also showed the reinforcing effects of advertising. The children categorized as "drinkers" tended to be better at naming brands of alcohol advertised on TV and also tended to be more adept at recognizing and identifying the brand imagery. Also, the "drinkers" tended to be more appreciative of alcohol commercials: proportionally more of them than "non-drinkers" had a favorite alcohol commercial and also were against a ban.¹¹³ Aitken stated that this study does not necessarily suggest that advertising plays a vital role in

¹¹⁰Ibid., p. 142.

¹¹¹Ibid., p. 144.

¹¹²Ibid.

¹¹³Ibid., p. 145.

causing children to start drinking, but "contrary to claims by spokesmen for the alcohol and advertising industries, it seems that television alcohol commercials do reinforce or reward under-age drinking."¹¹⁴

PRIMARY RESEARCH

In an order to help determine the effects of alcohol advertising on youth, fifteen adolescent clients at the Lighthouse Division of Chestnut Health Systems in Bloomington, Illinois participated in interviews. Adolescents with admitted drinking problems were chosen on the premise that they would provide more insightful answers than those who do not have, or do not realize they have, a drinking problem. Also, Aitken's study touches on the reinforcement powers of alcohol advertising, and this research expands that idea. The interviews consisted of individual meetings in which the interviewer asked 11 questions. (See attached survey tool.) Fourteen of the participants were males, and one female participated. The age breakdown was as follows: age 14(1), age 15(3), age 16(2), age 17(5), age 18(4). One 17-year-old participant did not continue the interview due to the fact that his problem was drug-related rather than alcohol-related.

The responses in these interviews depended heavily on imagery, an intangible and immeasurable advertising tool: seldom do viewers realize the impact subtle images have on their decisions. Consequently, the results cannot all be viewed as

¹¹⁴Ibid., p. 147.

concrete indications of advertising's effects. However, 11 of the 14 admitted that they paid closer attention to alcohol commercials than other advertisements. Only one person said that he did not consciously watch alcohol ads. This fact indicated that, for some reason, alcohol commercials catch the attention of these participants more so than other ads. This result, however, is limited by the fact that all of the participants drink, and people tend to give more attention to the ads of products they use. When asked why they show more interest in alcohol commercials, the participants gave a variety of reasons. The most popular reason, upbeat and memorable music, indicates that alcohol advertisers create an environment that appeals to youth and stays in their minds. Six people chose this aspect as an important factor. Of the other aspects listed, two people said that the humor of the ads make them watch, and three indicated that attractive people influenced them. In addition, three people said that they pay attention to alcohol commercials because they inform them of what is available. Interestingly, three people said they watch them simply because these ads focus on alcohol, indicating a definite behavior reinforcement.

In questions dealing with the image portrayed by alcohol commercials, the participants again differed in their responses. Many people pointed to multiple images: cool, relaxed(6), fun(6), macho, masculine(2), and sexy(3). However, five people said that they did not notice any images being portrayed. Those who perceived an image were divided on how close to reality they

believed these images to be. Three people, or one-third, thought they were very close to reality, but the other six clustered at the bottom of the range, with three choosing "somewhat close" and three choosing "not close at all." In other words, two-thirds of those who perceive an image being portrayed claim that they realize, for the most part, that this image does not reflect reality.

When asked how much alcohol advertising contributed to their drinking, the majority of the participants did not feel that commercials played a significant part in their decision to drink. Six people said it contributed somewhat and six said "not at all," while only two chose "a lot." Of those who said advertising contributed, they all indicated that its major role was that of reinforcing their drinking by either promoting a positive image of what they were already doing or encouraging them to try a new brand. Perhaps not surprisingly, all of them said that other influential factors existed in their decision: peer pressure(8), family problems(6), alcoholic parent(6), curiosity(2), and boredom(1). In reference to how alcohol commercials affect them now that they know they have a drinking problem, an overwhelming number(10) said that ads tempt them to drink, and three said that commercials make them angry that they cannot have the product. An additional two people have found that alcohol ads make them angry because they are being bombarded with strong messages to drink. Only three said that these messages do not affect them.

In terms of remedying this problem, only one participant was unaware of the responsible drinking messages. However, only three people believe they will be substantially effective. Five chose "somewhat effective," and four did not think they will be effective at all. Most indicated that these messages will only affect behavior, such as drinking and driving, and will not prevent people from drinking. One person thought they might be effective in discouraging those who have not yet begun to drink but saw no real effect on those who drink already. Interestingly, one participant admitted that when these messages appear, he turns off the television, indicating that, at least at some level, they make drinkers uncomfortable.

When the interviewer stated that alcohol advertising should be banned from television, a surprising majority disagreed: strongly agree(2), agree(3), disagree(6), and strongly disagree(3). Reasons were given supporting both sides of the issue. Those against such regulation felt that advertising plays a major role in business and free enterprise. One participant illustrated his point by explaining that no one suggests banning the advertising of sweets even though the product contributes to obesity. Some mentioned the issues of freedom of speech and the denial of valuable information to those who do not have a problem with the product. Others argued that advertising has no effect on whether people drink. On the other hand, those who supported such regulation relied on their belief that advertising encourages and tempts people to drink. One person suggested that

alcohol ads should be restricted to late hours so that children would not be exposed.

FUTURE OF ALCOHOL ADVERTISING

Legislators are constantly seeking ways to limit the amount of alcohol messages. Suggestions have included both denying advertising deductions for products such as tobacco and alcohol and imposing a tax on advertising.¹¹⁵ In May of 1989 three bills limiting the rights of tobacco and alcohol advertisers in Illinois were defeated: 1. the elimination of outdoor advertising within a half-mile of schools, churches, and hospitals; 2. the requirement of health warning labels above those required by the federal government; and, 3. the prohibition on advertising targeted at or accessible to children under the age of 21.¹¹⁶

However, new bills have recently been introduced in Illinois. On March 5, 1991, Representative Davis presented House Bill 0483. The Synopsis of the bill reads as follows:

Creates the Outdoor Alcohol and Tobacco Advertising Control Act. Prohibits the placing of outdoor advertising for certain alcoholic beverages or tobacco products within 1000 feet of a church or a public or private school, college or university. Provides for penalties and injunctive relief for violations of the Act. Provides that the Department of Public Health may adopt rules to carry out the purposes of the Act.¹¹⁷

"Outdoor advertising" is defined as "any outdoor sign, display,

¹¹⁵Kenneth Roman, "The Neo-Prohibitionists," p. 56.

¹¹⁶Ibid., p. 43.

¹¹⁷House bill 0483, 87th General Assembly, State of Illinois, 1991 and 1992.

device, notice, placard, poster, billboard ...(or any of the foregoing located indoors but positioned so as to be readily visible from outdoors) ..."¹¹⁸ A violation of this Act constitutes a business offense, and the guilty party may be fined up to \$5000.

On March 5, Representative Davis also introduced House Bill 0484. The Synopsis states:

Created the Outdoor Advertising Act. Provides that before an advertisement or other information concerning goods, services or activities is first displayed on an outdoor advertising sign, the subject matter thereof shall be submitted by the sign owner to the State Board of Education for approval in accordance with standards and criteria adopted by the State Board for that purpose.¹¹⁹

The billboards to which this bill refers are not limited to alcohol and tobacco products, rather any sign "used to advertise or provide information concerning any goods, services or activities."¹²⁰ Also, if this bill would pass, each advertiser would be required to pay the State Board of Education an approval fee, not to exceed the lesser of \$25 or .05% of the rental fee, at the time the request is submitted. The fee would be required in order to cover the expenses incurred in "implementing, administering and enforcing the provision of this Act."¹²¹

¹¹⁸Ibid., sec. 2.

¹¹⁹House Bill 0484, 87th General Assembly, State of Illinois, 1991 and 1992.

¹²⁰Ibid., sec. 2.

¹²¹Ibid., sec. 5.

CONCLUSIONS

The issue of alcohol advertising most likely will not be solved in the near future. The guidelines established by Central Hudson will cause great difficulty in upholding any kind of ban in court. In order to change the present situation, proponents of regulation need to prove that advertising actually causes youth to begin drinking. With so many other social factors involved, such as peer pressure, family problems, and alcoholic parents, this may be an impossible task: almost all of the adolescents at Lighthouse had experienced at least one of these other factors. However, the immeasurability of imagery seems to prevent researchers from proving any possible effects of the constant bombardment of messages saying that drinking makes life better. Perhaps though these other problems exist, advertising presents the escape--alcohol. As Aitken's study showed that the age of 12 marks the point at which children become more aware of advertising--especially alcohol--and the imagery involved, the interviews at Lighthouse indicated that 11 of 14 adolescents had begun drinking between the ages of nine and 13. While a correlation seems to exist, the number of factors involved prevents any conclusions: advertising seems to play only a small part in the larger trend of society.

Frequently, those in favor of a ban compare alcohol with cigarettes and, while many people may feel that both products should be discouraged, a crucial difference exists between them. As the FCC noted, reports have proven that the normal use of

cigarettes can be hazardous to one's health. The regulation of cigarette ads was a way of protecting the public. Alcohol, on the other hand, must be abused in order to be considered hazardous. Nevertheless, both Aitken's research and the Lighthouse interviews illustrate a definite reinforcement power of advertising on under-age drinking. While it is illegal for people under the age of 21 to drink, 15-year-old alcoholics admitted that they watch beer commercials "just because it's alcohol." Although Anheuser-Busch claims that no one under the age of 25 appears in their commercials and that ads are not targeted at minors, these commercials are definitely reaching under-age drinkers. Perhaps by reinforcing under-age drinking, alcohol commercials can be accused of promoting the abuse of alcohol and therefore, should be regulated to some extent.

Obviously, the alcohol industry would not be in favor of any sort of regulation or ban. As stated earlier, 60% of Anheuser-Busch's sales come from impulsive buys, in which case advertising plays the crucial role of familiarizing the consumer with the brand name. However, a total ban now probably would not decrease consumption for a long time: seemingly, the imagery associated with alcohol would not completely lose its impact until those who had been exposed to it no longer had any part in society. In this case, education should become the weapon against alcohol abuse. Though it seems counter-productive to present conflicting messages, at least children are given the opportunity to make a conscious decision in response to both sides of the issue. The

American culture does not lend itself to restrictions on any kind of information, and if alcohol ads would be lifted from television and radio, most likely the responsible drinking messages would also be taken off the air. This would be a step backward in terms of alcohol and drug awareness.

While public concern mounts and legislative action intensifies, ultimately the issue will return to the courts. Though the past several years have shown commercial speech receiving more and more First Amendment protection, the Supreme Court has experienced some changes. In 1986, Chief Justice Warren Burger was replaced by Justice William Rehnquist, and the vacant seat was filled by Justice Antonin Scalia. In 1989, the new Court showed its first move away from Central Hudson. In State University of New York v. Todd Fox, the college attempted to prosecute a saleswoman and several students who violated a school regulation prohibiting commercial transactions on campus by hosting a demonstration of kitchen utensils.¹²² Although the Court ruled that the speech was protected, the decision said that instead of the fourth prong of the Central Hudson test which required the least restrictive means of regulation, the government must only show that the restriction is "reasonable" and "narrowly tailored."¹²³ Though some experts believe this shift will have no substantial effect on the protection of

¹²²State University of New York v. Todd Fox, Slip Opinion, U.S. Reports, No. 87-2013, June 29, 1989.

¹²³Ibid., p. 10.

commercial speech, the decision indicates a willingness to change the trend and possibly allow more restriction. According to William Rogal, general counsel to the American Advertising Federation, Chief Justice Rehnquist "never met an ad ban or ad regulation that he didn't like": such changes in the Supreme Court could cause significant problems for alcohol advertisers.¹²⁴

When dealing with First Amendment protection issues, the government must prove a compelling interest in order to regulate speech. Although evidence shows a link between advertising and drinking, no definitive proof has been found indicating that ads actually cause alcohol abuse. In fact, some countries that have no forms of advertising consume more alcohol per capita than the United States. Furthermore, the participant at Lighthouse who was disqualified from the interview due to his drug, rather than alcohol, problem admitted he had been involved in drugs since the age of nine. While he did not differ from the others in terms of age, he obviously had not been exposed to drug advertisements. In this case, reason points to a broader social problem than advertising. Until studies prove that alcohol, like cigarettes, is hazardous when consumed normally or that advertising causes the abuse of alcohol, proponents of regulating alcohol advertising cannot rely on the interest of protecting the public's health, and a ban, most likely, would not be upheld.

¹²⁴Steven W. Colford, "Rehnquist Cool to Ad Rights," Advertising Age 57(June 23, 1986): 1.

TABLE 1 Per capita consumption: total alcohol (liters)¹²⁵

| | 1984 | 1985 | 1986 |
|--------------------------|------------|------------|------------|
| 1. France | 13.5 | 13.3 | 13.2 |
| 2. Luxembourg | 13.6 | 13.0 | 12.7 |
| 3. Spain | 11.5 | 11.8 | 11.5 |
| 4. Hungary | 11.7 | 11.5 | 11.4 |
| 5. Portugal | 12.8 | 13.1 | 11.2 |
| 6. Switzerland | 11.1 | 11.2 | 11.0 |
| 7. West Germany | 10.7 | 10.8 | 10.5 |
| 8. Belgium | 10.6 | 10.5 | 10.3 |
| 9. Italy | 12.1 | 11.6 | 10.2 |
| 10. East Germany | 10.2 | 10.3 | 10.2 |
| 11. Denmark | 9.9 | 9.9 | 10.0 |
| 12. Austria | 10.0 | 9.9 | 9.8 |
| 13. New Zealand | 9.3 | 9.1 | 9.7 |
| 14. Bulgaria | 9.2 | 8.8 | 9.3 |
| 15. Argentina | 9.6 | 8.9 | 9.1 |
| 16. Czechoslovakia | 9.5 | 9.4 | 9.0 |
| 17. Australia | 8.9 | 9.0 | 8.7 |
| 18. Netherlands | 8.6 | 8.5 | 8.6 |
| 19. Canada | 7.9 | 8.0 | n/a |
| 20. Romania | 7.9 | 7.9 | 7.8 |
| 21. United States | 8.0 | 8.0 | 7.6 |
| 22. Yugoslavia | 7.7 | 6.3 | 7.4 |
| 23. Poland | 6.5 | 7.0 | 7.2 |
| 24. United Kingdom | 6.9 | 7.1 | 7.1 |
| 25. Finland | 6.5 | 6.5 | 6.9 |
| 26. Greece | 6.8 | 6.2 | 6.2 |
| 27. Japan | 5.8 | 5.7 | 5.9 |
| 28. Cyprus | 5.7 | 5.6 | 5.9 |
| 29. Chile | 5.5 | 5.6 | 5.6 |
| 30. Sweden | 5.2 | 5.2 | 5.5 |

¹²⁵M.J. Waterson, "Advertising and Alcohol: Analysis of the Evidence Relating to Two Major Aspects of the Debate," p. 121, as cited from Produktschap voor Gestileerde Dranken.

TABLE 2 Per capita consumption: spirits (liters)¹²⁶

| | 1984 | 1985 | 1986 |
|--------------------------|-------------|-------------|-------------|
| 1. Hungary | 5.10 | 5.40 | 5.30 |
| 2. East Germany | 4.60 | 4.80 | 4.70 |
| 3. Poland | 4.20 | 4.60 | 4.70 |
| 4. Bulgaria | 3.17 | 3.21 | 3.41 |
| 5. Czechoslovakia | 3.28 | 3.52 | 3.40 |
| 6. Finland | 3.10 | 3.01 | 3.17 |
| 7. Spain | 2.80 | 3.00 | 3.00 |
| 8. Canada | 2.66 | 2.61 | n/a |
| 9. Luxembourg | 2.50 | 2.50 | 2.50 |
| 10. United States | 2.81 | 2.72 | 2.45 |
| 11. Iceland | 2.21 | 2.26 | 2.44 |
| 12. Japan | 2.47 | 2.40 | 2.58 |
| 13. France | 2.22 | 2.33 | 2.34 |
| 14. West Germany | 2.32 | 2.37 | 2.30 |
| 15. Cyprus | 2.30 | 2.10 | 2.30 |
| 16. Netherlands | 2.36 | 2.24 | 2.21 |
| 17. Sweden | 2.10 | 2.06 | 2.12 |
| 18. Switzerland | 2.11 | 2.18 | 2.08 |
| 19. Yugoslavia | 2.10 | 1.90 | 2.00 |
| 20. Romania | 2.00 | 2.00 | 2.00 |
| 21. Belgium | 1.91 | 2.12 | 1.98 |
| 22. USSR | 3.70 | 3.10 | 1.90 |
| 23. United Kingdom | 1.61 | 1.72 | 1.71 |
| 24. New Zealand | 1.75 | 1.71 | 1.70 |
| 25. Eire | 1.49 | 1.76 | 1.68 |
| 26. Denmark | 1.49 | 1.61 | 1.58 |
| 27. Austria | 1.48 | 1.46 | 1.45 |
| 28. South Africa | 1.24 | 1.11 | 1.32 |
| 29. Norway | 1.29 | 1.41 | 1.28 |
| 30. Australia | 1.20 | 1.22 | 1.20 |

¹²⁶M.J. Waterson, "Advertising and Alcohol: Analysis of the Evidence Relating to Two Major Aspects of the Debate," p. 120, as cited from Produktschap voor Gestileerde Dranken.

Sex _____ Age _____
 At what age did you begin drinking? _____
 How long have you known you have a drinking problem? _____

Before you realized you had a drinking problem:

1. When did you watch television?
 _____ Mornings _____ Evenings
 _____ Afternoons _____ Weekends
 2. Did you pay attention to commercials? _____ yes _____ no
 Alcohol commercials? _____ yes _____ no
 3. If so, why did you pay attention to them?
 _____ funny _____ upbeat and memorable music
 _____ attractive people
 _____ other: specify _____
 4. What kind of image did these commercials portray?
 _____ macho, masculine _____ fun
 _____ cool, relaxed _____ sexy
 _____ other: specify _____
 5. How close to reality did you think this image was?
 _____ Very close _____ Somewhat close
 _____ Close _____ Not close at all
 6. How much did your exposure to alcohol advertisements contribute to your drinking?
 _____ A lot _____ Somewhat
 _____ Moderately _____ Not at all
 7. What other factors contributed to your drinking?
 _____ Peer pressure _____ An alcoholic parent
 _____ Family problems _____ Other: specify _____
- After you realized you had a drinking problem:
8. How do alcohol advertisements affect you now? Do they:
 _____ Remind you of your problem _____ Make you angry
 _____ Tempt you to drink _____ Do not affect you
 _____ Other: specify _____
 9. Are you aware of the anti-drinking, or responsible drinking messages, on TV? _____ yes _____ no
 10. If so, how effective do you think they will be in preventing people from drinking?
 _____ Very effective _____ Somewhat effective
 _____ Effective _____ Not effective at all
 11. All alcohol messages should be banned from TV. Do you:
 _____ Strongly agree _____ Disagree
 _____ Agree _____ Strongly Disagree

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