



::view from the cheap seats::

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The Law of the Advertising Landscape

How much government regulation do advertising and marketing need?

Fred Flintstone once said, “Winston is the one filter cigarette that delivers flavor 20 times a pack. Winston tastes good like a cigarette should.”

Really, he said it. Of course, if you’re like me, watching a Flintstones cigarette commercial (which, thanks to YouTube, live on) is a completely surreal experience. Congress banned broadcast advertising of tobacco products in 1971—before I was born. Now, 36 years later, there’s a serious effort in Congress to enact more restrictions on tobacco marketing, this time on point-of-sale signage, print ads, promotions, and other tactics.

Which leads me to ask—how regulated should advertising and marketing be?

When television and radio advertising for tobacco was banned in 1971, the overall spending didn’t drop. Instead, the broadcast ban had a secondary effect: tobacco marketers moved their budgets into print ads—along with direct mail, product sampling, promotions, and special event sponsorships.

In other words, cigarette makers found more direct, sinister ways to get their products in people’s faces. And it worked, big time. In college, I had friends who would literally stop and pick Camel Cash out of a crack in the sidewalk if they spotted some.

So I’d say that the broadcast ban on tobacco products had some pretty serious unintentional consequences, and helped fuel the anything-goes below-the-line morass we’re currently surrounded by. (Hey, maybe we should allow cigarette ads back on TV. After all, if the 30-second spot is dying, and today’s kids are a part of the TiVo/MySpace/iPod generation, well, they wouldn’t pay attention to cigarette commercials, would they?)

It doesn’t matter who’s in power in Washington—there are both Democrats and Republicans who want to impose the additional tobacco regulations. It seems we are living in an ever-growing nanny state, and there are other types of advertising in the regulatory crosshairs, most notably fast-food, pharmaceutical, political advertising, and anything that kids could potentially see. That’s just for starters.

Now, I’m no fan of excessive government regulation, and I find it deeply strange to ban advertising of any product that’s perfectly legal to make and sell. But every time the threat of more regulation emerges, the leading trade groups for marketers, manufacturers, and advertisers along with their attendant lobbyists always say, “We don’t need federal regulation. Self-policing is the best way to go.” Bullshit. That’s letting the fox guard the henhouse, and frankly, our industry has never displayed much capacity for trustworthiness or self-control.

Another weaselly argument that’s used is the free speech defense. “These regulations would be trampling on the First Amendment. This is censorship.” There is a free speech issue here—sort of. Advertising, as it relates to products and services, is commercial speech and not entirely protected by the Constitution. Nor should it be, and I’ll tell you why.

Political speech—and as a result, political advertising—is the most protected form of free speech there is. And with that nearly unfettered freedom, political ads are predominantly negative, misleading, insulting, and do absolutely nothing to advance political discourse or encourage informed voting. Now, how far would the ad industry sink if every product had that same leeway? I mean, would Scottissue run ads claiming that Charmin causes butt rash?

So we have to walk a fine line, and be careful of anything lawmakers propose. And use the 1971 tobacco broadcast ban as an example of both good and bad consequences. Ban pharmaceutical ads on TV and drug makers might take that money and throw it into more golf junkets for doctors—so perhaps you’ll never know exactly why your doctor is pushing a new pill on you. Ban fast-food marketing on TV and you’ll see more toys, product tie-ins, and marketing directly to schools. Advertising and marketing is full of smart, dedicated professionals with few scruples, little job security, and sales targets to hit—so we’ll find a way to circumvent any regulation that gets passed in order to get results.

Of course, there is another way: It’d be nice if the ad industry, and the clients we serve, could truly learn to regulate ourselves. To practice a little bit of restraint. To have the gumption that even if an idea is doable and an intrusive tactic might be effective, a brand and perhaps society in general would be better off if we don’t pursue that idea.

Don’t count on that happening, though. In our industry, the pursuit of money is the law of the land.