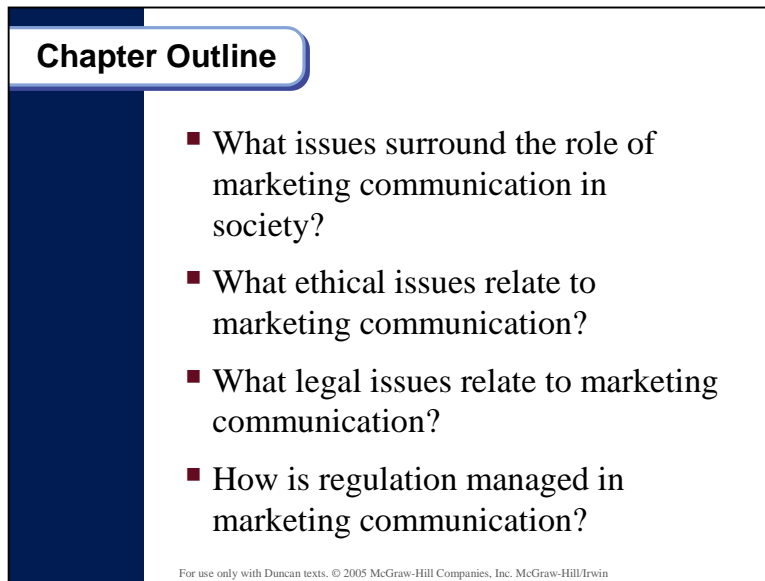


CHAPTER 20: SOCIAL, ETHICAL, AND LEGAL ISSUES

Chapter Objective

To identify critical issues in the social, ethical and legal environment that must be considered in the development of an IMC program.

Chapter Key Points



Chapter Outline

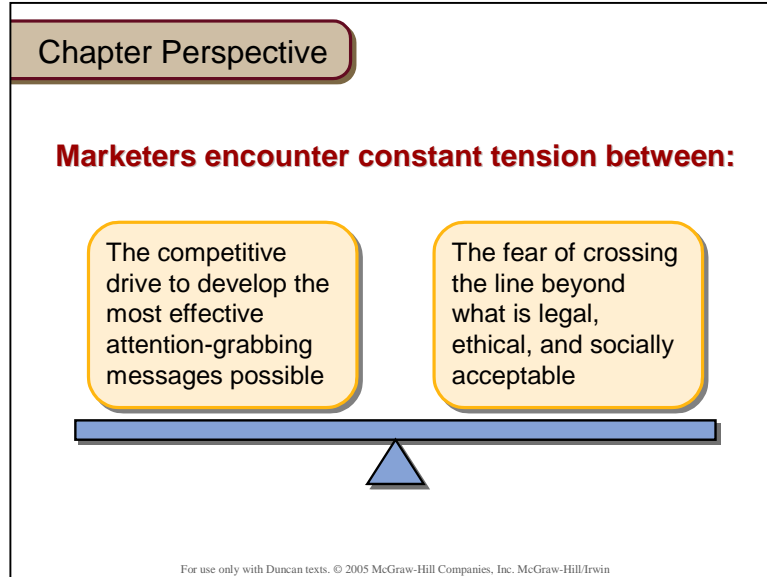
- What issues surround the role of marketing communication in society?
- What ethical issues relate to marketing communication?
- What legal issues relate to marketing communication?
- How is regulation managed in marketing communication?

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This chapter addresses four key issues:

- 1) What issues surround the role of marketing communication in society?
 - The chapter identifies ten issues that have emerged as societal concerns about MC.
- 2) What ethical issues relate to marketing communication?
 - The chapter discusses some of the ethical issues that impact MC, including stereotyping, the targeting of vulnerable groups, and the use of offensive content.
- 3) What legal issues relate to marketing communication?
 - The chapter examines some of the major legal ramifications of MC messages including a discussion of misleading claims, puffery questionable business practices and fraud.
- 4) How is regulation managed in marketing communication?
 - The chapter discusses the role of industry and governmental regulation in the MC environment and identifies many of the key regulatory players that can impact an MC program.

Chapter Perspective

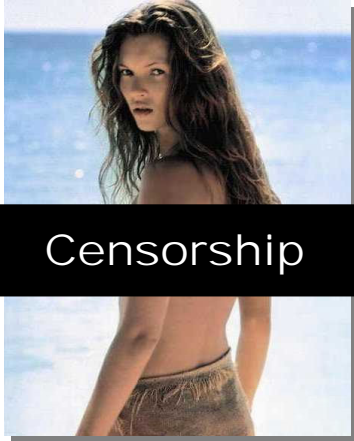


Marketing communication, because it is so public by its very nature, is constantly scrutinized for false promises, misleading statements, or the undermining of social values. In the marketplace of brand messages, constant tension exists between marketers, who want to take advantage of every way they can to persuade people to buy their products, and the many laws regulating commercial speech as well as the many social mores against which brand messages are measured. Responsible companies want to develop the most effective, attention-grabbing ad campaigns possible, yet they know that if they push beyond acceptable limits, which often are more “gray” than black and white, they can tarnish their image and risk fines and public humiliation. To make things even more complex, different audiences have different standards against which they evaluate brand messages.

Marketers must continually deal with being competitive while at the same time being legal and ethical in what they say and how they say it. This is why marketing communicators must have a basic understanding of what is and is not socially acceptable, what is legal and illegal, and what is ethical and unethical. This chapter focuses on explaining the issues, standards, guidelines, and regulations that have been put in place by various organizations and government bodies. The chapter’s objective is to make you sensitive to the social, ethical, and legal issues that relate to managing the marketing communications that create and sustain customer relationships.

Opening Case: Advertiser Censorship

Opening Case: Advertiser Censorship



Censorship

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Opening Case: Advertiser Censorship

Challenge: Attempts by advertisers to influence the news

Answer: Some advertisers have tried, including these cases:

- In L.A., a supermarket chain cancelled \$250,000 in ads after a critical story ran
- In San Jose, local car dealers banded together and cancelled \$1 million in advertising over a critical story

Results: In the San Jose case, the collective boycott was ruled illegal, but individual advertisers are still free to cancel advertising at any time

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Results:

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Discussion Starters:


- 1) Do you think advertisers are justified in canceling advertising if they believe they have received unfair coverage? Poll the class to see how many students agree and disagree.
- 2) Regardless their responses to question #1, ask what students to suggest specific actions an organization should take in response to press coverage they feel is unfair.
- 3) Poll the class to see how many believe that some advertisers really are succeeding in “censoring” the media by purchasing large quantities of advertising in the media vehicles. In other words, how many think the media will present a story differently for a large advertiser?

Lecture Outline

I. The Role Of Marketing Communication In Society

A. Two powers of MC

An Example of an MC Message For a Good Cause



SHOP 'TIL YOU DROP.

When you're out and about this holiday season, remember all the good you can do when you give to the Salvation Army. The help and hope you give make wonderful things happen for people in Thanksgiving and Christmas. The check you put in the collection throughout the year, multiplied together because you've worked through all seasons and placement. Thankful kids have been in the kitchen. You are not the only one who...

Salvation Army of America has helped and helped are strengthened through volunteer hours programs. Their red hat touched the lives of more than 30 million children in one year. And the donations we receive during the holidays show the important work we continue to do every year. You are not the only one who...


NEED KNOWS NO SEASON
www.salvationarmy.org

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- It can help promote socially responsible behavior...
- ...or it can create negative social consequences
 1. One potential effect: a materialistic consumer culture

B. Concerns about MC

Concerns About MC



- Drives up the cost of products
- Creates a barrier to market entry for small firms
- Merchandises too many aspects of our culture
- Sells inferior products
- Sells unhealthy, dangerous products
- Sets unrealistic expectations
- Is done in bad taste (including use of sex and violence)
- Invites censorship (by powerful advertisers)
- Creates visual pollution
- Pushes one country's culture onto another

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- i. *Drives up the cost of products*
- ii. *Creates a barrier to market entry for small firms*
- iii. *Merchandises too many aspects of our culture*
- iv. *Sells inferior products*
- v. *Sells unhealthy, dangerous products*
- vi. *Sets unrealistic expectations*
- vii. *Is done in bad taste (including use of sex and violence)*
- viii. *Invites censorship (by powerful advertisers)*
- ix. *Creates visual pollution*
- x. *Pushes one country's culture onto another*


II. Ethics And Marketing Communication

A. Ethics

Ethics

Ethics: Moral and value standards that act as behavioral guidelines for a society's citizens

- Unlike laws and regulations, ethical codes are generally not written down

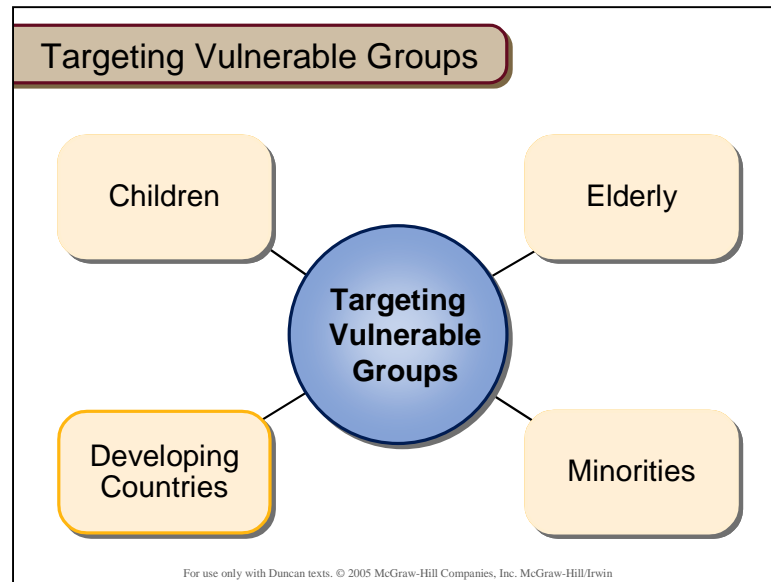


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- i. *Moral and value standards that act as behavioral guidelines for a society's citizens*
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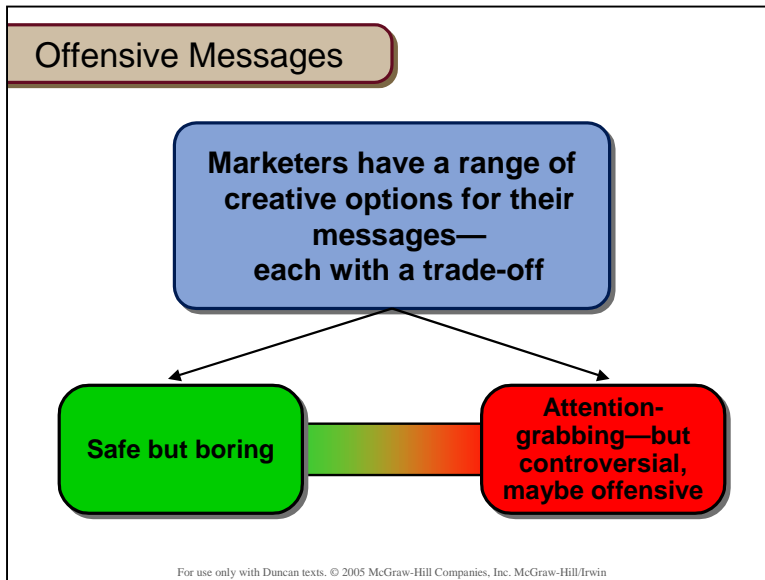
B. Ethics examples

- i. Stereotyping
 - 1. Challenge: develop messages that strike a chord with targeted audiences without reinforcing negative stereotypes
- ii. Targeting Vulnerable Groups

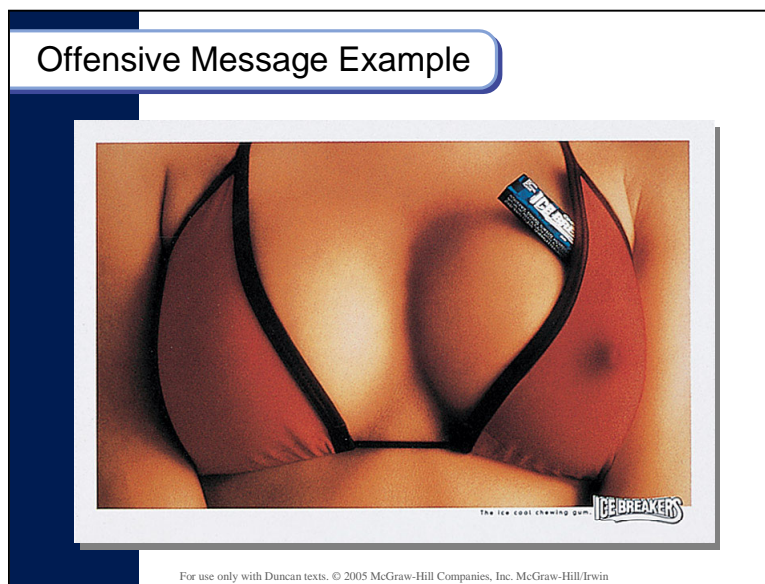


- 1. Children
- 2. Elderly
- 3. Minorities
- 4. Developing countries

- iii. Marketers have a range of creative options for their messages—each with a trade-off

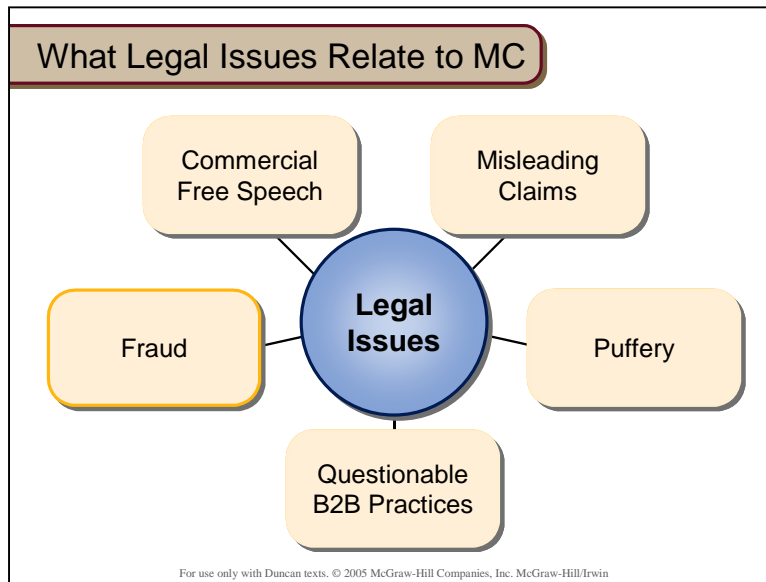


1. The message can be safe, but boring, or...
2. ...Attention-grabbing—but controversial, maybe offensive
 - a. Offensive message examples



- Sex
- Taboo topics
- Manipulation and subliminal advertising

III. Legal Issues Related To Marketing Communication



A. Legal issues

- i. Commercial free speech
 1. Protected by 1st amendment—to a degree
- ii. Some controversial types of products:
 1. Drugs
 2. Liquor
 3. Tobacco
- iii. Misleading claims
 1. 2 tests of accuracy
 - a. Claim must be factually accurate
 - b. It must be substantiated
- iv. Puffery
 1. *The use of hyperbole or exaggeration to promote a brand*
 - a. Essentially a legal form of boasting
- v. Questionable business-to-business practices
 1. Examples:
 - a. Slotting fees for product placement in stores
 - b. Drug company “seminars” for doctors at resorts
- vi. Fraud
 1. Examples:
 - a. Selling counterfeit brand names
 - b. Bait and switch tactics
 - Advertising a brand a low price (bait) and then telling the consumer it has been sold and attempting to trade them up to a more expensive brand (switch)



TALES FROM THE REAL WORLD

Tales From the Real World

Self-regulation may seem like a weak alternative to government regulation, but in the real world it can present a high hurdle for many advertisers.

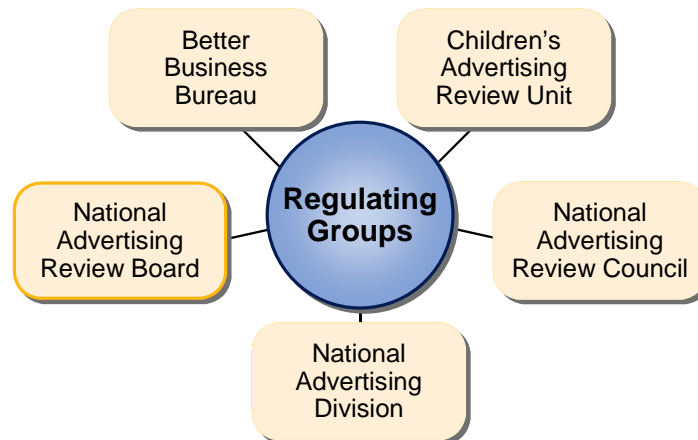
For example, agencies must submit a script of a proposed TV commercial to network TV “censors” as a condition of acceptance of the spot. The censors have the ability to reject certain text or visuals if they do not conform to the network’s guidelines—and require the advertisers to make revisions before the spot airs.

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IV. Regulatory Methods And Agencies

Table 20-1: Industry Self-Regulation Groups

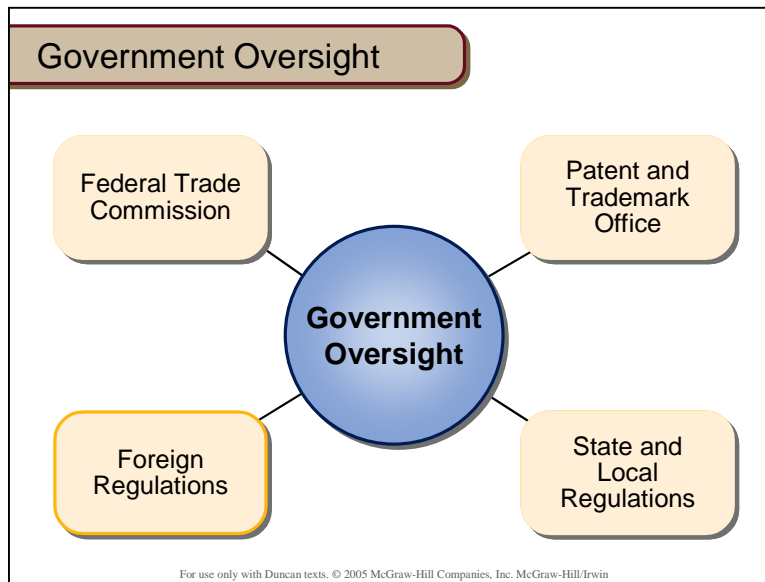


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A. Self-regulation

- i. Internal policies
 - 1. When in doubt, check with the lawyers
- ii. Industry standards
- iii. Media review
 - 1. Most media reserve the right to refuse questionable ads

B. Government oversight



- i. Federal Trade Commission (FTC)
 - 1. Powers:
 - a. Affirmative disclosure
 - b. Affirmative substantiation
 - c. Cease and desist order
 - d. Corrective advertising
 - ii. Patent and Trademark Office
 - iii. State and local regulations
 - iv. Foreign regulations

C. Consumer group oversight



- i. Examples of special interest groups:
 1. Children Now
 2. Center for Science in the Public Interest

▷ INSTRUCTOR IN-DEPTH INSIGHT: SPECIAL INTEREST GROUPS

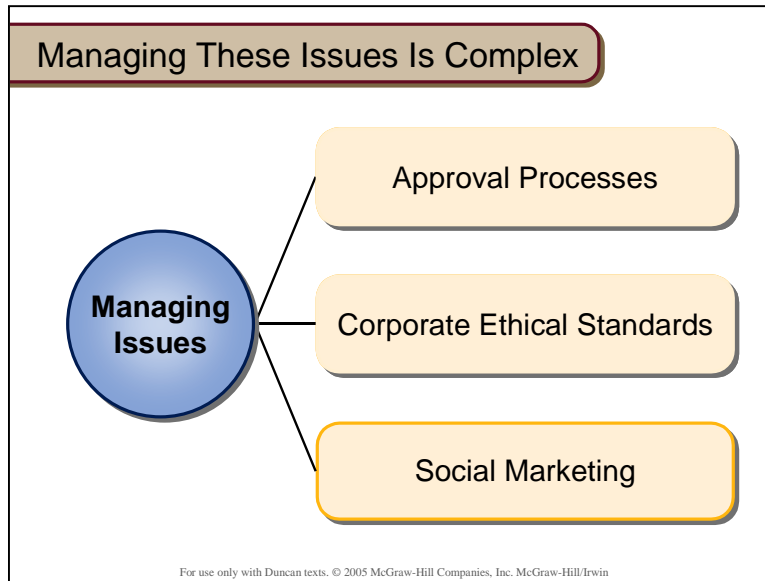
Insight: Special Interest Groups



Consumers often organize around a specific political or social issue, such as those that focus on pollution or environmental safety. They can be a company's friend and help it make responsible decisions that affect the community, or they can be enemies and actively work to block company proposals and organize brand boycotts. These stakeholder groups are important because they are often the source of negative word-of-mouth brand messages.

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D. Managing these issues is complex, involving:

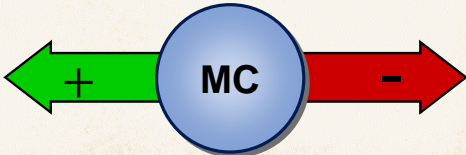


- i. Approval processes
- ii. Corporate ethical standards
- iii. Social marketing

V. Final Note

Final Note:

MC is not inherently good or bad.
It is simply the messenger. If the intent is negative, MC reflects this; and conversely for positive messages



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- A. MC is not inherently good or bad. It is simply the messenger. If the intent is negative, MC reflects this; and conversely for positive messages

Answers to Review Questions

1) Role in Society

- a. Why is marketing communication a more socially responsible platform than advertising?
Answer: The goals of an IMC program are to inform, persuade, and listen to all stakeholders. This relationship component gives IMC a platform on which to build a more socially responsible form of marketing communication than some of the past practices in advertising or direct marketing, which look at consumers solely as targets.
- b. Explain the two points of view represented in the shape or mirror debate.
Answer: On one hand, critics argue that MC has created a materialistic culture of conspicuous consumption. Not only are people persuaded to buy goods and services they don't want or need, but brand messages also present an idealistic profile of glamorous people, opulent lifestyles, and happiness, which can be had by buying the right brands. In this way, the critics argue, marketers shape how we live. On the other hand, MC defenders argue that marketers are given way too much credit for persuasive power. They note, for example, that of the hundreds of brand messages customers see and hear each day, few are remembered. They point out that 9 out of 10 new product ideas fail, which wouldn't be the case if marketers were as controlling as critics say they are.

- c. Choose one of the eight concerns that you either agree with or disagree with and research it. Write a two-page report on your findings.

Answer: Student choices will differ, but the eight concerns to consider are as follows: MC drives up the cost of products; MC creates a barrier to market entry for smaller firms; MC merchandises too many aspects of our culture; MC sells inferior products; MC sells unhealthy, dangerous products; MC sets unrealistic expectations; MC is done in bad taste; and MC is done in bad taste.

- d. Consider the advertiser censorship issue identified in the opening story. Is it fair for advertisers to expect to receive favorable coverage in return for their financial support of the media through advertising? Should editors consider the possible negative response of advertisers or other influential people in making a decision about whether to run or not run a story?

Answer: Student answers will differ depending upon their views of the role that free enterprise and a free press should play in society. On one side, some students would likely take the position that the media is comprised of profit-making enterprises like any other group of businesses, and therefore should be subject to the same free market forces as other organizations. This view would agree that the use of financial pressure to “persuade” a media organization to be sensitive to the concerns of an advertiser is an appropriate action.. On the other side, some students would likely take the position that there media organizations have a unique role to protect free speech in a free society. This view would argue that media organizations should have an insurmountable “wall” between the business side and editorial side of their organizations, and that advertisers have no right to expect media organizations to go around this wall.

2) Ethical Issues

- a. How would you define ethics?

Answer: The text defines ethics as “... moral and value standards that act as behavioral guidelines...” but some students might have their own words for the concept, that could be as simple as “the right thing to do.”

- b. What are sensitive areas in marketing communication? Do you think MC shapes society or mirrors it? Explain your answer.

Answer: As noted in question 1 (b) above, there is a lively debate about the role of MC in society. It is very likely that a number of students will take one side or the other of the “mirror” discussion. But a possible alternative way of looking at the debate is through the eyes of different types of consumers. Specifically, some consumers are much more motivated by status than others—and therefore might be more influenced by MC appeals than others. Conversely, some consumers might be more motivated by beliefs, and therefore less likely to be influenced by MC appeals.

- c. Find an example of a marketing message that offends you or someone you know. Explain why.

Answer: From a student perspective, two of the most likely areas for offensive messages are likely to be stereotyping and sexual themes. On the first topic, some ethnic groups might be offended by commercials that show them in a “token” status, simply to appeal to the broadest possible audience. Women may also take offense at the way they are sometimes stereotyped in MC messages. On the first topic, many women are offended by some of the overt sexual imagery that is found in many MC messages targeted to men, particularly young men. The most offensive (and most illogical from a marketing standpoint), is the use of sexual innuendo and imagery that is demeaning to women—in messages targeting both men and women.

- d. Find five examples of cigarette marketing communication and list the messages they appear to be sending and to whom. What ethical concerns do they raise, if any?

Answer: Student responses will vary, but a recent scan of cigarette advertising in Entertainment Weekly magazine suggests that there is cigarette marketers are employing a wide variety of message strategies in the ads. Starting on the “safe” end of the spectrum is an ad for Pall Mall which simply features a photo of three package varieties with the headline “lasts longer.” This approach is unlikely to offend many—but also unlikely to draw much attention. Next is an ad for Newport featuring a photo of a small mixed racial group of young people gathered on a city street, with one of the women and one of the men smoking and the headline “Holiday pleasure.” This ad is more visual interesting than the first, but is also fairly “safe” because it is unlikely to offend anyone on the grounds of racial or sexual stereotyping. A third example is a two-page spread for Salem that features a visually-arresting green-tinted visual of a young woman in forest setting with supernatural lighting effects. The headline is “stir the senses.” This ad strikes a good balance between a visual appeal and taste because the woman is not portrayed in an overtly sexual way and is not even depicted smoking. A fourth ad is for the Natural American Spirit brand and features only a photo of the package and the headline “100% additive-free natural tobacco.” This ad may offend some on the grounds that it may imply to some that the cigarettes are somehow healthier, although the ad does feature a box near the surgeon general’s warning that reads “No additives in our tobacco does NOT mean a safer cigarette.” This addition may have been in recognition of ATF guidelines. Finally an ad for Camel features a realistic drawing of a female nightclub singer smoking with a cigarette holder, with the headline “Pleasure to burn.” This ad may be offensive to some women who would view the singer as a sexual stereotype.

- e. Find an example of a social marketing campaign and analyze how it relates to various stakeholder groups.

Answer: Student responses will vary widely, but a visit to the website for the Partnership for a Drug Free America (drugfreeamerica.org) indicates that the group is attempting to appeal to a fairly broad cross section of stakeholders. Specifically, one section of the site is dedicated to teens, another to parents and caregivers, the press (which includes new releases), state and local government

officials (with information about local alliances), and the general public (with downloads of current Partnership TV commercials).

3) Legal Issues

- a. What is the NAD?

Answer: National Advertising Division (NAD) is the division of the National Advertising Review Council (NARC) that monitors advertising and reviews complaints from consumers, consumer groups, competitors, local BBBs, trade associations, and others. Once presented with a complaint, it investigates the issue and asks for claim substantiation, if warranted. Where necessary, it will recommend that the advertiser change the questionable advertising.

- b. How do puffery and fraud differ?

Answer: Puffery is the use of hyperbole or exaggeration to promote a brand that is acceptable unless a buyer can show that such language was intended to be interpreted as a fact or a promise. An example would be a diner proclaiming “we have the best coffee in town.” On the other hand, fraud is the act of willingly misleading the public. An example would be the diner proclaiming that they sell Starbuck’s coffee, when in fact, they really do not.

- c. Find an example of a false or misleading piece of marketing communication and explain why you believe it has problems.

Answer: Student responses will vary widely, but one example that many will find relevant would be claims like “Spring Break Packages Starting at \$59.” Although the fine print may correctly indicate that this price is based on sleeping eight people to a room—and driving all the way to Florida, many students may feel that the net effect of the ad is misleading—and therefore an invitation either to disappointment or to a cynical dismissal of the message as a scam.

- d. How and in what areas do competitors get involved in challenging a brand’s communication?

Answer: Competitors have a number of courses of action to challenge a competitor’s communication. First, they can contact the National Advertising Division of the Council of Better Business Bureau, and ask the group to investigate allegations in false or misleading communication. Second, they can bring the matter to the attention of the following government regulatory agencies regarding the following complaints: the Federal Trade Commission if the issue relates to marketing communication for products sold through interstate commerce; the Federal Communications Commission (FCC) if the complaint relates to radio, television, telephone, or Internet messages, the Food and Drug Administration if the complaint involves labeling, packaging, branding, and advertising of packaged foods, medicine; the United States Postal Service (USPS) if the complaint relates to messages sent through the U.S. mail; the Bureau of Alcohol, Tobacco, if the complaint has to do with alcohol, tobacco, and firearm advertising and beer and wine labeling; the Patent and Trademark Office if the

complaint involves unauthorized use of trademarks and logos; the U.S. Department of Agriculture if the complaint is regarding meat and poultry labeling, and seed and insecticide advertising; and the U.S. Department of Transportation (DOT) if the complaint is related to airline advertising and promotions (e.g., frequent-flyer programs).

- e. What is your position on commercial free speech? Visit the sites of IAA (www.iaaglobal.org) and its critics (www.corpwatch.org and www.ReclaimDemocracy.org), as well as any other articles you can find, and develop a two-page position statement that outlines the arguments for and against and concludes with your position.

Answer: Student responses will vary widely, but they will probably tend to group along the lines of the two sides identified in question 1 (d) above.

4) Regulation

- a. What is the main federal agency overseeing advertising in the United States?

Answer: All of the federal agencies noted in question 3 (d) above have some oversight on advertising-related issues, but the one agency that probably has the most powerful role would be the Federal Trade Commission, which regulates marketing communication for products sold through interstate commerce.

- b. What is the difference between the FTC's and the FCC's oversight responsibilities for marketing communication in the United States?

Answer: The role of the FTC is more focused upon the messages developed and transmitted by marketers whereas the role of the FCC is more focused on the content of the programming that is featured on radio, television, telephone, and the Internet.

- c. What is the role of your state's attorney general in overseeing marketing communication

Answer: The role of state and local governments is to oversee marketing communication within their respective geographical jurisdictions. For example, The National Association of Attorneys General has been particularly proactive in recent years, going after large corporations that individuals and even the federal government cannot afford to fight. In one high profile case, attorneys general from 40 states sued the department store chain Sears for using misleading tactics to secure payments from bankrupt customers.

- d. You are planning to launch a new soft drink, first in the United States and then in Europe. List as many regulatory agencies as you can that might factor into the launch, and explain their involvement with this launch.

Answer: Launching a seemingly simple new product like a soft drink can actually be a tremendous undertaking, if for no other reason than the regulatory agencies to consider. For example, FDA regulations would need to be consulted regarding labeling, and packaging. FTC regulations would also be at the forefront in the development of any MC messages concerning the beverage. USPS regulations

would need to be considered for any direct marketing messages sent through the U.S. mail and Patent and Trademark Office regulations would need to be considered in the development of a brand name and logo to ensure that it does not infringe upon any existing trademarks and logos. All of this is just related to the U.S. launch. For the European launch, these regulations, as well as those enforced by the EU (European Union) would need to be considered and addressed.

Chapter Challenge

Writing Assignment

You are the marketing director of a large real estate company which spends over \$1,000,000 a year advertising in your local metropolitan newspaper. You have just gotten word that the paper is planning a series of investigative articles on the misleading practices used by some real estate brokers. The story mentions two brokers who work for you and who you had already disciplined for their out-of-line practices. You had assumed the matter taken care of, now it will be made public and make an extremely negative impression on the company. You know you have “a million dollars worth of clout” with the newspaper. While you ideally would like to kill any negative reference to your company, you also recognize the newspaper has a social responsibility to its readers. Write a letter to the editor laying out what you would like the paper to do and explain why.

Presentation Assignment

You are in charge of developing a direct mail piece to be used locally by the Chevrolet dealer in your town. What information should be in the dealer’s database that would be useful to identify the target market? How could you use this information to personalize the message without irritating the prospective customer? Prepare a mock-up of the mailing and present it to your class.

Internet Assignment

Visit Junkbusters.com, Epic.org, PrivacyCouncil.com, and Webwasher.com to determine what they advise you to do about the social, ethical, and legal issues associated with e-commerce.

Research Assignment

Consult books and magazines to identify the key social responsibility issues that affect IMC. (Every issue of *Adbusters* contains stories related to misleading ads and marketing manipulation.) Develop your own personal statement of ethical behavior for yourself as a marketing communication professional.

IMC Plan Team Assignment

At this stage in their semester-long project, students must consider some of the ethical and legal implications of the concepts they are developing for their final IMC plan. This assignment will ask them to consider and identify any possible problem areas in their work.

IMC Final Project Checklist #20

Due Date: _____

Your Agency Name:

Possible Ethics Issues

Carefully consider the following potential issues and how the work you are considering may impact each.

Stereotyping

Targeting Vulnerable Groups

(i.e. children, the elderly, minorities, or developing countries)

Offensive Messages

Possible Legal Issues

Carefully consider the following potential issues and how the work you are considering may impact each.

Controversial Product

(i.e., drugs, liquor, tobacco)

Misleading Claims

Puffery

Questionable B2B Practices

Fraud