

Chapter 8

Ethics and Marketing

Reality is how we felt and saw events, not events as they appeared objectively, because we are not objective.

Anaïs Nin

A magazine is simply a device to induce people to read advertising.

James Collins

I am the world's worst salesman; therefore, I must make it easy for people to buy.

F. W. Woolworth (1852–1919)

Opening Decision Point

Marketing to the Base of the Pyramid

In a recent book, business scholar C.K. Prahalad details the business opportunities that exist for firms that are creative and resourceful enough to develop markets among the world's poorest people.¹

Done correctly, marketing to the 4 billion people at the base of the global economic pyramid would employ market forces in addressing some of the greatest ethical and environmental problems of the 21st century.

Obviously, helping to meet the needs of the world's poorest people would be a significant ethical contribution. The strategy involves another ethical consideration as well: A market of this size requires environmentally sustainable products and technologies. If everyone in the world used resources and created wastes at the rate Americans do, the global environment would suffer immeasurably. Businesses that understand this fact face a huge marketing opportunity.

Accomplishing such goals will require a significant revision to the standard marketing paradigm. Business must, in Prahalad's phrase, "create the capacity to consume" among the world's poor. Creating this capacity to consume among the world's poor would create a significant win-win opportunity from both a financial and an ethical perspective.

Prahalad points out that the world's poor do have significant purchasing power, albeit in the aggregate rather than on a per capita basis. Creating the capacity to consume among the world's poor will require a transformation in the conceptual framework of global marketing and some creative steps from business. Prahalad mentions three principles as key to marketing to the poor: affordability, access, and availability.

Do you think that business firms and industries have an ethical responsibility to address global poverty by creating the capacity to consume among the world's poor? Do you think that this can be done? What responsibilities, ethical and economic, do firms face when marketing in other countries and among different cultures? Imagine that you are in the marketing department of a firm that manufactures a consumer product such as laundry detergent or shampoo. Describe how it might be marketed differently in India.

- What are the key facts relevant to your judgment?
- What ethical issues are involved in a firm's decision to market its products among the world's poor by creating the capacity to consume?
- Who are the stakeholders?
- What alternatives does a firm have with regard to the way in which it markets its products?
- How do the alternatives compare; how do the alternatives you have identified affect the stakeholders?



Chapter Objectives

After reading this chapter, you will be able to:

1. Understand the application of the ethical decision-making framework to ethical issues in marketing.

2. Describe the three key concerns of ethical analysis of marketing issues.
3. Describe three interpretations of responsibility and apply them to the topic of product safety.
4. Explain contractual standards for establishing business's responsibilities for safe products.
5. Articulate the tort standards for establishing business's responsibilities for safe products.
6. Analyze the ethical arguments for and against strict product liability.
7. Discuss how to evaluate both ethical and unethical means by which to influence people through advertising.
8. Explain the ethical justification for advertising.
9. Trace debates about advertising's influence on consumer autonomy.
10. Distinguish ethical from unethical target marketing, using marketing to vulnerable populations as an example.
11. Discuss business's responsibilities for the activities of its supply chain.

Introduction

Some believe that the very purpose of business is found within the marketing function. The description of business's purpose offered by marketing scholar Theodore Levitt is a case in point. Levitt suggests that:

The purpose of a business is to create and keep a customer. To do that you have to produce and deliver goods and services that people want and value at prices and under conditions that are reasonably attractive relative to those offered by others. . . It was not so long ago that a lot of companies assumed something quite different about the purpose of business. They said quite simply that the purpose is to make money. But that is as vacuous as to say that the purpose of life is to eat. Eating is a prerequisite, not a purpose of life . . . Profits can be made in lots of devious and transient ways. For people of affairs, a statement of purpose should provide guidance to the management of their affairs. To say that they should attract and hold customers forces facing the necessity of figuring out what people really want and value, and then catering to those wants and values. It provides specific guidance, and has moral merit.²

Similarly, the American Marketing Association defines **marketing** in a way that suggests marketing is at the heart of business activity: "an organizational function and a set of processes for creating, communicating, and delivering value to customers and for managing customer relationships in ways that benefit the organization and its stakeholders."³

The concept of an exchange between a seller and a buyer is central to the "market" and is the core idea behind marketing. Marketing involves all aspects of creating a product or service and bringing it to market where an exchange can take place. Marketing ethics therefore examines the responsibilities associated with bringing a product to the market, promoting it to buyers, and exchanging it with

them. But this simple model of a seller bringing a product to the marketplace, and the ethics implicit within it, gets complicated fairly quickly.

Even before a product is created, a producer might first consider who, if anyone, is interested in purchasing it. The product might then be redesigned or changed in light of what is learned about potential buyers. Once the product is ready for market, the producer must decide on a price that will be mutually acceptable. At first glance, the minimal asking price should be the production cost plus some reasonable profit. But the producer might also consider who the buyers are and what they can afford, how price might influence future purchases, how the price might affect distributors and retailers, and what competitors are charging before settling on a price. The producer might also consider advertising the product to attract new potential purchasers and offer incentives to promote the product among buyers.

The producer might also consider the lost production that results from the trip to the market and therefore consider hiring someone else, a salesperson, or delegating someone, a “retailer,” to handle the actual exchange itself. Producers might be more concerned with cash flow than profit and therefore be willing to ask a price that is below production costs. They might consider where and under what conditions the product is sold, and they might decide that the best chance for a sale will occur only among certain people. The producer might also consider issues of volume and price the product in such a way to insure profit only after certain sales targets are met. The producer might also consider how such factors as price, convenience, reliability, and service might contribute to sustaining an ongoing relationship with the customer. Finally, throughout this entire process the producer might conduct market research to gather information and use that information in production, pricing, promotion, and placement decisions.

All of the factors considered and each decision made throughout this process are elements of marketing. What, how, why, and under what conditions is something *produced*? What *price* is acceptable, reasonable, fair? How can the product be *promoted* to support, enhance, and maintain sales? Where, when, and under what conditions should the product be *placed* in the marketplace? These four general categories—*product, price, promotion, placement*—are sometimes referred to as the **“Four Ps” of marketing**.

Each of the Four Ps also raises important ethical questions. What responsibilities do producers have for the quality and safety of their products? Who is responsible for harms caused by a product? Are there some products that should not be produced, or does consumer demand decide all production questions? Is the consumer’s willingness to pay the only ethical constraint on fair pricing? Should the ability to pay be a factor in setting price? Do all customers deserve the same price, or can producers discriminate in favor of, or against, some consumers? What effects will price have on competitors? On retailers? Are deceptive or misleading ads ethical? What ethical constraints should be placed on sales promotions? Is the information gathered in market research the property of the business that conducts the research? What privacy protections should be offered for marketing data? Is it ethical to target vulnerable populations such as children or the elderly? What responsibilities does a producer have when marketing in foreign countries? What responsibilities do producers have to retailers? To competitors? To suppliers?

Ethical Issues in Marketing: A Framework



We can take the simple model of a single exchange between two individuals as a useful way to introduce an ethical framework for marketing ethics (see Table 8.1). As in previous chapters, this framework will provide insights to assist the decision maker in arriving at an ethical decision but will not point to the “correct” decision since this is not a normative framework—in other words, it does not determine the right answer but instead identifies rights, responsibilities, duties and obligations, causes and consequences. Once these parameters are clarified, the decision maker uses the framework to effectively analyze the scenario and arrive at the decision that best reflects her or his person and professional value structure.

This simple situation in which two parties come together and freely agree to an exchange is *prima facie* ethically legitimate. The deontological ethical tradition described in Chapter 3 would see it as upholding respect for individuals by treating them as autonomous agents capable of pursuing their own ends. This tradition presumes that each individual will abide by fundamental principles. The utilitarian ethical tradition would take the two parties’ agreement as evidence that both are better off than they were prior to the exchange and thus conclude that overall happiness has been increased.

This assessment is only *prima facie* because, like all agreements, certain conditions must be met before we can conclude that autonomy has in fact been respected

TABLE 8.1
Ethical Issues in
Marketing:
A Framework

Market Exchange is *prima facie* ethically legitimate because of

- Kantian respect for autonomy
- Utilitarian mutual benefit

This ethical judgment is conditional because

- Informed consent is needed
- Benefits might not occur
- Other values might conflict

Is consent “voluntary”?

- Windows operating system?
- Anxiety and stress in some purchasing situations
- Price-fixing, monopolies, price gouging, etc.
- Targeted and vulnerable consumers

Is it “informed”?

- Lack of information
- Deception
- Complicated information

Are people truly benefited?

- Impulse buying, “influenza,” consumerism
- Injuries, unsafe products
- “Contrived” wants

Competing Values

- Justice—e.g., “redlining” mortgages
- Market failures (externalities)

and mutual benefit has been achieved. Thus, for example, we would need to establish that the agreement resulted from an informed and voluntary consent, and that there was no fraud, deception, or coercion involved. When these conditions are violated, autonomy is not respected, and mutual benefit is not attained. Furthermore, even when such conditions are met, other values may override the freedom of individuals to contract for mutually beneficial purposes. Thus, for example, the freedom of drug dealers to pursue mutually agreeable ends is overridden by society's concern to maintain law and order.

**OBJECTIVE**

In general, therefore, it will be helpful to keep three concerns in mind as we approach any ethical issue in marketing: The Kantian ethical tradition would ask to what degree the participants are respected as free and autonomous agents rather than treated simply as means to the end of making a sale. The utilitarian tradition would want to know the degree to which the transaction provided actual as opposed to merely apparent benefits. Every ethical tradition would wonder what other values might be at stake in the transaction. Let us consider these three issues in more detail.

It is not always easy to determine if someone is being treated with respect in marketing situations. As a first approximation we might suggest two conditions. First, the person must freely consent to the transaction. But how free is "free"? Surely transactions completed under the threat of force are not voluntary and therefore are unethical. But there are many degrees of voluntariness. For example, the more consumers need a product, the less free they are to choose and therefore the more protection they deserve within the marketplace. Consider the use of the *Windows* operating system by the overwhelming majority of computer users. How voluntary is the decision to use *Windows*? Do most people even make a decision to use *Windows*? Or, consider the anxiety and stress that many consumers experience during a car purchase. When an automobile dealer exploits that anxiety to sell extended warranty insurance, it is not at all clear that the consumer has made a fully voluntary decision. More dramatic cases of price gouging, price-fixing, and monopolistic pricing clearly raise the issue of freedom in marketing. Practices aimed at vulnerable populations such as children and the elderly also raise questions of voluntariness. Thus, an adequate analysis of marketing ethics challenges us to be sensitive to the many ways in which consumer choice can be less than fully voluntary. (To explore what it means to engage in "voluntary" purchasing decisions, review the following Reality Check.)

A second condition for respect requires that the consent be not only voluntary, but also informed. Informed consent has received a great deal of attention in the medical ethics literature because patients are at a distinct informational disadvantage when dealing with health care professionals. Similar disadvantages can occur in marketing situations. Outright deception and fraud clearly violate this condition and are unethical. A consumer's consent to purchase a product is not informed if that consumer is being misled or deceived about the product. But there can also be many more nuanced cases of deception and misleading marketing practices.

The complexity of many consumer products and services can mean that consumers may not understand fully what they are purchasing. Consider, as an example, all that would be involved for a consumer to determine which fuel tank design was

Reality Check *Impulse Buying*

Though the cartoon to the right pokes fun at the ability of marketing professionals to “make” us buy certain items, not everyone exercises similar levels of effective judgment necessary to protect themselves from poor decisions about credit and debt, good and bad spending choices. Young spenders in particular may not yet be sufficiently experienced—with shopping, spending or responding to sophisticated marketing campaigns—to adequately protect themselves against strategies designed to encourage impulse buying.

Sales pitches that hype the latest and trendiest items, those that must be purchased today and worn tonight, are difficult to resist for some purchasers, who buy in haste and perhaps regret it later. Marketing campaigns are also chastised for creating needs where the purchaser may originally have only sensed a desire. Purchases on impulse are often not reversible, but because they are often so hastily made that the purchaser fails to notice that the product is imperfect or does not match a personal style, they are perhaps most in need of later returns.

In the same way that a hungry person is more likely to buy groceries on impulse than one who has just had her or his meal, we are better off engaging in our purchasing efforts when we are capable of evaluating our options with a clear head (and a full stomach!).



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most safe for subcompact cars, or which tire design is least likely to cause blow-outs. Consider also the many people who have very weak mathematical skills. Imagine such a person trying to decide on the economic benefits of whole-life versus term insurance, or a 48-month auto lease versus a five-year purchase loan at 2.9 percent financing. In general, while some businesses claim that an “informed consumer is our best customer,” many others recognize that an uninformed consumer can be an easy target for quick profits.⁴ Serious ethical questions should be raised whenever marketing practices either deny consumers full information or rely on the fact that they lack relevant information or understanding.

The second ethical concern looks to the alleged benefits obtained through market exchanges. Economics textbooks commonly assume that consumers benefit, almost by definition, whenever they make an exchange in the marketplace. But this assumption won’t bear up under close scrutiny. Many purchases do not result in actual benefit.

For example, impulse buying, and the many marketing techniques used to promote such consumer behavior, cannot be justified by appeal to satisfying

consumer interests. (See the preceding Reality Check.) The ever-increasing number of individual bankruptcies suggests that consumers cannot purchase happiness. Empirical studies provide evidence that suggests that greater consumption can lead to unhappiness, a condition called by some “affluenza.”⁵ So, if simple consumer satisfaction is not a conclusive measure of the benefits of market exchanges, one must always ask about the ends of marketing. What goods are attained by successfully marketing this product or service? How and in what ways are individuals and society benefited from the product?

Both parties to the marketing exchange are also not benefited in situations in which one party is injured by the product. Unsafe products do not further the utilitarian goal of maximizing overall happiness. It would also be the case that consumers are not benefited if the desires that they seek to satisfy in the market are somehow contrived or manipulated by the seller.

The third set of factors that must be considered in any ethical analysis of marketing are values other than those served by the exchange itself. Such primary social values as fairness, justice, health, and safety are just some of the values that can be jeopardized by some marketing practices. For example, a bank that offers lower mortgage rates in affluent neighborhoods than it does in inner-city neighborhoods might be involved only in deals that are mutually beneficial since they do not, in fact, sell mortgages in the inner city. But such contracts would violate important social norms of equal treatment and fairness.

There may be a very strong market for such things as certain body parts of endangered species. There is also, unfortunately, a market for children. But just because someone wants to buy something and someone else is willing to sell it does not mean that the transaction is ethically legitimate. An adequate ethical analysis of marketing must ask who else might be affected by the transaction. How, if at all, are the interests of these others represented? What social goods are promoted, and which are threatened, by marketing this product?

One must also ask what the true costs of production are. An adequate ethical analysis of marketing must consider externalities, those costs that are not integrated within the exchange between buyer and seller. Externalities show that even if both parties to the exchange receive actual benefits from the exchange, other parties external to the exchange might be adversely affected. One thinks of the environmental or health impact of marketing products such as SUVs, pesticides, and tobacco as examples in which a simple model of individual consumer exchange would ignore significant social costs. With these general issues in mind, we can now turn to a closer examination of several major aspects of marketing ethics.

Responsibility for Products: Safety and Liability



The general category of business’s responsibility for the products and services it sells includes a wide range of topics. Few issues have received as much scrutiny in law, politics, and ethics as has the responsibility of business for the harms caused by its products. Business has an ethical responsibility to design, manufacture, and promote its products in ways that avoid causing harm to consumers.

It will be helpful to review here several different meanings of the word *responsibility* that were introduced in the discussion of corporate social responsibility in Chapter 5. In one sense, to be responsible is to be identified as the *cause* of something. (See the following Reality Check, which is related to the “cause” of obesity and the possible “responsibility” of soft drinks for childhood obesity.) Thus, we say that Hurricane Katrina was responsible for millions of dollars in property damages in New Orleans. In another sense, responsibility involves accountability. When we ask who will be responsible for the damages caused by Katrina, we are asking who will pay for the damages. A third sense of responsibility, connected to but different from the sense of accountability, involves assigning fault or liability for something.

The hurricane example demonstrates how these three meanings can be distinguished. Katrina was responsible for (caused) the damage, but cannot be held responsible (accountable for paying for the damages), nor can it be faulted for it. Yet, many think that those who designed, built, or managed the levees in New Orleans were at fault and should be made to pay because their negligence caused much of the harm. In other situations, an automobile crash, for example, a careless driver would be identified as the cause of the accident and held accountable because he was at fault.

Both law and ethics rely on a similar framework when evaluating cases in which business products or services cause harm in the marketplace. The focus for much of the discussion of business’s responsibility for product safety is on assigning liability (fault) for harms caused by unsafe products. The legal doctrine of strict liability is ethically controversial exactly because it holds a business accountable for paying damages whether or not it was at fault. In a strict liability case, no matter how careful the business is in its product or service, if harm results from use, the business is liable. We will consider the case of strict liability in more detail in the following section. For the present, let us examine the various standards for holding business liable for its products.

Contractual Standards for Product Safety



It is fair to say that the standard of *caveat emptor* (let the buyer beware) is in the background to many discussions of product safety. The ***caveat emptor* approach** understands marketing on a simple model of a contractual exchange between a buyer and seller. This perspective assumes that every purchase involves the informed consent of the buyer and therefore it is assumed to be ethically legitimate. Buyers have the responsibility to look out for their own interests and protect their own safety when buying a product. From this perspective, business has only the responsibility to provide a good or service at an agreed-upon price.

The social contract tradition in ethics holds that all ethical responsibilities can be understood with this contractual model, and that the only duties we have are those that we have freely taken on within a social contract. Individual contracts and promises are the basis of ethical duties. The implication of this within the business sphere is that unless a seller explicitly warrants a product as safe, unless, in other words, the seller promises otherwise, buyers are liable for any harms they suffer.

Reality Check *The “Cause” of Obesity?*

Scholar Regina Lawrence explored where we actually place the responsibility for obesity in our society.⁶ Her research sought to determine who is “blamed and burdened in the public debate” surrounding obesity and divided the options between individuals and systemic or environmental causes. Individual causes would limit the causes of the problem to particular individuals, such as eating too much or a lack of exercise, while environmental causes would broaden the focus to government, business, and larger social forces, such as marketing campaigns, a lack of safe places to exercise, or unhealthy food choices in school cafeterias.

To answer the question of where we place responsibility for obesity, Lawrence reviewed the content of *New York Times* page-one stories (from all sections of the paper) and editorials that mentioned obesity over a select period of years. She found that, in 1990, the articles analyzed most often discussed obesity as caused by the individuals themselves (86 percent compared to 14 percent discussing environmental issues as a cause). However, by 2003, only 54 percent discussed individuals as potential causal factors, while 46 percent discussed environmental issues with possible causal links. In other words, our assessment of “fault” for obesity has shifted from a discussion of individual fault to a discussion of responsibility that includes a variety of possible factors. We have shifted the responsibility for obesity from solely those who are obese to a broader view that also includes business, the government and other external forces.

Tara Radin and Martin Calkins explore a similar question in the article “Stakeholders Influence Sales: Soda Companies Stop Selling in Schools,” which follows (*adapted with permission of the authors*):

The largest soft drink companies in the United States recently announced that they will stop selling regular soft drinks in school vending machines and cafeterias. By 2008, Coca-Cola, PepsiCo, and Cadbury Schweppes will replace the high-calorie sodas they have been selling with bottled water, natural fruit juice, and diet soda. Specifically targeted are carbonated beverages containing more than 100 calories per serving. While parents and health advocates are thrilled with the success of

their concerted efforts, this decision is nothing short of shocking to teenagers around the country.

The decision was motivated in large part by increasing concerns about childhood obesity. It is somewhat myopic, in that it selectively addresses a single possible problem, when there are so many health challenges that children and young adults confront—lack of exercise, smoking, drugs and alcohol, and so on. The decision is also relatively paternalistic in that it effectively removes this temptation from the easy access of children and young adults.

Ironically, this decision runs counter to many past predatory marketing practices. Vulnerable groups, such as children, have traditionally been easy targets for many types of companies. Even though alcohol cannot be sold legally to individuals under the age of 21, it has been claimed time and again that beer manufacturers have featured teenage female models in order to appeal to the young adult market. In the 1970s and 1908s, cigarette companies allegedly focused aggressive marketing campaigns on low-income black males. They initially sold cigarettes with high levels of nicotine to increase their addictiveness, and then gradually reduced the nicotine levels to keep the young men buying more and more cigarettes.

At the same time, this decision calls into question underlying assumptions about freedom of choice. By exerting excessive pressure on soft drink manufactures with threats of litigation, interest groups have removed choice from children and young adults. Is this a positive step? By removing the temptation, are not we in fact depriving children and young adults of a valuable learning? Would it not be preferable for us to teach them moderation and resistance to temptation?

The reality is that this is not expected to affect the soft drink industry dramatically—at least not in the short run—considering that the affected sales have accounted for only about 1% of total industry revenues. From a business perspective, however, it is somewhat alarming to see the extent of stakeholder control over companies. In this situation, parents and health advocates have effectively put an end to a distribution channel for a popular product.

Interestingly, it has been labeled a “voluntary” change. This is a shift from customers exercising influence by choosing the products to support through their individual purchases, to interest groups and other stakeholders influencing access to products.

What does this mean for companies? Perhaps this is a signal that, to remain competitive, companies in the 21st century are going to have to pay closer attention to the concerns of stakeholders, and they are going to have to cast a wider net around which stakeholders they consider relevant. We are seeing

this in the health arena—not just with sodas, but also with the struggles of Krispy Kreme, for example. Other markets, too, are likely vulnerable.

At the same time, however, this also reinforces the value of ethics and social responsibility, in that vigilant businesspeople and entrepreneurs are likely going to be able to identify more growth niches providing products that service socially conscious stakeholders.

But even this simple model of a contractual market exchange would place ethical constraints on the seller. Sellers have a duty not to coerce, defraud, or deceive buyers, for example. Consumers who were injured by a product that was deceptively or fraudulently marketed would have legal recourse to recover damages from the seller.

Even in the early years of product safety law, courts recognized an implicit promise, or implied warranty, that accompanies any product that is marketed. What the law refers to as the **“implied warranty of merchantability,”** holds that in selling a product a business implicitly offers assurances that the product is reasonably suitable for its purpose. Even without a verbal or written promise or contract, the law holds that business has a duty to insure that its products will accomplish their purpose. How far does this duty reach? See the preceding Reality Check for a discussion of that responsibility.

The ethics implicit within the contract approach assumes that consumers adequately understand products well enough that they can reasonably be expected to protect themselves. But consumers don’t always understand products fully and they are not always free to choose not to purchase some things. In effect, the implied warranty standard shifts the burden of proof from consumers to producers by allowing consumers to assume that products were safe for ordinary use. By bringing goods and services to the market, producers were implicitly promising that their products were safe under normal use. The ethical basis for this decision is the assumption that consumers would not give their consent to a purchase if they had reason to believe that they would be harmed by it when used in a normal way.

Of course, if law will hold business liable for implicit promises, a prudent business will seek to limit its liability by explicitly disowning any promise or warranty. Thus, many businesses will issue a disclaimer of liability (e.g., products are sold “as is”), or offer an expressed and limited warranty (e.g., the seller will replace the product but neither offers any other guarantees nor seeks to cap liability damages). Most courts will not allow a business to completely disclaim the implied warranty of merchantability.

Tort Standards for Product Safety



OBJECTIVE

The use of an implied warranty solved one set of problems with the contract law approach to product liability. Consumers wouldn’t need complex contracts in order to protect themselves from all possible harms that products might cause. But a

Reality Check *Responsibility beyond Direct Contracts*

The classic 1916 legal case of *MacPherson v. Buick* established the principle that manufacturers could be held responsible for damages caused by their products even when no direct contract existed between the manufacturer and the injured party.

Like all automobile companies, Buick assembled automobiles at its manufacturing plant from parts manufactured by a chain of suppliers. In turn, Buick sold these cars to local automobile dealers who then resold them to consumers. Soon after purchasing a Buick, Donald MacPherson was injured in an accident caused when a defective wheel collapsed.

Buick argued that it was not liable since it had not manufactured the wheel and had no contractual relationship with Mr. MacPherson. The courts rejected these arguments and held Buick liable. The court concluded that Buick could be held liable for defective products it used in automobiles because by selling this product the company was implicitly promising that it was safe for use as intended. Further, by selling it to a retailer, Buick knew the product would be resold and therefore the court did not require an explicit and direct contract with MacPherson to determine Buick's responsibilities.

second problem remains. If we hold business liable for only those promises made during the market exchange, then as the consumer gets further separated from the manufacturer by layers of suppliers and retailers, there may be no relationship at all between the consumer who gets harmed and the ultimate manufacturer or designer who was at fault. (See the following Decision Point for a discussion of the concept of causation or "at fault.")

Negligence, a concept from the area of law known as torts, provides a second avenue for consumers to hold producers responsible for their products. The distinction between contract law and tort law also calls attention to two different ways to understand ethical duties. Under a contract model, the only duties that a person owes are those that have been explicitly promised to another party. Otherwise, I owe nothing to anyone.

The ethical perspective that underlies tort law holds that we all owe other people certain general duties, *even if we have not explicitly and voluntarily assumed them*. Specifically, I owe other people a general duty not to put them at unnecessary and avoidable risk. Thus, although I have never explicitly promised anyone that I will drive carefully, I have an ethical duty not to drive recklessly down the street.

Negligence is a central component of tort law. As the word suggests, negligence involves a type of ethical neglect, specifically neglecting one's duty to exercise reasonable care not to harm other people. Many of the ethical and legal issues surrounding manufacturers' responsibility for products can be understood as the attempt to specify what constitutes negligence in their design, production, and sale. What duties, exactly, do producers owe to consumers?

One can think of possible answers to this question as falling along a continuum. On one extreme is the social contract answer: Producers owe only those things promised to consumers in the sales agreement. At the other extreme is something closer to **strict liability**: Producers owe compensation to consumers for any harm caused by their products. In between these extremes is a range of answers that vary with different interpretations of negligence. We have already suggested why

Decision Point

When Has a Company's Action Caused Injuries to Its Customers?

One of the most influential cases in U.S. tort law involved a railroad company being sued by a customer who was injured while waiting for a train. In *Palsgraf v. Long Island Railroad*, Helen Palsgraf was standing at a train station awaiting the arrival of her train. As an earlier train was leaving the station, another passenger ran to catch the moving train. Railroad employees helped the man onto the moving train. In the process of being jostled by the employees, the man dropped his package onto the tracks. The package contained fireworks for the upcoming 4th of July celebration, and they exploded, setting off a chain of events. In the mayhem that followed, a scale at the end of the platform was knocked over, striking Helen Palsgraf and causing her injuries. Palsgraf sued to recover damages for her injuries.

The court in this case faced two basic questions: Did the actions of the railroad employees cause her injuries? Were the railroad employees negligent in the way they treated customers and, if so, were they negligent to Mrs. Palsgraf? How would you have decided this case?

- What facts would you want to know before deciding this case?
- What alternatives would a jury face in deciding this case?
- Who are the stakeholders of your decision? What is the impact of each alternative decision on each stakeholder you have identified?
- What rights and duties are involved?
- How would you decide the case? Is it mostly a matter of consequences, or are there important principles involved?

the strict contract approach is incomplete. In the next section we shall examine the pros and cons of strict product liability. The remainder of this section will examine the important concept of negligence.

Negligence can be characterized as a failure to exercise reasonable care or ordinary vigilance that results in an injury to another. In many ways, negligence simply codifies two fundamental ethical precepts: “ought implies can” (we cannot reasonably oblige someone to do what they cannot do) and “one ought not harm others.” People have done an ethical wrong when they cause harm to others in ways that they can reasonably be expected to have avoided. Negligence includes acts of both commission and omission. One can be negligent by doing something that one ought not (e.g., speeding in a school zone) or by failing to do something that one ought to have done (e.g., neglecting to inspect a product before sending it to market).

Negligence involves the ability to foresee the consequences of our acts and failing to take steps to avoid the likely harmful consequences (see the following Decision Point). The standards of foreseeability, however, raise interesting challenges. One standard would hold people liable only for those harms they actually foresaw occurring (actual foreseeability). Thus, for example, they would be acting negligently if (as was alleged in the famous Ford Pinto case), on the basis of engineering tests, they concluded that a fuel tank placed behind the rear axle would puncture and explode during crashes at speeds below 30 miles per hour, yet still brought the car to market.

Decision Point

Liability for Spilt Coffee? A Double Latté!

In 1992 a 70-year-old woman was severely burned when a cup of coffee she had just purchased at a McDonald's drive-through window spilled on her lap. She apparently held the cup between her legs and tried to pry off the lid as she drove away. The coffee was hot enough (185 degrees) to cause third-degree burns that required skin grafts and long-term medical care. A jury awarded this woman \$2.86 million, \$160,000 for compensatory damages and \$2.7 million in punitive damages. Should McDonald's be held liable for these injuries? Was the restaurant negligent in serving such hot coffee at a drive-through window? Was the consumer negligent in her own actions?

- What facts would you want to know before deciding whether this settlement was fair?
- What alternatives would a jury face in deciding this case?
- Who are the stakeholders of your decision? What is the impact of each alternative mentioned above on each stakeholder you have identified?
- Should *caveat emptor* govern the situation?
- What are the consequences of the jury's decision?
- What rights and duties are involved?
- How would you decide the case? Is it mostly a matter of consequences, or are there important principles involved?

In an interesting 2006 case with somewhat related facts, a woman was awarded more than \$300,000 by a jury when a Starbucks Coffee employee caused a cup of coffee to spill on to the woman's foot. In fact, the *barista* (the coffee server at Starbucks) slid the coffee toward the woman; the coffee slipped over the edge of the counter; the top fell off; and the coffee spilled onto the woman's sneaker-covered foot. Her foot suffered nerve damage from the scalding liquid. Starbucks' public statement explained that, while it regrets any injury to Griffin, "we do not believe we are responsible for her injury."

- Do you see a distinction between these two cases?
- Is there any difference between the responsibility McDonald's owes the woman in the first instance and the responsibility Starbucks owes the woman in the second situation, as described above?
- Are the principles involved in the two cases any different?
- Will the decisions in the two cases lead to different consequences?

But this standard of actual foreseeability is too restricted. If someone actually thinks that harms are likely to result from his acts and proceeds nonetheless, he has committed a serious wrong and deserves harsh punishment. Such a case seems more akin to recklessness, or even intentional harm, than negligence. But this standard would also imply that unthoughtful people cannot be negligent, since one escapes liability by not actually thinking about the consequences of one's acts. "I never thought about that" would be an adequate defense if we used this standard of negligence. Yet this surely is part of what we are after with the concept of negligence. We want to encourage people to be thoughtful and hold them liable when they are not.

Decision Point *Foreseeing and Designing for Product Misuse: Can a Manufacturer Be Held Liable When a Product Is Misused?*

Manufacturers can be held legally and ethically negligent if they fail to foresee harms that could reasonably be anticipated in the normal use of a product. Consider this case with the design of a kitchen stove.

A young child is curious about what her mother is cooking on top of the kitchen stove. In order to gain a better view, she opens the oven door and steps up on it to look into the pans on the stovetop. Her weight causes the stove to tip over, spilling the hot food on her and causing severe burns. Was the manufacturer at fault for not designing a stove that would not tip with the weight of a child on the oven door?

Could the stove design team have foreseen a child using the oven door as a stepladder? Could the designers foresee the use of the oven door as a work surface on which to place heavy roasting pans, for example, a turkey pan while basting? If the weight of such a large oven pan is comparable to the weight of a young child, should the oven have been designed to withstand a foreseeable weight being placed on the door? If you were on a jury and had to decide this case, would you hold the manufacturer accountable for the child's injuries?

- What facts would you want to know before deciding this case?
- What alternatives would a jury face in deciding this case?
- Who are the stakeholders of such your decision? What is the impact of each alternative decision on each stakeholder you have identified?
- What rights and duties are involved?
- How would you decide the case? Is it mostly a matter of consequences, or are important principles involved?

A preferable standard would require people to avoid harms that, even if they haven't actually thought about, they *should* have thought about had they been reasonable. For example, in the Decision Point on page 324 presumably McDonald's did not actually anticipate that customers would be severely burned by coffee. But, had its managers thought about what people who are served coffee at drive-through windows might do to hold their cups when they drive away from the window, they could have foreseen the likelihood of spills. Moreover, the fact that McDonald's had received over 700 prior burn claims involving coffee over a 10-year period suggests that a reasonable person would have concluded that this was a dangerous practice. This "reasonable person" standard is the one most often used in legal cases and seems to better capture the ethical goals of the very concept of negligence. People are expected to act reasonably and are held liable when they are not. In addition, when one has actual notice of a likelihood of harm, such as in this case, the reasonable person expectation is increased. An issue arises surrounding foreseeability when a product might be misused, as in the Decision Point above.

But even the reasonable person standard can be interpreted in various ways. On one hand, we expect people will act in ways that would be normal or average.

A “reasonable” person does what we could expect the ordinary, average person to do. There are problems using this standard for both consumer and producer behavior. It may turn out that the ordinary average consumer is not as smart as we might hope. The average person doesn’t always read, or understand, warning labels, for example. The ordinary and average person may thoughtlessly place a cup of very hot coffee between her legs as she drives out of a parking lot and into traffic. The average person standard when applied to consumers risks exempting many consumers from taking responsibility for their own acts. When applied to producers, the average person standard sets the bar too low. We can expect more from a person who designs, manufactures, and sells a product than average and ordinary vigilance.

Reasons such as these can lead us to interpret the reasonable person standard more normatively than descriptively. In this sense, a “reasonable” person assumes a standard of thoughtful, reflective, and judicious decision making. The problem with this, of course, is that we might be asking more of average consumers than they are capable of giving. Particularly if we think that the disadvantaged and vulnerable deserve greater protection from harm, we might conclude that this is too stringent a standard to be applied to consumer behavior. On the other hand, given the fact that producers do have more expertise than the average person, this stronger standard seems more appropriate when applied to producers than to consumers.

Strict Product Liability



The negligence standard of tort law focuses on the sense of responsibility that involves liability or fault. As such, it asks what the business or person involved had foreseen or should have foreseen. But there are also cases in which consumers can be injured by a product in which no negligence was involved. In such cases where no one was at fault, the question of accountability remains. Who should pay for damages when consumers are injured by products and no one is at fault? The legal doctrine of strict product liability holds manufacturers accountable in such cases.

One classic strict product liability case involved the synthetic estrogen hormone diethylstilbestrol (DES). In the late 1940s, DES was approved for use in the prevention of miscarriages and was widely prescribed for problem pregnancies until the early 1970s. The drug had been widely tested in clinical trials and proved quiet successful in reducing the number of miscarriages. However, in the early 1970s a connection was discovered between the use of DES during pregnancy and certain forms of vaginal cancer in the female children of women who used the drug. These cancers did not typically appear until more than a decade after the drug was used. In 1972 the FDA prohibited all marketing of the drug for use during pregnancy. For the experience of another manufacturer, see the Decision Point that follows.

Ethical Debates on Product Liability



It is fair to say that the business community is a strong critic of much of the legal standards of product liability. Liability standards, and the liability insurance costs in which they have resulted, have imposed significant costs on contemporary business. In particular, these critics single out the strict product liability standard as

Decision Point

Who Should Pay for Asbestos-Caused Illness and Deaths?

Another major strict product liability case involves asbestos, a fibrous mineral used for decades for insulation and fire prevention in homes, industry, and consumer products. When inhaled through long-term exposure, asbestos dust causes a variety of lung and respiratory diseases, including mesothelioma, a particularly fatal form of cancer. Millions of workers have been exposed to asbestos, especially during the middle decades of the 20th century. However, many of the diseases associated with asbestos, including mesothelioma, might take decades before they appear. Thus, it is often difficult if not impossible to identify the exact source of the asbestos that caused the disease. In such cases, the liability focuses on any and all manufacturers of asbestos products. They brought the product to market, the product proved defective, therefore they ought to be held accountable for the damages.

One estimate suggests that 700,000 people have been involved in lawsuits against 8,000 corporations for asbestos-related injuries. Asbestos liability lawsuits have bankrupted several corporations, including the high-profile Johns-Manville. As much as \$70 billion has been paid in asbestos claims, and lawsuits continue in every state.

Should manufacturers of asbestos be held accountable for the damages caused by the product they brought to market, even if no direct link can be established between the injury and any specific product they manufactured?

- What facts would you need to know to make a fully informed judgment in this case?
- What alternatives are available? If not the manufacturer, who should be accountable to pay for the damages caused by asbestos?
- Who are the stakeholders who should be involved in this case?
- What are the likely consequences of holding manufacturers strictly liable? Of holding the injured consumer accountable? Of having the government pay?
- What duties do the manufacturers of asbestos have? What does the principle of fairness require in this case?
- If you were on a jury and had to decide who should pay the costs of a worker's mesothelioma, how would you decide?

especially unfair to business because it holds business responsible for harms that were not the result of business negligence.

In fact, the rationale often used to justify strict product liability is problematic. Defenders of the strict product liability standard, including juries who decide in favor of injured consumers, often reply with two major claims. First, by holding business strictly liable for any harms their products cause, society creates a strong incentive for business to produce safer goods and services. Second, given that someone has to be accountable for the costs of injuries, holding business liable allocates the costs to the party best able to bear the financial burden. Each rationale is open to serious objections.

First, the incentive argument seems to misunderstand the nature of strict liability. Holding someone accountable for a harm can provide an incentive only if they could

have done otherwise. But this means that the harm was foreseeable and the failure to act was negligent. Surely this is a reasonable justification for the tort standard of negligence. But strict liability is not negligence and the harms caused by such products as DES and asbestos were not foreseeable. Thus, holding business liable for these harms cannot provide an incentive to better protect consumers in the future.

The second rationale also suffers a serious defect. This argument amounts to the claim that business is best able to pay for damages. Yet, as the asbestos case indicates, many businesses have been bankrupted by product liability claims.

If it is unfair to hold business accountable for harms caused by their products, however, it is equally if not more unfair to hold injured consumers accountable. Neither party is at fault, yet someone must pay for the injuries. A third option would be to have government, and therefore all taxpayers, accountable for paying the costs of injuries caused by defective products. But this, too, seems unfair.

A third argument for holding business accountable might be more persuasive. Accountability, after all, focuses on those situations where no one is at fault, yet someone has to pay. This might be another way of saying that accountability is not a matter of ethical principle in that no one deserves to pay for damages. But perhaps accountability is best understood as a matter of utilitarian efficiency rather than principle. When business is held accountable, the costs for injuries will eventually fall on those consumers who buy the product through higher costs, especially higher insurance costs to business. This amounts to the claim that external costs should be internalized and that the full costs of a product should be paid for by those who use the product. Products that impose a cost on society through injuries will end up costing more to those who purchase them. Companies that cannot afford to remain in business when the full costs of its products are taken into account perhaps ought not remain in business.

Responsibility for Products: Advertising and Sales



Along with product safety, the general area of advertising ethics has received significant legal and philosophical attention within business ethics. The goal of all marketing is the sale, the eventual exchange between seller and buyer. A major element of marketing is sales promotion, the attempt to influence the buyer to complete a purchase. (See the Decision Point that follows.) Target marketing and marketing research are two important elements of product placement, seeking to determine which audience is most likely to buy, and which audience is mostly likely to be influenced by product promotion.

There are, of course, ethically good and bad ways for influencing others. Among the ethically commendable ways to influence another are persuading, asking, informing, and advising. Unethical means of influence would include threats, coercion, deception, manipulation, and lying. Unfortunately, all too often sales and advertising practices employ deceptive or manipulative means of influence, or are aimed at audiences that are susceptible to manipulation or deception. Perhaps the most infamous and maligned of all marketing fields is automotive sales, especially in used car markets. The concept of manipulation, and its subset of deception,

Decision Point

Automobile Advertising

"Below invoice prices." "Cash-back incentives." "Low monthly lease rate." "Late model close-outs." "\$500 cash back." "Manufacturer's suggested retail price." "Sticker price." "Factory rebates." "Absolute lowest price guaranteed." "0% interest on selected vehicles." "Factory authorized clearance." "Extended service contracts." "No money down." "Certified preowned vehicles." "No reasonable offer refused." "Huge discounts. Save thousands." "We sell wholesale to the public!" "We are dealing. Save \$\$\$." "Credit problems? No problem. Your approval is guaranteed or we'll give you \$1,000." "No games, no gimmicks."

All of these claims were found in just a few pages of one local Sunday newspaper. They point to the extraordinary difficulty that consumers face in purchasing a car. Perhaps no other industry suffers as bad a reputation in pricing and sales as the automobile industry.

Do you find any of these claims misleading? Confusing? Deceptive? Which are easily understood? Which are least clear? Who is being targeted by these ads?

- What facts would you want to know before making a judgment about these ads?
- Which ads, if any, raise ethical questions?
- Who are the stakeholders in automobile advertising? What are the potential benefits and potential harms of such advertising?
- What ethical principles have you used in making your judgments?
- What type of people do you think are involved in automobile advertising and automobile sales?

is central to the ethical issues explored in this chapter and can help organize the following sections.

To manipulate something is to guide or direct its behavior. Manipulation need not involve total control, and in fact it more likely suggests a process of subtle direction or management. Manipulating people implies working behind the scenes, guiding their behavior without their explicit consent or conscious understanding. In this way, manipulation is contrasted with persuasion and other forms of rational influence. When I manipulate someone, I explicitly do not rely on their own reasoned judgment to direct their behavior. Instead, I seek to bypass their autonomy (although successful manipulation can be reinforced when the person manipulated *believes* she acted of her own accord).

One of the ways in which we can manipulate someone is through deception, one form of which is an outright lie. I need not deceive you to manipulate you, although I would be happy if you falsely believed that you were not being manipulated. We can manipulate someone without deception, as when I get my sons to mow the lawn by making them feel guilty about not carrying their share of family responsibilities. Or I might manipulate my students into studying more diligently by hinting that there may be a quiz during the next class. These examples raise a very crucial point because they suggest that the more I know about your psychology—your motivations, interests, desires, beliefs, dispositions, and so forth—the better able I will be to manipulate your behavior. Guilt, pity, a desire to please, anxiety, fear, low

self-esteem, pride, and conformity can all be powerful motivators. Knowing such things about another person provides effective tools for manipulating their behavior.

We can see how this is relevant to marketing ethics. Critics charge that many marketing practices manipulate consumers. Clearly, many advertisements are deceptive, and some are outright lies. We can also see how marketing research plays into this. The more one learns about customer psychology, the better able one will be to satisfy their desires, but the better able one will also be to manipulate their behavior. Critics charge that some marketing practices target populations that are particularly susceptible to manipulation and deception.

Ethical Issues in Advertising



OBJECTIVE

The general ethical defense of advertising reflects both utilitarian and Kantian ethical standards. Advertising provides information for market exchanges and therefore contributes to market efficiency and to the overall happiness. Advertising information also contributes to the information necessary for autonomous individuals to make informed choices. But note that each of these rationales assumes that the information is true and accurate.

The deontological tradition in ethics would have the strongest objections to manipulation. When I manipulate someone I treat them as a means to my own ends, as an object to be used rather than as an autonomous person in his or her own right. Manipulation is a clear example of disrespect for persons since it bypasses their own rational decision making. Because the evil rests with the intention to use another as a means, even unsuccessful manipulations are guilty of this ethical wrong.

As we might expect, the utilitarian tradition would offer a more conditional critique of manipulation, depending on the consequences. There surely can be cases of paternalistic manipulation, in which someone is manipulated for their own good. But even in such cases, unforeseen harms can occur. Manipulation tends to erode bonds of trust and respect between persons. It can erode one's self-confidence and hinder the development of responsible choice among those manipulated. In general, because most manipulation is done to further the manipulator's own ends at the expense of the manipulated, utilitarians would be inclined to think that manipulation lessens overall happiness. A general practice of manipulation, as critics would charge occurs in many sales practices, can undermine the very social practices (e.g., sales) that it is thought to promote as the reputation of sales is lowered. The example of used car sales, once again, is a good example of such a situation.

A particularly egregious form of manipulation occurs when vulnerable people are targeted for abuse. Cigarette advertising aimed at children is one example that has received major criticism in recent years. Marketing practices targeted at elderly populations for such goods and services as insurance (particularly Medicare supplemental insurance), casinos and gambling, nursing homes, and funerals have been subjected to similar criticisms. (See the following Reality Check.)

We can suggest the following general guidelines. Marketing practices that seek to discover which consumers might already and independently be predisposed

Reality Check *Winners and Losers*

The Illinois Lottery Commission came under fire in 2005 for a billboard marketing campaign in downtown Chicago that included signs that read, “How to go from Washington Street to Easy Street—Play the Illinois State Lottery.” A boycott of the lottery was organized, claiming that the lottery took advantage of the poor of the inner city. The claim is that the lottery is actually an unfair form of a regressive tax because it draws a disproportionate amount of its revenues from the poor by preying on unrealistic hopes.

To the contrary, argues Edward J. Stanek, the president of the North American Association of State and Provincial Lotteries:

Big jackpot games are equalizers. Those who were not fortunate in the drawing of genes and inheritance can venture a chance equal to everyone else to benefit financially . . . Lotteries don't discriminate among their customers. . . . If there is something inherently wrong with allowing less prosperous people the choice to buy a ticket, then the protectionists should seek legislation to prohibit low-income

citizens from taking a chance. Why haven't they? Because the folly of their self-righteous protectionism would be exposed. . . .

For a lottery to take “advantage” of the poor would imply that the poor have a “disadvantage.” Obviously they have less money, which means that lotteries can benefit them more relative to helping those of greater means. The only way that the poor can be at a disadvantage is if they don't have the same mental capacity to make \$1 decisions as those who are wealthier. It follows that those who make such claims are assuming that the poor have a diminished intellectual capacity. But economic status is not a measure of intelligence. Saying that the poor are taken advantage of in this context is an insult to the intelligence of those who play lottery games.

With which side do you agree?

Source: E. Stanek, “Take the High Road and Keep the Upper Hand: A Critique of Lottery Critics,” speech to North American Association of State and Provincial Lotteries (Sept. 29, 1997), <http://www.nmlottery.com/Miscellaneous/CRITIQUE.HTM>.

to purchasing a product are ethically legitimate. So, for example, an automobile dealership learns from its manufacturer's marketing department that the typical buyer of its car is a college-educated female between the ages of 25 and 30 who enjoys outdoors activities and earns more than \$30,000. Sending targeted direct mail pieces to everyone within an area who matches these criteria seems an ethically legitimate marketing practice. Marketing practices that seek to identify populations that can be easily influenced and manipulated, on the other hand, are not. Sales and marketing that appeal to fear, anxiety, or other nonrational motivations are ethically improper. For example, an automobile dealer who knows that an unmarried or widowed woman is anxious about the purchase and who uses this anxiety as a way to sell extended warranty insurance, disability insurance, theft protection products, and the like is unethical. (The manner in which this or other information is collected is also subject to ethical concerns; see the following Reality Check.)

Marketing research seeks to learn something about the psychology of potential customers. But not all psychological categories are alike. Some are more cognitive and rational than others. Targeting the considered and rational desires of consumers is one thing; targeting their fears, anxiety, and whims is another.

Reality Check *New Challenges to Old Problems: From Redlining to E-Lining*

by Tara J. Radin, Martin Calkins, and
Carolyn Predmore

Today, more than a decade since the Internet became widely and publicly available, we still lack consensus about the degree of ownership and acceptable limits of data gathering and use. In fact, Richard De George's 1999 remark is arguably more valid now than previously: "The U.S. is schizophrenic about information privacy, wanting it in theory and giving it away in practice."⁷ Such schizophrenia is problematic in itself, but it has been exacerbated by the questionable applications of data collection that have occurred. E-lining (electronic redlining) represents one glaring example of how data gathering crosses moral boundaries.

Redlining is the practice of denying or increasing the cost of services to residents of certain geographic locations. In the United States, it has been deemed illegal when the criteria involve race, religion, or ethnic origin. The term came to prominence with the discussions that led to the Housing Act of 1934, which established the Federal Housing Authority, which later became the Department of Housing and Urban Development. It occurs when financial institutions (banks, brokerages, and insurance companies) literally draw red lines on maps to distinguish between creditworthy and financially risky neighborhoods.

Although illegal, redlining has not died out completely. It reemerged recently when MCI removed international long distance service via calling cards from pay phones in poorer communities in the suburbs of Los Angeles. It reappeared also in retail sales when Victoria's Secret allegedly tailored its catalog prices along customer demographics (specifically, ethnicity). In this case, two sisters living in different parts of town discovered price differences when discussing items from seemingly identical catalogs. As the two compared prices on the phone, they found that the cost of some items varied by as much as 25 percent. A subsequent and more thorough investigation revealed that Victoria's Secret had been engaging in an extensive practice of price variation according to gender, age, and income. In the end, although Victoria's Secret was

vindicated in the court of law, it lost in the court of public opinion.

Finally, it resurfaced when Kozmo.com, an online provider of one-hour delivery services, used zip codes to refuse to deliver merchandise to customers in predominantly black neighborhoods. In all of these cases, companies (to different degrees) "exclude(d)" classes of individuals from full participation in the marketplace and the public sphere."

E-lining differs from these more traditional forms of redlining by not drawing a red line on a map, but by using information that Internet users unwittingly leave behind as they surf Web sites. E-liners use "spyware" programs embedded in Web pages to collect information surreptitiously and with little or no outside oversight. They are able to "spy on" surfers in this way without much challenge because, at present, there are few limits on what companies can do with the information they gather.

In recent years companies have used customer information to direct customers to particular products or services. In this way, they have used information in much the same way high-end clothing stores use a Rolodex of customer phone numbers to alert customers about newly arrived items that match or complement prior purchases. At other times, businesses have not acted so benevolently. They have used the data they collected in a discriminatory way to direct customers to particular products or services that fit a profile based on demographics. Amazon has received significant criticism for its use of historical purchase information to tailor Web offerings to repeat customers. Amazon allegedly used data profiling in order to set prices. In September 2000, Amazon customers determined that they were charged different prices for the same CDs. Although Amazon claimed that the price differentiation was part of a randomized test, the result was price discrimination that appeared to be based on demographics.

This sort of discrimination and deprivation of financial opportunities according to demographics is exactly what the rules against redlining are intended to prevent. The absence of comparable rules against e-lining is not, as some firms might like to argue, an indication that this sort of behavior is acceptable in e-commerce, but, rather, is a reflection of the

lag in time it is taking for the legal infrastructure to catch up with e-commerce. Our current legal infrastructure, particularly in the United States, which is aimed almost exclusively toward brick-and-mortar enterprises, does not account for the tremendous amount of information available through e-commerce or for the numerous ways in which e-merchants are able to exploit customers through misuse of that information. The unfortunate reality is that there is not a clear distinction between acceptable and unacceptable forms of information gathering, use, and market segmentation, and e-commerce provides a cloak that insulates from detection many firms engaging in inappropriate behavior.

There are few if any obstacles to firms engaging in questionable e-commerce business practices in the first place. Public outcries are generally short-lived

and do not appear to have a significant impact on e-shopping. If anything, e-commerce continues to attract an increasing number of customers. In the meantime, few generally agreed-upon standards exist regarding the acceptable limits of information gathering via the Internet. Instead, businesses are shaping the expectations of Web users and society in general as they implicitly set standards to guide future marketers through their irresponsible behavior. They are sending the message: "Internet user beware!" to Internet surfers and potential e-customers. As long as the legal infrastructure remains underdeveloped, society remains vulnerable to an increasing number of potential electronic abuses.

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Marketing Ethics and Consumer Autonomy



OBJECTIVE

Defenders of advertising argue that despite cases of deceptive practices, overall advertising contributes much to the economy. The majority of advertisements provide information to consumers, information that contributes to an efficient function of economic markets. These defenders argue that over time, market forces will weed out deceptive ads and practices. They point out that the most effective counter to a deceptive ad is a competitor's ad calling attention to the deception.

Beyond this question of what advertising does *for* people, a second important ethical question asks what advertising, specifically, and marketing in general, does *to* people. People may well benefit from business's marketing of its products. People learn about products they may need or want, they get information that helps them make responsible choices, they even sometimes are entertained. But marketing also helps shape culture and the individuals who develop and are socialized within that culture, some would say dramatically so. Marketing can have direct and indirect influence on the very persons we become. How it does that, and the kind of people we become as a result, is of fundamental ethical importance. Critics of such claims either deny that marketing can have such influence or maintain that marketing is only a mirror of the culture of which it is a part.

The initial proposal in this debate was offered by economist John Kenneth Galbraith in his 1958 book, *The Affluent Society*. Galbraith claimed that advertising and marketing were creating the very consumer demand that production then aimed to satisfy. Dubbed the "dependence effect," this assertion held that consumer demand depended upon what producers had to sell. This fact had three major and unwelcome implications.

First, by creating wants advertising was standing the "law" of supply and demand on its head. Rather than supply being a function of demand, demand turns out to

Reality Check Advertising Spending

Total spending on advertising in all media for 2005 was estimated by one marketing group to exceed \$275 billion. Worldwide, advertising was a \$560 billion industry.⁸

In terms of direct marketing, alone, companies spent more than \$160 billion in the United States,

which, measured against total U.S. sales, generated an estimated \$1.85 trillion in increased sales in 2005, or 7 percent of the \$26 trillion in total sales in the U.S. economy, and accounted for 10.3 percent of total U.S. GDP in that year.⁹

be a function of supply. Second, advertising and marketing tend to create irrational and trivial consumer wants and this distorts the entire economy. The “affluent” society of consumer products and creature comforts is in many ways worse off than so-called undeveloped economies because resources devoted to contrived, private consumer goods are therefore denied to more important public goods and consumer needs. Taxpayers deny school districts small tax increases to provide essential funding while parents drop their children off at school in \$40,000 SUVs. A society that cannot guarantee vaccinations and minimal health care to poor children spends millions annual for cosmetic surgery to keep its youthful appearance. Finally, by creating consumer wants, advertising and other marketing practices violate consumer autonomy. Consumers who consider themselves free because they are able to purchase what they want are not in fact free if those wants are created by marketing. In short, consumers are being manipulated by advertising.

Ethically, the crucial point is the assertion that advertising violates consumer autonomy. The law of supply and demand is reversed, and the economy of the affluent society is contrived and distorted, only if consumer autonomy can be violated, and consumers manipulated, by advertising’s ability to create wants. But can advertising violate consumer autonomy and, if it can, does this occur? Consider the annual investment in this effort (see the preceding Reality Check). Given this investment, what does advertising do *to* people and *to* society?

An initial thesis in this debate claims that advertising controls consumer *behavior*. Autonomy involves making reasoned and voluntary choices, and the claim that advertising violates autonomy might mean that advertising controls consumer choice. Psychological behaviorists and critics of subliminal advertising, for example, would claim that advertising can control consumer behavior in this way. But this seems to be an empirical claim and the evidence suggests that it is false. For example, some studies show that more than half of all new products introduced in the market fail, a fact that should not be true if consumer behavior could be controlled by marketing. Consumers certainly don’t seem controlled by advertising in any obvious sense of that word.

But consumer autonomy might be violated in a more subtle way. Rather than controlling behavior, perhaps advertising creates the wants and desires on the basis of which consumers act. The focus here becomes the concept of *autonomous desires* rather than *autonomous behavior*. This is much closer to the original assertion by Galbraith and other critics of advertising. Consumer autonomy is violated by advertising’s ability to create nonautonomous desires.

Decision Point

Advertising Prescription Drugs

Advertisements promoting prescription drugs have increased significantly since the FDA changed regulations in 1997 to allow direct to consumer (DTC) advertising. Among the most widely marketed drugs have been Lipitor, Zocor, Prilosec, Prevacid, Nexium, Celebrex, Vioxx, Zoloft, Paxil, Prozac, Viagra, Cialis, Levitra, Propecia, and Zyban. These drug names, literally household words today, were unheard of or nonexistent even 10 years ago. Together, they accounted for over \$21 billion in sales in 2002.

These drugs treat the following conditions: ulcers and acid-reflux (Prilosec, Prevacid, Nexium), high cholesterol (Lipitor, Zocor), arthritis pain (Celebrex, Vioxx), depression, panic attacks, and anxiety (Zoloft, Paxil, Prozac), “erectile dysfunction” (Viagra, Cialis, and Levitra), hair loss (Propecia), and cigarette and nicotine withdrawal (Zyban).

Ads for these drugs often appeal to such emotional considerations as embarrassment; fear; shame; social, sexual, and romantic inferiority; helplessness; vulnerability; and vanity. Many of these drugs are heavily advertised in women’s magazines and during televised sporting events.

Perhaps no marketing campaign has received as much critical attention as the Viagra, Cialis, and Levitra campaign to counteract erectile dysfunction. Much of the criticism has focused on the ad placements, particularly in places where young children would see them such as during prime time television and during high-profile sporting events. Other criticisms suggest that although these drugs can be used to treat real medical conditions, they are being marketed as little more than sex toys. Erectile dysfunction can be a problem for older men and especially for men recovering from such medical treatments as prostate surgery. But for younger and otherwise healthy men, the primary causes of erectile dysfunction are alcohol consumption, obesity, lack of exercise, smoking, and the use of other prescription drugs. All these causes are either easily addressed without reliance on pharmaceuticals or, as in the case of alcohol abuse, use of erectile dysfunction drugs is potentially unsafe with them.

Arguments in support of this type of marketing are that they provide information to consumers, respect consumer choice, encourage those who are reluctant to seek medical care to do so, get more people into the health care system, address real public health issues, and increase competition and efficiency in the pharmaceutical industry. Opponents claim that these ads increase the unnecessary use of drugs; that because all drugs have harmful side effects, the ads increase public harms; that the ads increase reliance on pharmaceutical health care treatments and discourage alternative therapies and treatments, many of which have fewer side effects; that these ads manipulate and exploit vulnerable consumers; that they often provide misleading and incomplete information; that they alienate patients from physicians by bypassing the gatekeeper function of medical professionals; and that they treat social and behavior problems with medical and chemical solutions. What is your judgment about the ethics of advertising prescription drugs?

What facts would you want to know before deciding this case?

- What alternatives exist for marketing prescription drugs?
- Who are the stakeholders of drug marketing?
- What are the consequences of alternative marketing strategies?
- What rights and duties are involved?
- How would you decide the case? Is it mostly a matter of consequences, or are important principles involved?

A helpful exercise to understand how desires might be nonautonomous is to think of the many reasons people buy the things they buy and consume the things they do, and why, in general, people go shopping. After certain basic needs are met, there is a real question of why people consume the way they do. People buy things for many reasons, including the desire to appear fashionable, for status, to feel good, because everyone else is buying something, and so forth. The interesting ethical question at this point is where did *these* desires originate, and how much has marketing influenced these non-necessity purchases. These questions and issues are addressed in the preceding Decision Point.

Marketing to Vulnerable Populations



OBJECTIVE

Consider two examples of target marketing. In one case, based on market research supplied by the manufacturer, an automobile retailer learns that the typical customer is a single woman, between the ages of 30 and 40 years old with annual income over \$30,000, who enjoys outdoor sports and recreation. Knowing this information, the dealer targets advertising and direct mail to this audience. Ads depict attractive and active young people using their product and enjoying outdoors activities. A second targeted campaign is aimed at selling an emergency call device to elderly widows who live alone. This marketing campaign depicts an elderly woman at the bottom of a stairway crying out “I’ve fallen and can’t get up!” These ads are placed in media that elderly women are likely to see or hear. Are these marketing campaigns on an equal ethical footing?

The first marketing strategy appeals to the considered judgments which consumers, presumably, have settled on over the course of their lives. People with similar backgrounds tend to have similar beliefs, desires, and values and often make similar judgments about consumer purchases. Target marketing in this sense is simply a means for identifying likely customers based on common beliefs and values. On the other hand, there does seem to be something ethically offensive about the second case. This campaign aims to sell the product by exploiting the real fear and anxiety that many older people experience. This marketing strategy tries to manipulate people by appealing to nonrational factors such as fear or anxiety rather than relying on straightforward informative ads. Is there anything to the claim that elderly women living alone are more “vulnerable” than younger women and that this vulnerability creates greater responsibility for marketers? In general, do marketers have special responsibility to the vulnerable?

Are elderly people living alone particularly vulnerable? The answer to this depends on what we mean by particularly vulnerable. In one sense, a person is vulnerable as a consumer by being unable in some way to participate as a fully informed and voluntary participant in the market exchange. Valid market exchanges make several assumptions about the participants: They understand what they are doing, they have considered their choice, they are free to decide, and so forth. What we can call *consumer vulnerability* occurs when a person has an impaired ability to make an informed consent to the market exchange. A vulnerable consumer lacks

Decision Point

Targeting Vulnerable People?

The *Boston Globe* reported one controversial attempt to market pharmaceuticals in 2002. The *Globe* reported that sales representatives for TAP Pharmaceuticals, makers of Lupron Depot, an analgesic for treating pain associated with prostate cancer, were instructed to attend meetings of a prostate cancer support group to promote the drug directly to cancer patients. While pharmaceutical companies often provide support groups with financial assistance and informational materials, many critics believed that this action crossed the line of acceptable marketing.

A second case of marketing drugs to targeted populations involves the drug Strattera, Eli Lilly's prescription medication that controls attention deficit disorder and hyperactivity (ADHD) in children. This ad ran in magazines such as *Family Circle* (September 2003) under the simple title "Welcome to Ordinary." The ad pictures two boys holding up a model airplane that they have finished building, a challenging task for a child with ADHD. The ad reads: "4:30 p.m. Tuesday. He started something you never thought he'd finish. 5:20 p.m. Thursday. He's proved you wrong." The ad suggests that, if a child with ADHD is not "ordinary," it is the parents who are "wrong" because all it would take would be Strattera to solve their problem. The same issue of *Family Circle* contained ads for McNeil Pharmaceutical's Concerta and Shire Pharmaceutical's Adderall, the two major competitors to Strattera.

Are these marketing practices ethically responsible?

- What facts would you want to know before deciding this case?
- What alternative marketing practices were open to these companies?
- Who are the stakeholders of your decision? What is the impact of each alternative decision on each stakeholder you have identified?
- What rights and duties are involved?
- How would you decide the case? Would you primarily consider consequences, or are important principles involved?

the intellectual capacities, psychological ability, or maturity to make informed and considered consumer judgments. Children would be the paradigmatic example of consumer vulnerability. The harm to which such people are susceptible is the harm of not satisfying one's consumer desires and/or losing one's money. Elderly people living alone are not necessarily vulnerable in this sense.

There is a second sense of vulnerability in which the harm is other than the financial harm of an unsatisfactory market exchange. Elderly people living alone are susceptible to injuries from falls, from medical emergencies, from expensive health care bills, from loneliness. Alcoholics are susceptible to alcohol abuse, the poor are susceptible to bankruptcy, single women walking alone at night are vulnerable to sexual assault, accident victims are susceptible to high medical expenses and loss of income, and so forth. What we can call *general vulnerability* occurs when someone is susceptible to some specific physical, psychological, or financial harm.

From this we can see that there can be two types of marketing that targets vulnerable populations. Some marketing practices might target those consumers

who are likely to be uninformed and vulnerable as consumers. Marketing aimed at children, for example, aims to sell products to customers who are unable to make thoughtful and informed consumer decisions. Other marketing practices might target populations that are vulnerable in the general sense as when, for example, an insurance company markets flood protection insurance to homeowners living in a river's floodplain. Are either, or both, types of targeting ethically legitimate?

As an initial judgment, we must say that marketing that is targeted at those individuals who are vulnerable as consumers is unethical. This is a case of taking advantage of someone's frailty and manipulating it for one's own advantage. Clearly a portion of marketing and sales targets people who are vulnerable as consumers. Just as clearly such practices are wrong.

One way that this issue plays out involves groups who are vulnerable in both senses. Oftentimes people can become vulnerable as a consumer *because* they are vulnerable in some more general sense. The vulnerability that many elderly have with respect to injuries and illness might cause them to make consumer choices based on fear or guilt. A family member grieving over the death of a loved one might make choices in purchasing funeral services based on guilt or sorrow, rather than on a considered judgment. A person with a medical condition or disease is vulnerable, and the anxiety or fear associated with this vulnerability can lead to uninformed consumer choices. An inner city resident who is poor, uneducated, and chronically unemployed is unlikely to weigh the full consequences of the choice of alcoholic beverage.

A number of marketing campaigns seem to fit this model. The most abhorrent (and stereotypical) example is the ambulance-chasing attorney seeking a client for a personal-injury lawsuit. An accident victim is vulnerable to many harms and, while experiencing the stress of this situation, is unlikely to make a fully informed choice about legal representation. Marketing campaigns that target the elderly for such products as supplemental medical insurance, life insurance, emergency call devices, funeral services, and insurance often play on the fears, anxiety, and guilt that many elderly people experience. (See preceding and following Decision Points to consider examples of marketing to particular populations.)

But just as people can be made vulnerable as consumers because they are vulnerable to other harms, there can also be cases in which people become vulnerable to other harms because they are vulnerable as consumers. Perhaps this strategy is the most abhorrent case of unethical marketing. Certain products—tobacco and alcohol are the most obvious examples—can make an individual vulnerable to a wide range of health risks. Marketing campaigns for products that target people who are vulnerable as consumers seem ethically repugnant. This explains the particular public outrage directed at tobacco and alcohol companies that target young people. Companies that market alcoholic beverages in poor inner-city neighborhoods must take this ethical guideline into account. Marketing malt beverages, fortified wines, and other alcoholic drinks to poor inner-city residents must acknowledge that many people in such situations are not fully autonomous consumers. Many people in such situations drink to get drunk; they drink to escape; they drink because they are alcoholics.

Decision Point

Marketing in Schools

Is there an age below which marketers ought not to target commercial products? Is every person, regardless of age, a potential consumer? The market potential of young people is huge. According to one 2001 report, children's spending tripled in the 1990s. Children between the ages of 4 and 12 spent \$2.2 billion in 1968, \$4.2 billion in 1984, \$17.1 billion in 1994, and more than \$40 billion by 2002. Estimates are that direct buying by children is expected to exceed \$51.8 billion by 2006. This makes young people an attractive target for marketers, and where better to target marketing than in schools?

Commercials in schools occur in many forms. Products are directly advertised in a variety of formats and circumstances, including on school busses and through Channel One, a for-profit media company that produces news programming shown daily in thousands of middle and high school classrooms. Indirect advertising occurs with sponsorships of school activities and supplies. Many products are sold in and by schools and many schools participate in a variety of marketing research studies. In every case, schools provide the occasion for students to learn about some commercial product.

- Should advertising be allowed in schools?
- What facts would you want to know before deciding this question?
- What alternative marketing practices are open to companies that sell products to children? If some school districts propose advertising on and in buses, which are public property paid for by tax dollars, does that raise additional issues?
- Who are the stakeholders of your decision? What is the impact of each alternative decision on each stakeholder you have identified?
- What rights and duties are involved?
- How would you decide the case? Is it mostly a matter of consequences, or are important principles involved?

One final form of marketing to a vulnerable population involves potentially all of us as consumer targets. We are each vulnerable when we are not aware that we are subject to a marketing campaign. This type of campaign is called **"stealth" or "undercover" marketing** and refers to those situations where we are subject to directed commercial activity without our knowledge. Certainly we are subjected to numerous communications on a regular basis without paying much attention, such as the billboards at which we might glance sideways as we speed past on a highway. That is not undercover marketing. Instead, undercover marketing is an intentional effort to hide the true marketing element of the interaction. For example, Sony Ericsson Mobile Communications hired 60 actors to pose as tourists in New York City's Empire State Building. The actor/tourists were supposed to pretend they were tourists and to ask passersby if they would mind taking their pictures. In doing so, the unsuspecting passersby had a chance to see how easy the new Ericsson mobile phone cameras were to operate. The actors praised the phones and said how much they loved them, and the passersby left having had a good experience with the new product, unaware they were just involved in a product test!

Reality Check *Word-of-Mouth Marketing*

The above practices should not be confused with “word-of-mouth marketing,” which refers to those efforts by companies to generate personal recommendations by users. The Word of Mouth Marketing Association (WOMMA, www.womma.org) produced a Code of Ethics in 2005 which sought to distinguish word-of-mouth marketing from stealth and buzz marketing, both of which had received a great deal of press at that time. The WOMMA explained that “this is a first step in the complicated process of building an industry based on consumer respect and fundamental ethical principles.”

The essence of the WOMMA Code comes down to the Honesty ROI:

- **Honesty of Relationship:** You say who you’re speaking for
- **Honesty of Opinion:** You say what you believe
- **Honesty of Identity:** You never obscure your identity

THE WOMMA CODE OF ETHICS: SUMMARY

1. Consumer protection and respect are paramount.

2. We uphold the Honesty ROI: Honesty of Relationship, Opinion, and Identity.
3. We respect the rules of the venue.
4. We manage relationships with minors responsibly.
5. We promote honest downstream communications.
6. We protect privacy and permission.

WOMMA CODE OF ETHICS: FUNDAMENTAL PRINCIPLES

1. Happy, interested people will say good things about you.
2. Honest, genuine opinion is our medium.
3. We start, support, and simplify the sharing.
4. Word of mouth cannot be faked.
5. Word of mouth marketing empowers the consumer.

Source: From www.womma.org. Reprinted by permission of Word of Mouth Marketing Association.

With the advent of blogs, stealth marketing has hit the Internet, as well. Internet users reading a product review cannot know if the individual posting the review is a user, the product’s manufacturer, or even a competitor posting a negative review just to sway consumers away from the product. “Buzz marketing,” where people are paid to create a “buzz” around a new product by using it or discussing in ways that create media or other attention, also creates the potential for unspoken conflicts of interest. See the preceding Reality Check for the distinction between buzz marketing and **word-of-mouth marketing** practices.

Marketing experts consider stealth marketing extraordinarily effective because the consumer’s guard is down; she is not questioning the message as she might challenge a traditional advertising campaign. Consumers do not seek out the communicator’s vested interest; they see the communication as more personal and often tend to trust the communicator much more than they would trust an advertisement or other marketing material.

Where these practices simply involve the use of a product and the honest response to that use, arguably there is no deception. However, where the practice—however termed—involves subversion and deception to encourage a product’s use,

or deception surrounding the fact that a practice is part of a marketing campaign, it is challenging to argue that the practice remains ethical. From a universalist perspective, there is a violation of trust in the communication, which could also lead to a sense of betrayal so the consumer may no longer trust the company itself. In addition, the consumer is no longer being treated as an end in itself but instrumentally only as a means to the manufacturer's end. Further, if stealth marketing becomes the universal practice, the erosion of trust could become so significant that our commercial interactions would disintegrate under burdens of disclosures that would then be necessary.

Utilitarian analysis also does not support the ethics of these types of practices. When a consumer cannot trust the company's communication, the consumer may also lose faith in the company as a whole and will choose to purchase products and services elsewhere. Neither the company nor the consumer benefits from this result, and a product or service that might otherwise be the most effective or efficient solution may cease production because of a faulty marketing campaign.

Supply Chain Responsibility



In creating a product, promoting it, and bringing it to the market, the marketing function of business involves a wide range of relationships with other commercial entities. In recent decades, the ethical spotlight has focused on the responsibility that a firm has for the activities of these other entities, what we shall refer to as supply chain responsibility. Few businesses have received as much attention in this regard as Nike.

Nike is the world's largest athletic shoe and apparel maker. In 1999, Nike held over 30 percent of the world's market share for athletic footwear, and along with Adidas (15 percent) and Reebok (11 percent) controls more than half of the world market. Nike began business in 1964 as Blue Ribbon Sports, an importer and marketer of low-priced Japanese sport shoes. As sales increased, the company began to design its own line of shoes and subcontract the manufacturing of the shoes to Japanese firms, eventually changing its name to Nike. Nike's Web site described its business philosophy decades later in the following words:

Our business model in 1964 is essentially the same as our model today: We grow by investing our money in design, development, marketing and sales and then contract with other companies to manufacture our products.

In the late 1990s, as discussed in Chapter 6, Nike was subjected to intense international criticism for the working conditions in the factories where its products were manufactured. Critics charged that Nike relied on child labor and sweatshops in producing their shoes. They charged that workers in these factories were paid pennies a day, were subjected to cruel, unhealthy, and inhumane working conditions, were harassed and abused, and were prohibited from any union or collective bargaining activities.

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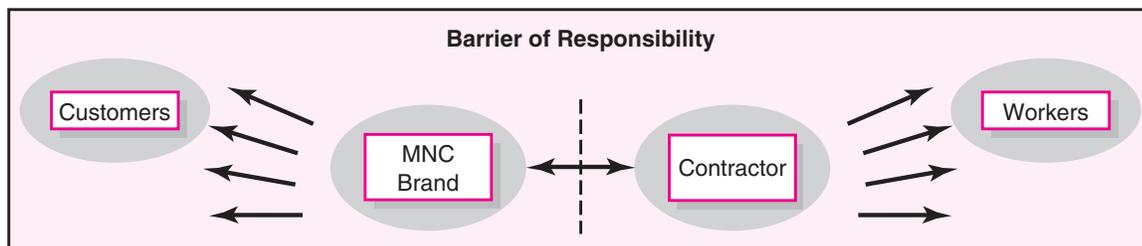
Nike initially seemed to ignore the critics and deflect any criticism by denying responsibility for the behavior of its suppliers. If local manufacturers treated their workers poorly, that was beyond Nike’s responsibility. At one point, Nike’s vice president for Asia claimed that Nike did not “know the first thing about manufacturing. We are marketers and designers.” Nike soon learned that the public was not persuaded by this response.

Ordinarily, we do not hold a person responsible for the actions of someone else. Assuming that the other person is an autonomous agent, we believe that each person is responsible for her or his own actions. But this is not always the case. There is a legal parallel to the idea that a business should be held responsible for the actions of its suppliers. The doctrine of *respondent superior*, Latin for “let the master answer,” holds a principal (e.g., an employer) responsible for the actions of an agent (e.g., an employee) when that agent is acting in the ordinary course of his or her duties to the principal.¹⁰ Thus, in the standard example, an employer can be held liable for damages caused by an accident involving an employee driving the company car on company business.

The justification for doing what might otherwise be considered unfair is that the agent is acting on the principal’s behalf, at the principal’s direction, and that the principal has direct influence over the agent’s actions. Thus, if someone is doing something for you, at your direction, and under your influence, then you must take at least some responsibility for that person’s actions. Most of the ethical rationale for business’s responsibility for the actions of its suppliers stems from two of these conditions: Suppliers often act at the direction of business, and business often exercises significant influence over the actions of its suppliers.

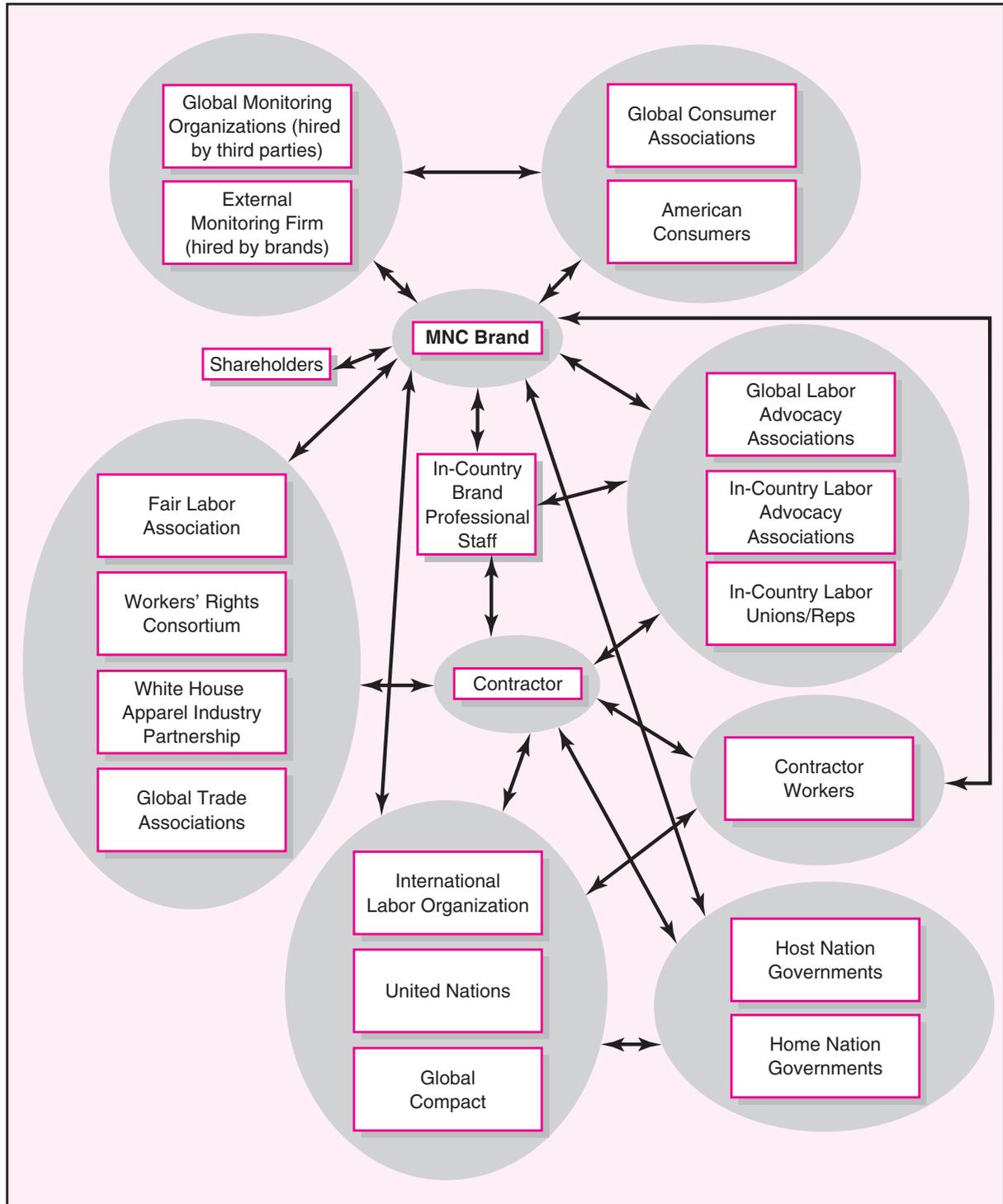
However, in the multinational apparel and footwear industry, historically the corporate brands accepted responsibility only for their own organizations and specifically did not regard themselves as accountable for the labor abuses of their contractors (see Figure 8.1). This conception changed as multinationals and others became more aware of working conditions in these factories and the lack of legal protections for workers. Today, multinationals customarily accept this responsibility and use their leverage to encourage suppliers to have positive working environments for workers. The new concept of responsibility travels far deeper throughout the entire supply chain system, as is depicted in Figure 8.2. Each

FIGURE 8.1
Historical Responsibility



Source: Reprinted with permission from D. Arnold and L. Hartman, “Moral Imagination and the Future of Sweatshops,” *Business & Society Review* 108, no. 4 (2003).

FIGURE 8.2 Evolved Concept of Responsibility



Source: Reprinted with permission from D. Arnold and L. Hartman, "Moral Imagination and the Future of Sweatshops," *Business & Society Review* 108, no. 4 (2003).

Opening Decision Point Revisited

Marketing to the Base of the Pyramids

Consider how a firm might market such household products as laundry soap differently in India than in the United States. Marketing in the United States can involve large plastic containers, sold at a low per-unit cost. Trucks transport cases from manufacturing plant to wholesale warehouses to giant big-box retailers where they can sit in inventory until purchase. Consumers wheel the heavy containers out to their cars in shopping carts and store them at home in the laundry room.

The aggregate soap market in India could be greater than the market in the United States, but Indian consumers would require smaller and more affordable containers. Prahalad therefore talks about the need for single-size servings for many consumer products. Given longer and more erratic work hours and a lack of personal transportation, the poor often lack access to markets. Creative marketing would need to find ways to provide easier access to their products. Longer store hours and wider and more convenient distribution channels can reach consumers otherwise left out of the market.

So, too, can imaginative financing, credit, and pricing schemes. Microfinance and microcredit arrangements are developing throughout less developed economies as creative means to support the capacity of poor people to buy and sell goods and services. Finally, innovative marketing can ensure that products are available where and when the world's poor need them. Base-of-the-pyramid consumers tend to be cash customers with incomes that are unpredictable. A distributional system that ensures product availability at the time and place when customers are ready and able to make the purchase can help create the capacity to consume. Prahalad's approach—tied to moral imagination discussed previously—responds both to the consumers and to the corporate investors and other for-profit multinational stakeholders.

element of what should strike you as a tremendously complicated set of interrelationships is based on the potential to influence or exercise leverage throughout the system. The question, however, relates back to our earlier discussion of responsibility. How far down—or across—the supply chain should responsibility travel? Should a firm like Nike truly be responsible for the entire footwear and apparel system? If not, where would you draw the line as a consumer, or where would you draw the line if you were the corporate responsibility vice president for Nike? What response will most effectively protect the rights of those involved while creating the most appropriate incentives to achieve profitable, ethical results? In today's increasingly complicated, globalized multinational systems, stakeholders have yet to resolve this challenging dilemma.

Questions, Projects, and Exercises

1. Are some products too dangerous to be marketed in any circumstance? What regulations, if any, would you place on marketing cigarettes? Handguns? Prescription drugs?
2. Conduct a classroom debate on the McDonald's spilt coffee case. Conduct an Internet search for this case (*Liebeck v. McDonald's*) to find both legal and journalistic comments on this case. One-third of the class should play the role of Mrs. Liebeck's attorneys, one-third the role of McDonald's attorneys, and one-third the role of the judge and jury.
3. Research the case *Pelman v. McDonald's* in which it was alleged that McDonald's was partially responsible for the health problems associated with the obesity of children who eat McDonald's fast food. Should McDonald's and other fast-food restaurants be judged negligent for selling dangerous products, failing to warn consumers of the dangers of a high-fat diet, and deceptive advertising?
4. The Federal Trade Commission regulates advertising on the basis of two criteria: deception and unfairness. How can an ad be unfair? Who gets hurt by deceptive advertising?
5. Collect several sample prescription drug ads from magazines, newspapers, and television. On the basis of location of the ad, what do you think is the intended target audience? Are the ads in any way misleading? Are the required side-effect warnings deceptive in any way? Do you believe that health care professionals provide adequate screening to ensure that prescription drugs are not misused?
6. Review the Decision Point concerning marketing in the schools and Channel One and reflect on your own educational experience. Assume you were offered a laptop computer as long as you understood that you would see a commercial every time you turned it on and for two minutes for every fifteen minutes of use. How would you feel about this arrangement from a gut perspective? As you consider it in greater detail, what types of restrictions on advertisements do you think the laptop manufacturer (or service provider who is responsible for managing the advertising messages) should impose if the laptops will be given to college-aged students? How would you develop standards for these restrictions?
7. Many salespeople are compensated predominantly on a commission basis. In other words, though the salesperson receives a small base hourly rate, most of her or his compensation derives from a percentage of the price of items sold. Since basically the salesperson makes money only if you buy something and he or she makes more money if you spend more money, do you ever trust a salesperson's opinion? What would make you more likely to trust a commission-based salesperson, or less likely? Is there anything a commissioned salesperson could do to get you to trust her or him? Best Buy, the consumer electronics store, communicates to consumers that it does *not* pay its salespeople on the basis of commissions in order to encourage objectivity. Are you more likely to go to Best Buy as a result?
8. In 2001 TAP Pharmaceuticals pled guilty to participating in a criminal conspiracy with doctors by providing free samples of Lupron for which the doctors later billed Medicare and patients. Federal prosecutors also charged TAP executives and midlevel managers with fraud, alleging that TAP employees bribed doctors and hospitals with cash, free vacations, and free samples as an incentive for them to prescribe Lupron. Defendants argued that the samples and gifts were standard industry practice and did not amount to a bribe. In December 2004, a jury acquitted the individuals involved. TAP itself settled its case with the government by agreeing to pay \$150 million restitution to consumers and insurance companies for what the government charged were artificially inflated drug prices. The prices were inflated because of the alleged bribes paid to doctors. TAP

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did not admit to any wrongdoing, claiming that it settled to avoid further legal costs. Studies have shown that samples, as well as small gifts and lunches, can lead doctors to prescribe more expensive brand names when cheaper generic drugs would be as effective. What additional facts might you need to know to make a fully informed judgment in this case? What outcome do you believe the pharmaceutical companies are striving to achieve through these practices? What alternatives might be available to pharmaceutical companies to serve a similar outcome without incurring legal liability or crossing ethical lines? Do the doctors or hospitals bear any ethical responsibility under these circumstances? What duties do the pharmaceutical companies, doctors, or hospitals have? What does the principle of fairness require in this case? What rights are implicated?

Key Terms

After reading this chapter, you should have a clear understanding of the following Key Terms. The page numbers refer to the point at which they were discussed in the chapter. For a more complete definition, please see the Glossary.

<i>caveat emptor</i> approach, p. 319	marketing, p. 313	word-of-mouth marketing, p. 340
“Four Ps” of marketing, p. 314	negligence, p. 322	
implied warranty of merchantability, p. 321	<i>prima facie</i> , p. 315	
	stealth marketing, p. 339	
	strict liability, p. 322	

Endnotes

1. C.K. Prahalad, *The Fortune at the Bottom of the Pyramid* (Upper Saddle River, NJ: Wharton Publishing, 2005)
2. The Levitt quote is taken from Theodore Levitt, “Marketing and the Corporate Purpose: The Purpose Is to Create and Keep a Customer,” a speech delivered at New York University, March 2, 1977, available from Vital Speeches of the Day. Similar claims can be found in Theodore Levitt, “Marketing and the Corporate Purpose,” Chapter 1 of *The Marketing Imagination* (New York: Free Press, 1983), pp. 5 and 7.
3. The American Marketing Association definition is taken from its Web site: <http://www.marketingpower.com/>
4. An informal Internet search found over a hundred companies advertising with this slogan. They ranged from real estate companies to antique dealers, and from long-distance phone providers to water filtration systems dealers. Presumably those who disagree do not advertise that fact.
5. See, for example, the PBS video *Affluenza*, produced by KCTS/Seattle and Oregon Public Broadcasting. See also Juliet Shor, “Why Do We Consume So Much?,” the Clemens Lecture at St. John’s University, in *Contemporary Issues in Business Ethics*, Joseph DesJardins and John McCall, eds., (Belmont, CA: Wadsworth Publishing, 2005); and Jim Pooler, *Why We Shop: Emotional Rewards and Retail Strategies* (Westport, CT: Praeger Publishing, 2003).
6. Regina Lawrence, “Framing Obesity: The Evolution of News Discourse on a Public Health Issue,” Harvard University Working Paper No. 2004-5, 2004, http://www.ksg.harvard.edu/presspol/Research_Publications/Papers/Working_Papers/2004_5.pdf.
7. References have been removed but are available from the authors.
8. McCann-Erickson U.S. Advertising Volume Reports and Bob Coen’s Insider’s Report for December 2005, <http://www.mccann.com/news/pdfs/insiders05.pdf>, accessed 6/16/06.
9. Direct Marketing Association, <http://www.the-dma.org/cgi/disppressrelease?article=787> (May 2006).

10. This parallel is explained in Michael Santoro, *Profits and Principles: Global Capitalism and Human Rights in China* (Ithaca, NY: Cornell University Press, 2000), p. 161, and is cited as well by Denis Arnold and Norman Bowie, "Sweatshops and Respects for Persons," *Business Ethics Quarterly* 13, no. 2 (2003), pp. 221–242.

Readings

Reading 8-1: "An Interview with Alex Molnar," by Jay Huber, p. 347.

Reading 8-2: "Sony Online Entertainment: EverQuest® or EverCrack?" by Laura P. Hartman and Moses L. Pava, p. 351.

Reading 8-3: "Everquest®: A Rejoinder to Hartman and Pava," by Tara Radin, p. 361.

Reading 8-4: "Wrestling with Ethics: Is Marketing Ethics an Oxymoron?" by Philip Kotler, p. 362.

Reading 8-1

An Interview with Alex Molnar*

Jay Huber

Stay Free!: Early in the book you bring up the Apples program, where people, by buying stuff at sponsoring stores, help schools get Apple computers. Does your criticism of that program boil down to it not being generous enough? Because you bring up the actual percentage of the amount that was set aside and take issue with that.

Molnar: It's pretty much just a straightforward marketing scam. It's an attempt to get parents to purchase products at stores that they might or might not otherwise patronize, on the grounds that they're somehow improving the chances that their children will have access to computer technology. But you gotta spend an awful lot of money to get any computer technology, because the way the rules are rigged, the people who make the most from the Apples for Computers game are the people who buy the computers from the manufacturer and then sell them to the marketers that run the contest. For a store that participates it's neither here nor there; they have a marketing budget and they spend it on this instead of something else. So, a marketer goes to them and says, Spend your advertising dollars this way. For the store, it doesn't make any difference at all. The big bucks are really for the people who inflate the cost of the computers to make their profit. Instead of being something that's really win-win for the kids, it's nothing more than a very large money-making operation for the middle people. If computer technology is important, I'm trying to imagine a stupider way of equipping schools with computers. If children need access to computer technology, then it ought to be a fundamental part of the school program. It ought to be paid for with tax dollars and every child ought to have equal access to that technology. It shouldn't be dependent on whether a parent can afford to buy \$150 worth of flank steak at Cole's.

Looking at it from a local level, with locally owned companies, can the desire to help out the local school system and the desire to get a good marketing push or a bit of goodwill out of it, can those desires coexist in any productive way?

No. First of all, although the Supreme Court at the end of the nineteenth century established the Constitutional fiction that corporations are legal individuals and that therefore they have constitutional protections that individuals have, that was kind of a nutty decision that has cast a long shadow over a lot of things. Quite apart from the legal consequences of it, it's led to a kind of assumption that we can talk about corporations the same way we can talk about individuals in everyday life. In fact, corporations are special interests. They have a legal obligation to promote the welfare of the people that own them. Simple as that, whether it's a closely held corporation owned by private individuals, or whether it's a publicly traded corporation. Any kind of scheme that involves a corporation will be held to one test, and that test is: does this benefit the corporation? Any other benefit that may accrue is tangential to that, is secondary to that. So any relationship with a business that a school enters into is characterized by the business first and foremost serving itself. Those interests may or may not coincide with the interests of the school. Most often they don't.

The other problem of thinking about corporations as individuals is that at a practical level, people tend to talk about corporate involvement and corporate citizenship with regard to schools and think about it the same way in which they think about a local PTO member (Parent-Teacher Organization) volunteering to do something for the schools. And it's absurd. Can you imagine in your wildest dreams that a father or mother volunteering to tutor children in a school would only do so if they were allowed to promote the business they worked for? People would say, What a reprehensible parent.

On the other hand, I could see the example of a fairly conscientious executive or a local CEO who says, "Hmm, you know, I really want to tutor poor kids who are reading several grades below level, and gosh, we can get our name out there at the same time." Does that latter motivation ultimately trump the former motivation?

Absolutely it does. If a business executive wants to tutor children, what's wrong with that? That's a wonderful and laudable thing to do. Why should that carry any other freight?

* * * *

. . . A recent educational supplement of *The New York Times* talked about how Colorado Springs and Seattle were examples of school systems that accept advertising dollars. The ostensible motivation for that is that they are cash-strapped and in places where any sort of tax revenue increase is highly unlikely.

Actually, in Washington state, it is possible.

I guess the way the writer couched it . . .

That's the rhetoric that's coming out of the school board. Certainly in a place like Colorado Springs, which is very conservative, it's probably not very likely that they're going to be able to raise tax revenue, or there's a strong public resistance to it . . . Since you read that, Jay, you realize that the amount of money that's even going full-tilt boogie . . . Colorado Springs is raising peanuts. About \$68,000.

* * * *

So the notion that this money can somehow be a necessary evil to alleviate cash shortages is a joke because it won't even come close to serving that function.

If you're going to discuss it within that frame of reference, then that's right: it's a joke. However, even if it would raise the necessary money, I'd say you shouldn't do it. Even if you accepted the premises of the argument, it's a wrong-headed argument. I don't accept the premises of the argument because I don't think that advertising, which is in essence propaganda, is consistent with the purposes of education. It's like matter and antimatter. They don't fit together.

Let's talk about that. A libertarian [Nick Gillespie] proposed to me the idea that classrooms are not uncontested space. There's ideology and agendas coming from various angles, even if you exclude commercials. In one sense, you can't really say that you can make the classroom a commercial-free zone, because there's all kinds of competing agendas already taking place.

I'd regard that as kind of a nutty argument, too. And the reason I say *nutty* is because of course it's a contested space. But the point is that it's contested explicitly with reference to public pedagogical, educational, and civic values. And that's very different than inserting propaganda, which is incomplete, misleading, and whose explicit purpose is not to promote the best interests of the children, but the welfare of the corporation. I mean that's an absolute given. And that's uncontested.

So of course classrooms and curriculum are contested space. What does it mean to promote the welfare of children? That's a question that contains all shades of meaning and is subject to all kinds of different interpretations. I think it should be that way. I agree with that. The question is: What is legitimate to contest and what isn't? Would your libertarian friend say that the most important contest that goes on in the classroom is the duel between Pepsi and Coke? Is that what we reduce our civic dialogue to?

He seems to think that some of these commercial inroads into the classrooms can be used for purposes of media critique.

Yeah, but you can't turn the whole school curriculum into media criticism. The problem is, most teachers are not trained in media criticism, they're trained in English or social studies or whatever. So, as a practical matter, that's not gonna happen.

Secondly, since most advertising propaganda is good propaganda, it never literally lies. It's either empty, in an appeal to the emotions: "Pepsi's cool," "Sprite is what's happening." And so on. It's empty, it means nothing. I was in Germany and I saw a commercial for Pepsi, and the whole tagline of the commercial was "Pepsi is America." Well, what's that? It's either empty or, it's really good propaganda in the sense that it doesn't tell you the complete story. In other words, it lies by omission. And most teachers are not able to be well-enough trained, or have the time, to say, "Look at all the things that are omitted. Look at all the things that weren't said."

I guess I was going to get into Channel One in that regard, too, because this educational supplement in *The New York Times* said that Channel One is now in almost 40 percent of the secondary schools in the country.

According to them, it's in about 12,000 [schools], but then they want to pump up their numbers to get advertising bucks. According to the NEA, it's in about 8,000. The figure's probably somewhere in between.

It's still fairly extraordinary. Given that, is it even a possible way to salvage the use of the thing with media critique. I mean, if it's going to be in the school already . . .

Not really, because of the contract terms. The terms have varied somewhat over the years; sometimes an individual school could negotiate a slightly different contract. But, in essence, 90 percent of the children need to be watching the program 90 percent of the time. In most schools, that means that those programs are broadcast in any class the child happens to be in when the program is broadcast. That might be homeroom, that might be science, it might be math, it might be anything. It might be gym. The idea that this is somehow going to be subject to media scrutiny is nonsense.

I hadn't realized that the element of control was so completely removed from the school.

Oh, the school has no control at all. None at all. Channel One is the antithesis of local control of curriculum. Nobody at the school knows what the content of that program is going to be until it appears on their screen.

Given that, you don't think that the North Carolina Supreme Court decision was correct? That is, you don't think the control should remain local.

Channel One would use whatever argument it can to make its tawdry bucks. The question of whether or not it's constitutional, despite their motives and intentions, is an entirely different thing. I think the North Carolina Supreme Court was led astray in the arguments. Schools are a creature of the state, not of local school districts. School districts are created as administrative contrivances of the state. If North Carolina wanted to disband all of its school districts tomorrow, it could. The ability of the state to regulate the schools strikes me as unassailable. Obviously the North Carolina Supreme Court disagrees. But I'm not sure constitutionally that's the final word on it. The federal Constitution reserves to the states all powers not explicitly granted to the federal government and education is not explicitly granted to the federal government; it's therefore state responsibility. It is not the primary responsibility of some school district which is itself a creature of the state. The federal government can't devolve powers that the Constitution reserves to it. It's like you can't sell your right to vote.

You bring up the *Nation at Risk* report at the beginning of the book, and you talk about how that led to this wave of corporate activism, and all the market ideas started flowering out of that. One thing that the corporate world certainly has is money. And this sort of touches on the later chapters on charter schools and privatization and that is: Are the public schools suffering from a huge PR problem? Is the crisis in education in some large way a huge corporate PR boondoggle to allow the public opinion to be more sympathetic to all these market ideas?

Corporate executives are all over on public education. Again, what corporate executives do best is serve their own purposes. I mean, we are fast evolving in this country a kind of mandarin class of wildly overpaid prima donnas called CEOs. So the first people they serve is themselves, the second people they serve are their corporate shareholders or owners, and so on. I think schools figure in some of this thought but only insofar as they might be able to use the schools to solve a public relations problem. Like Waste Management provides college scholarships to students at Carver High School in Chicago because they had this huge fine for dumping toxic waste in that neighborhood. That really doesn't have anything to do with education per se, it's just, "What the hell can we do to get out from under this public relations blemish?"

Some corporate executives are fairly enlightened. If I had to choose the educational values that they express personally, I would support them as opposed to many other folks. And other corporate executives see education as either a market to be exploited—I think Louis Gerstner, Jr. [CEO of IBM], is a prime example of that—or they see education as a cost to be contained. So I think corporate executives are just all over the map. These market-based school reforms are gaining adherence because anybody who's taken a look at the demographics at all realizes that with public education setting record enrollments—and it will continue to increase for about the next eight years—the potential tax liability is enormous. So the question is how do you contain the cost of that? If you look at the tax structure of most states, it doesn't take a genius to realize that corporations are going to have to pay more. Unless something gives, they gotta pay more because the people who had been footing the bill can't afford to anymore.

I think a lot of this sympathy is based on a fairly straightforward calculus as: this is a way of reducing our tax liability. These reforms are not only consistent with our basic

ideological predisposition—I mean, I kind of like the idea of “the market,” I like the sound of “competition,” and all of this other stuff—but, Christ, they probably cost less. There’s a lot of things that go into building corporate support or consensus about so-called market-based school reforms, privatization.

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*Alex Molnar is a professor at the University of Wisconsin–Milwaukee, author of *Giving Kids the Business: The Commercialization of America’s Schools*, and one of the nation’s leading experts on the commercialization of public education.

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Reading 8-2

Sony Online Entertainment: EverQuest® or EverCrack? Oxford-Style Debate Presented at Tenth Annual International Conference Promoting Business Ethics

Laura P. Hartman and Moses L. Pava

Abstract

This Oxford-style debate was held at the Tenth Annual International Conference Promoting Business Ethics between Laura Hartman, J.D., and Dr. Moses Pava. . . . In a traditional Oxford-style debate, two debaters take opposing viewpoints and the third debater argues the neutral position. At the Conference, the modified format featured the two debaters presenting diametrically opposing views—corporate responsibility versus personal responsibility. This modified format was also used during the Ethics Awareness Week, with University professors presenting the debate before the student body. Ms. Hartman’s position focused on the personal responsibility by Mr. Woolley while Dr. Pava opined that Sony Online Entertainment had corporate responsibility toward Mr. Woolley and all other individuals similarly situated.

Ms. Hartman’s Presentation

The question put to our debate today is who shall bear the responsibility for the death of young Mr. Wooley. Personally, I believe that we’re here arguing this issue, not because of a responsibility of Sony Online Entertainment, but instead simply because we have a need in our society to blame. By validating our blame, we then feel better able to prevent harm in the future. If we can find the cause, we can prevent the damage next time.

But, unfortunately, this is not always the case—and certainly not the case in this particular instance. As stated by Judge Nelson in the seminal case on this topic, “tragedies such as this simply defy rational explanation, and courts should not pretend otherwise.” Nor should my esteemed colleague from the East and nor should we all.

Note: Citations and references have been deleted, but are available from the authors.

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In my allotted time, I will set forth my plea that we not extend liability—whether legal or ethical—to Sony for the unforeseen death of Mr. Wooley. If we were to do so, we would have no choice but to barrel down the slippery slope of responsibility in connection with everything from a child’s television addiction to Teletubbies and Clifford, to those who overeat because of tantalizing candy packaging.

Consider the possibilities of a slippery slope if we impose liability—in any manner—on the supplier of entertainment for the implications of enjoying the entertainment. For example, there is extraordinarily more evidence of a real addiction to television among children. We allow significantly more violence—and in fact more widespread addiction—in our television and film media environments notwithstanding evidence that violence in the media begets violence in reality. Remarkably, the evidence is uncontroverted.

The question is this: if the general public and the Hollywood machine itself acknowledge that graphical violence in the media is bad for the individual and bad for society as a whole, why does it continue to grow and flourish?

The answer is simple: addiction.

A *New York Times* article reports the following:

One study found that self-described [television] addicts watched an average of 56 hours a week; the A.C. Nielsen Company reports the average for adults is just above 30 hours a week. Recent studies have found that 2–12% of viewers see themselves as addicted to television; they feel unhappy watching as much as they do, yet seem powerless to stop themselves. . . .

For compulsive viewers, inertia becomes extreme, so that the longer they watch, the more passive and less discriminating they become.

Similarly, a *Scientific American* article reported that 40 percent of adults and 70 percent of children surveyed said that they were watching more television than they would like. What is to blame here for any unfortunate implications? Our society has concluded that the networks, producers, and other providers of this entertainment are certainly not responsible. Instead, the responsibility lies flatly on the user. Though we wish there was someone else who could pay a price, the responsibility for Mr. Wooley’s death also lies with Mr. Wooley and not Sony Online Entertainment.

My argument will focus on three areas, two teleological contentions and one deontological: (1) the lack of foreseeability of harm, (2) Mr. Wooley’s assumption of risk in violating reasonable use expectations, and (3) Sony’s right to freedom of speech. In considering the underlying claims with regard to Mr. Wooley’s demise, perhaps we can learn from this third inquiry based on individual rights and responsibilities. What are Sony’s rights in connection with this complaint? Freedom of expression and the right to product commercialization in a free market. What then are Sony’s responsibilities with regard to the Wooley complaint? Our discussion of foreseeability and of assumption of risk will address this arena.

The overriding theme of this discussion is the nature of personal accountability itself. As stated by Judge Posner of the 7th Circuit, “people are unlikely to become well-functioning, independent-minded adults and responsible citizens if they are raised in an intellectual bubble.” In that case, the video games involved were perceived as tremendously violent and inappropriate for children. Judge Posner held that preventing children from this type of exposure—certainly more insightful of violence to self and/or others than EverQuest®—was not warranted and in fact may be harmful in other ways, as he explains in his above comments. Besides, as has been stated in multiple arenas also in support of this concept of accountability, it is a significant challenge to blame another for an individual’s suicide.

This accountability is reiterated in a statement by the Commission on Marketing and Advertising of the International Chamber of Commerce:

Marketers and advertisers must market and sell their products to children in a responsible manner. It is equally important that other parties, such as parents, educators, the media, entertainment content providers and both governmental and non-governmental organizations should also play a role in helping children develop a critical understanding of advertising and other media messages.

Nowhere in the ICC's regulations relating to marketing is there any prohibition of marketing a product such as EverQuest®. In particular, the only prohibitions articulated under "social responsibility" include a proscription against discrimination, against unjustifiably playing on fear, inciting violence or encouraging reprehensible behavior, and against playing on superstition.

If we protect our children from exposure to experiences derived from video games that are so involving as to be considered addicting, how will these same children learn self-control, self-discipline and discrimination between and among the vast multitude of media experiences they are destined to have as adolescents and adults?

Lack of Foreseeability

The first basis on which I will argue against liability is the lack of foreseeability. The key to any responsibility here of any sort must first be premised on Sony's ability to have actually foreseen the potential death of Mr. Wooley. There is absolutely no evidence nor barely a reason to believe that Mr. Wooley's death was proximately related to Sony's game. Mrs. Wooley insists that it is simply her "guess" that something terrible in the game prompted Mr. Wooley's choice to commit suicide. Even if there were some evidence of proximate cause (which there is not), if the company could not possibly have anticipated the death, how can it be expected to prevent it?

In a similar case involving a youth who committed suicide after becoming engrossed in the role-playing game, *Dungeons and Dragons*, the conclusion was that a responsibility would only arise if the resulting harm could have reasonably been anticipated. In that case, the youth's mother asserted that Johnny had "never caused his mother any problems," and that "no one had any reason to know that Johnny Burnett was going to take his own life." The court explained that, if Johnny's own mother could not foresee the possible harm, how could the game manufacturer possibly have known?

If we conclude that Sony is responsible for the death of Mr. Wooley, aren't we then concluding as well that any manufacturer of a product that people enjoy and from which they simply "just cannot pull themselves away" is accountable for any resulting harm? Mark misses his children at the school bus because he can't pull himself away from his favorite soap opera? Is the broadcasting station responsible for resulting harm? Of course not. But it would be counterintuitive to claim that the producer is not striving for soap opera addiction, wouldn't it? Yet we would never consider that same producer responsible for the results of that addiction such as eating disorders, lack of attention to work, and so on.

In addition, also highly relevant to the concept of foreseeability—or lack thereof—is the fact that Mr. Wooley suffered from depression and a schizoid personality disorder. These aggravating factors could not possibly have been anticipated by Sony. Consider the following language from Watters:

The defendant [game manufacturer] cannot be faulted, obviously, for putting its game on the market without attempting to ascertain the mental conditions of each

and every prospective player. The only practicable way of insuring that the game would never reach a “mentally fragile” individual would be to refrain from selling it at all.

This dicta was later used to support the successful defense of an entertainment firm that marketed the movie, *The Basketball Diaries*, against the claim that the movie incited the violence of several youths in the Columbine tragedy. As the court explained in *Watters*, “we are not dealing here with the kind of violence or depravity to which children can be exposed when they watch television, or go to the movies, or read the fairy tales of the Brothers Grimm, for example.” Similarly the benign EverQuest® does not rise to those levels.

In the alternative, if the harm was foreseeable to any extent, shouldn’t the weight of the responsibility fall on those who were most likely to be able to influence his actions? *48 Hours* explained that Mr. Wooley quit his job late the previous autumn, he stopped seeing his family, and he ceased to take care of himself and his apartment. His mother then realized that “he was completely addicted, playing all night and day.” In fact, he was prone to epileptic seizures which were aggravated by the game; yet his mother permitted him to continue without intervention. Notwithstanding any responsibility of Sony to know that Mr. Wooley might have ill effects from playing the game, might not his mother have sensed a problem of some sort whatsoever at these admittedly abnormal occurrences?

Assumption of Risk and Reasonable Use

The next basis for Sony’s defense is the concept of “assumption of risk.” In this case, Mr. Wooley and his parents assumed a risk that was known—“Shawn was playing 12 hours a day, and he wasn’t supposed to because he was epileptic and the game would cause seizures.” In addition to the epilepsy, there remains the question of how a reasonable person would experience this game. Similar to the *Watters* case, there is no question but that EverQuest® is a “let’s pretend” game—not an incitement to do anything more than exercise the imagination.

If Mr. Wooley chose to abuse the game by exceeding a reasonable playing time, with full knowledge of his epileptic risk, Sony should not bear responsibility for the results of his recklessness. It is neither Sony’s legal nor ethical obligation to police all of its users as would, say, a parent.

Reasonable use of EverQuest® has never been shown to be harmful. Sony cannot be held responsible because certain individuals choose to use the product in an unreasonable manner.

It should be noted that this was a rare and individual case. To claim that addiction to EverQuest® was the decisive factor in his suicide is no more accurate than saying purchasing a computer drove his life to a premature end.

First Amendment Freedom of Speech

In considering Sony’s affirmative defenses, it appears that Sony would have both a legal and an ethical defense to any responsibility based on the First Amendment. From a legal perspective, Sony might bear responsibility only if its expression (EverQuest®) was “directed to inciting or producing imminent lawless action and likely to incite or produce that action.” Nowhere in any of the Wooley claims is there a contention that Sony’s actions were “directed” to inciting or producing Mr. Wooley’s suicide.

Significantly, not only has there been no contention in the literature that freedom of speech *should* be curtailed except in instances of violence, but the courts have not been willing to constrain speech even where it is contended that the expression *does* incite violence. In the case where a 13-year-old hung himself after watching a mock hanging on

television, the court barred recovery against the broadcaster (even where the court found a negligent failure to give adequate warnings). In another case where a youth hurt himself while trying to duplicate a sound effect demonstrated on television, the court barred recovery on First Amendment grounds. In the name of the First Amendment, the courts have even precluded recovery in a case filed on behalf of a nine-year-old victim of a bizarre sexual crime committed by minors allegedly copying a similar crime seen on television! In Mr. Wooley's case, the facts are far less persuasive that Sony's expression (EverQuest®) somehow incited violence than the convincing, credible, and disturbing facts cited above.

From an ethical perspective, the freedom of speech is one of the most oft-cited hypernorms in the consideration of fundamental rights. In order to suggest this constraint on Sony's expression, the protection of its free expression must constitute an overwhelming violation of a countervailing value. Since prior arguments do not support this countervailing value, Sony's right to free expression would prevail.

Therefore, not only does the constraint hold no water from a legal perspective, but restricting this expression also violates fundamental concepts of human rights and hypernorms.

In conclusion, though in troubling times we strive to find someone to blame, someone to "pay," there remain those circumstances where we can look no further than the individual who engaged in the damaging act. In this case, that individual was Mr. Wooley, and Mr. Wooley alone. Sony Entertainment could not possibly have foreseen that harm would result from playing its game. In fact, the person best positioned to have foreseen the harm and perhaps even to have prevented it was Mr. Wooley's mother. She noticed his personality changes and changes in their relationship—factors of which Sony had no knowledge, of course. One hates to place an additional burden on an otherwise grieving mother in this circumstance. Perhaps pursuing this complaint in part helps her feel as if she is doing everything that she can since his death to reach peace.

Accountability also falls on Mr. Wooley for using the game in a manner that presented some risk to himself. By assuming this risk, Mr. Wooley violated Sony's expectations of reasonable use, thus preventing the aforementioned foreseeability. Finally, Sony's expression in EverQuest® is protected as free speech and our slippery slope argument has evidenced the ludicrousness of constraining this type of entertainment. What is next? A claim that someone is addicted to the *Lord of the Rings* trilogy and therefore was "forced" to spend their money to see the last installment?

Recall Judge Posner's caution that "people are unlikely to become well-functioning, independent-minded adults and responsible citizens if they are raised in an intellectual bubble." Let us not all sacrifice our adult capabilities and exposure simply because one man's behavior warrants it.

Dr. Pava's Presentation

Resolved: Sony bears no responsibility, whether ethically or legally, for damages incurred as a result of playing EverQuest®.

"Only a cheesy company can make real cheesy hamburgers." So goes the corporate motto of the hypothetical company Cheesy Cheese Hamburgers.

Cheesy Cheese is one of the leading purveyors of fast food in the world and is an American icon recognized across the globe.

Two years ago, though, things began to unravel for the fast food giant. The company was losing market share, and quarterly profits were down for the first time in anyone's memory. That's when the board hired Laura Headman. An attorney by training, Ms. Headman had gained a reputation over the years as a hard-nosed, no-nonsense hamburger wiz!

As Laura took over the reigns at Cheesy Cheese Hamburgers, she was concerned about the increasing popularity of some of the new restaurant chains that were attracting some of Cheesy Cheese's more upscale customers. Laura was also informed by her lawyers about a number of recent legal suits filed against the company claiming that Cheesy Cheese Hamburgers was responsible for their obesity problems. These legal suits had captured the imagination of the media, and some of the corporate giants in the industry had taken notice and action.

CEO Headman, however, was certain that these legal claims were just a frivolous nuisance. In fact, Laura believed strongly in the doctrine of the consumer as king. She was so convinced of Cheesy Cheese Hamburgers' right to sell as many hamburgers as it possibly could that she actually decided to increase the fat content in the company's fries and shakes after her research department informed her that the new recipes scored higher in head-to-head taste tests, especially among children and young teenagers.

Laura Headman also decided to refocus the chain's advertising, targeting the company's efforts directly to children and teenagers through clever television ads making use of well-known cartoon characters, movie-placements, and cereal tie-ins. Headman even has plans for a theme park built around Cheesy Cheese's corporate logo—the cheesy cow.

"This company got its start by inventing the idea of serving the best tasting fast food at very reasonable prices. I see no reason to deviate from this formula," said Laura. "We sell what families want, and that's what we're going to continue to do—only better and even more efficiently."

When asked about health concerns Laura laughed and said, "we're a fast food company for God's sake, and not a healthcare company. It is the consumers' responsibility to eat a well-balanced diet, not big brother's responsibility to make sure that they do."

Laura Headman's strategy is short-sighted. To claim that a company bears no responsibility for the effects of its product on consumer health is bad ethics and bad business. Sooner or later, as has happened in the tobacco industry, alcohol industry, and chemical and oil industries, Cheesy Cheese Hamburgers and its shareholders will need to rethink core business objectives and strategies, but by then it might be too late.

Even if it's too late for Cheesy Cheese Hamburgers, it's not too late yet for Sony Online Entertainment. Though I don't think anyone believes that Sony is legally liable for the death of Shawn Wooley—the 21-year-old young man, who quit his job, holed up in his apartment for a week, and whose body was found in a rocking chair at his computer desk with EverQuest® still playing on his computer screen—I do think that this case should serve as a shrill wake-up call to the industry.

Unlike Laura Headman in the Cheesy Cheese case, Scott McDaniel, VP of Marketing for Sony Online Entertainment, and John Smedley, President, are real flesh and blood executives and not products of someone's imagination. As high-level executives in the new and emerging industry of online fantasy games, they, like all of us, own a degree of responsibility for the products they invent, manufacture, and market.

It should go without saying that Mr. McDaniel is surely correct when he states that "There's a duty on the consumer to use it [the product] responsibly." Even more so, I would think it should go without saying that there is a duty on the part of the manufacturer to act responsibly. This is what is called corporate social responsibility, an idea endorsed at least in words by almost all major corporations in the world today including Sony.

EverQuest® players enter into an enormous virtual world called Norrath "with its own species, economic systems, alliances, and politics." Players create their own characters. They might choose to be elves, trolls, knights, or even monsters. What many game players find so exciting and liberating is, as the case states, that once the players choose a character,

they are then “free to roam the fantasy world,” slaying other monsters, forming guilds, and becoming the powerful rulers of Norrath.

Even Milton Friedman, the economist famous for endorsing the magical benefits of the free market system, would surely recognize the difference between the fantasy world of Norrath and the real world of corporate America.

In the case at hand, Sony is not operating in a virtual world with its own economic and political system. Scott McDaniel and John Smedley are neither gnomes nor monsters “free to roam the fantasy world” and to choose whether to be human or not, as game players are, but are high level business leaders morally responsible to a host of diverse stakeholders.

Like the hypothetical company Cheesy Cheese Hamburgers, Sony Online Entertainment is producing a product that is highly desirable and harmless to many and perhaps most consumers, but is also potentially dangerous to a significant number of them.

Consider some of the following facts:

- EverQuest® is so addictive that the average player spends 20 hours per week online. As the magazine, *Business 2.0*, calculates it, that’s more man-hours per week than it took to build New York City’s Empire State Building.
- One-third of players 18 and older spend more time playing EverQuest® than they do their real jobs.
- About two-thirds of players self-report that they are probably addicted to the game.
- About 5 percent of players play for more than 50 hours per week.
- About one out of five players self-report that they would spend all of their time online if they could.

There is some preliminary evidence that video games increase the production of dopamine, the molecular neurotransmitters of the brain that has been found to play a major role in other addictions like cocaine use.

As one player puts it, “I call myself an addict because I share the same symptoms as someone who’s addicted to smoking, or alcohol, or some other substance. I think about EverQuest® when I’m not playing, I get stressed when I have to go 24 hours without logging on for a fix, and I wasn’t able to quit when I tried. If that’s not an addiction, I don’t know what is.”

If one defines an addiction as “a recurring behavior that is unhealthy or self-destructive which the individual has difficulty ending” as one researcher has, then there can be little doubt that EverQuest® is highly addictive for some players.

According to Addictions Counselor Jay Parker here are just some of the symptoms of computer game addiction:

- Failed attempts to control personal computer use for an extended period of time.
- Neglecting family and friends.
- Lying to employers and family about computer activity.
- Problems with school or job performance.
- Feelings of guilt, shame, anxiety, or depression.
- Obsessing about sexual acting out through the use of the Internet.
- Withdrawal from real life hobbies and social interactions.
- Denials, rationalizations, and minimization of adverse consequences stemming from computer use.

It appears that just as some addicts have a hard time admitting that a problem really exists, so too do Sony and its top executives. I don't think that Sony should stop producing its popular on-line games like Ever-Quest®, but I do believe that in the long run it is in the company's own interest to recognize its corporate social responsibilities. These responsibilities derive from Sony's huge information advantage over consumers and from the fact that its product, when used correctly, may be harmfully addictive to a minority of players.

Here are four simple ideas for meeting its obligations to its most vulnerable consumers:

- Sony should fund third-party research to determine the precise effects of its game. Although, as mentioned above, there is some preliminary research on the effects of computer games, more rigorous studies are needed, especially research on neurotransmitters and their relationship to computer game addiction.
- Sony should strongly consider putting on warning labels informing customers of the possibility of online addiction, even if Sony considers the probability of addiction to be quite low.
- Sony should stop marketing the game to children and young teenagers. Even the most staunch free-marketers recognize the limitations of children to make rational choices.
- Finally, Sony should change the incentives of the game. As it is currently set up, the longer one is online the more likely one's characters will be successful. In fact, the game continues even when one is not online and one's characters are at risk. In addition, because of the formation of teams, there is strong peer pressure to stay online as long as possible. Sony should also consider putting on a time limit on weekly play.

Let me conclude with a short quote from Nobuyuki Idei, Chairman and Chief Executive Officer of Sony:

Creating successful businesses in the short term is a goal of management. But I also feel that management must look beyond this to conduct corporate activities in a way that strikes a harmonious balance with diverse communities over the long term.

Ms. Hartman's Rebuttal Response to Dr. Pava

Did Sony have any responsibility at all for the death of Mr. Wooley?

Dr. Pava mentions our protagonist just ONCE in his argument, evidencing the lack of ANY link between Sony and Mr. Wooley at all!!

Instead, he found it necessary to make up a hypothetical that goes far beyond the facts of the current case. Evidently, he needed to do so since the current facts do not actually support a claim of Sony responsibility. It is completely understandable since I have found myself using the exact same ploy in class sometimes when I am struggling to make a point.

But, for better or worse, the slippery slope from manufacturing a video entertainment game to abetting obesity or heart disease from eating a high-fat diet is simply nonexistent. (Though I do not actually buy in to his contention that a company is responsible in any way for the eating habits of its consumers, either! What did YOU have for lunch today and did someone make you do it??)

In addition, I do not think even Dr. Pava's extensive research in this area could uncover a link between his hypothetical company's financial challenges and its subsequent intent to create an addiction to cheeseburgers, and Sony's current extraordinary financial comfort level. Sony has posted operating revenues of \$62 billion and net income of \$963 million for fiscal year 2003.

Instead, Dr. Pava chooses not to respond at all to the far more appropriate comparison between entertainment through a video game and entertainment through a sitcom or other television show. Dr. Pava bases his argument for Sony responsibility on a claim that “there is a duty on the part of the manufacturer to act responsibly.” Of course Sony would agree that manufacturers have a duty to act responsibly—and THEY DID DO. Dr. Pava in fact fails to identify any standard of practice that Sony has not met or any way in which he could claim that they have been irresponsible.

Instead, he bases his entire argument on his contention that Sony is “producing a product that is highly desirable and harmless to many and perhaps most consumers.” Well, of course, I would agree. He then offers a number of interesting facts about addiction. Also interesting. However, HE FAILS TO LINK THESE TWO DISCUSSIONS! There is absolutely nothing offered to you by my colleague that even begins to suggest medical evidence that Sony has encouraged an addiction to EverQuest®. And, without that link, a manufacturer has never been held liable for a customer’s addiction to a product!

Further, he fails to cite even one case in the world that finds a manufacturer liable—legally or ethically—for an addiction to a video game (or to a television show, or cheeseburger, for that matter). Do you not think he would have told you about one if he could only have found one?

He has told you all that he could, and it is not enough to change the facts.

Dr. Pava’s Rebuttal Response to Ms. Hartman

Let me begin this second part of the debate by noting my agreement with Laura.

I don’t believe that Sony should be held legally responsible for the death of Shawn Wooley. As an aside, I should point out, in the interest of full disclosure, that if I were ever to get into the kind of trouble that Sony is in, I’d love to get Laura on my side as my defense attorney.

Unfortunately there is little else I can agree with in her presentation. Most importantly, *I would suggest that there is a stark difference between legal and ethical responsibilities.* In fact, this is what makes this case so interesting and important in the first place.

So, unlike Laura, I don’t think that the only reason we’re debating this case is because “we have a need in our society to blame.” Rather, I believe the reason for engaging in this debate is to underscore the importance of corporate social responsibility to our society. Perhaps by raising these issues here and in the classroom, we can begin to protect the most vulnerable members of society (like Shawn Wooley) from being the victims of corporate manipulation.

This case demonstrates exactly why the concept of social responsibility is so important. Here is a situation where the legal remedy is probably too costly from society’s point of view (Laura’s right about that), but where a real sense of social responsibility just might make a difference (this is where Laura’s mistake lies).

From a legalistic perspective, it may be true that Sony could not have *foreseen the death* of Shawn Wooley. But, from an ethical point of view, I’m not sure that this is the real issue. Could Sony have foreseen the possibility that some players might become addicted to their game, especially when the game never ends and the longer you play the better your odds are? And, further, doesn’t Sony have an obligation to study the effects of its product on consumers, especially if these effects are unknown? These are not legal questions, of course, but are nothing more than a matter of common sense.

Laura also suggests that a basis for Sony’s defense is the concept of the “*assumption of risk.*” She says, “Mr. Wooley assumed a risk that was known.” This is a view that only a lawyer could love.

It misses the entire point of what addiction is all about. Addiction means you want to stop but you *can't*. Mr. Wooley didn't assume a risk that was known as if he was an economist specializing in rational choice theory. Mr. Wooley started playing a game that looked innocent enough but once he got started he couldn't stop.

Of course, we don't know whether or not EverQuest® is truly addictive from a scientific point of view or whether or not Mr. Wooley's death really had anything to do with his addiction, but minimally the case does demonstrate that Sony has a responsibility to its game players to find out. There is already enough evidence to make one extremely suspicious.

Laura believes in freedom of speech and so do I.

But when looked at from a social responsibility perspective and not from a legalistic perspective, this case shows how precarious this right is. The only way such a right can be maintained in a democracy such as ours is if citizens, including corporate executives, use the right constructively.

To the extent that a company exploits its right to freedom of speech in order to produce and market a game that is potentially dangerous to a sizeable group of consumers, it is acting in an irresponsible way, especially when it is marketing the game to children and young teenagers. Further, this kind of behavior makes it *more* difficult for proponents of free speech like Laura and myself to defend it not less difficult.

"If we protect our children from exposure to experiences derived from video games that are so involving as to be considered addicting, how will these same children learn self-control and self-discipline?" asks Laura.

Hmm. I don't know, but I'm sure if we all put on our thinking caps we could figure out a way to teach our children self-control in a world without EverQuest®. If nothing else works, we could always put them in front of the TV, buy them a Big Mac, pour them a Bud, and offer them a cigarette. That should do the trick!

Rushword Kidder recently identified the universities from which 13 executives graduated. These executives were drawn from the leadership ranks of firms such as Imclone, Tyco, Enron, Arthur Andersen and so on. Their alma mater(s) included Harvard, NYU, Ohio State, University of Houston, Northwestern, Tufts, SMU, Barnard, and other fine institutions. He then asked "how can you hold those schools accountable for the deviance of a few, when so many of their graduates care deeply about ethics?"

One might even add, certainly these universities could not have foreseen what these graduates would do in the future. And, these universities more than any other institution enjoy the protection of the First Amendment's right to freedom of speech.

But a recent President of the Business Ethics Society took Kidder to task. She asked, and I think correctly, "How can you hold those schools accountable? I ask how can we not? Consider the alternative. If we are not responsible for the impact (or lack thereof) that we have on our students, then what is our purpose? Doesn't each of us seek to leave an imprint on our students? And if that imprint is irrelevant to their later decisions, what is our value as educators?"

The President of the Business Ethics Society, Laura Hartman, was not suggesting that these schools bear a legal responsibility: she was suggesting that they bear a social responsibility.

Let me take Laura's own words and apply them to the case at hand.

How can we hold Sony accountable? I ask how can we not? Consider the alternative. If Sony is not responsible for the impact that it has on consumers, then what is its purpose? Certainly, Sony must have an obligation beyond its own self-interest.

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Reading 8-3

Everquest[®]: A Rejoinder to Hartman and Pava

Tara Radin

Interestingly, the popular TV drama *Boston Legal* recently featured an episode in which this very issue was addressed. In the episode, a mother sued a video game company when her son died from a heart attack after playing their game for two days straight, barely eating or drinking. The fictional TV show mentioned some very real studies that indicate that video gaming causes an adrenaline rush and an increase in dopamine levels, also linked to the reinforcing effects of drugs like cocaine. The assumption by many people tends to be that the fault here lies with the individual, and this was also the decision of the fictitious judge in *Boston Legal*, who ruled that there was insufficient evidence linking the dead child to any fault on the part of the video game company.

It is perhaps important to separate the intricacies of our legal system from the social and/or moral responsibility of corporations. In this situation, members of corporations are aware that intense video gaming has an effect on the brain similar to that of drugs—it can be called “addictive.” This causes changes in some people who play video games, in that it has been observed that they stop taking care of themselves, in terms of regular sleep, eating, attention to work, and so on. In fact, the people who make these games know this and actually prey upon it, if indirectly, in that they endeavor to keep people engaged in their games as much as possible for as long as possible.

From a business perspective, Sony’s strategy is ingenious. The more a person plays, the more he or she has to play in order to reach higher levels. In addition, there is an advantage to playing the game for multiple consecutive hours in terms of the progress the player is able to make. The very nature of the game therefore compounds any other addictive qualities of the game. The significant effect of Everquest[®] is manifest in the incredible community—even offline—that has developed around the game. Through eBay, Everquest[®] fans can bid on hundreds of weapons and characters that players have acquired—some that sell for more than a thousand dollars.

While the slippery slope to which Hartman refers is of very real concern, it is important to distinguish a product known to affect the brain in an addictive fashion from other sorts of potentially undesirable products. And while Mr. Wooley’s death might have been unanticipated, it was not unforeseeable—the negative effect the game had on his life was entirely consistent with the strategy Sony set out to achieve. If we did not have sufficient evidence of this at the time of Mr. Wooley’s death, we certainly do now.

Aside from the legal implications, what about Sony’s moral responsibility? What about Abercrombie and Fitch, a clothing company that distributed a catalogue targeted to children and young adults, which featured provocative, explicit photos of group of scantily clad young people (labeled as pornography by some critics)? Should we have to rely on our legal system to send the message that this sort of predatory behavior is unacceptable? Or should not businesses be willing to take that responsibility on themselves?

Hartman’s argument that excessive paternalism prevents vital learning is an important message, consistent with concern expressed regarding the decision by soft drink companies to remove most of their products from schools. It is essential, however, not to allow the power of that argument to blur the difference between sodas and physically addictive products and, arguably, pornography. Again, there are studies that suggest that video games are like drugs. If these studies are accurate, how can we ignore that reality?

The purpose here is not to advocate a particular course of action, but to emphasize how important it is that we not treat this too casually. It is about very real harm that is happening as a result of altered brain activity, intentionally being caused by video game manufacturers. Should not it bother us that manufacturers are preying on our physical weaknesses? Moreover, should not manufacturers, as members of society, care about the effect of their products on stakeholders? Perhaps the issue is not the inability of the legal system to address this situation adequately, but, rather, the unwillingness of people in companies independently to recognize their own moral and/or social responsibilities to their own families and communities. In a sense, then, perhaps the societal reaction to sodas in schools is a positive step.

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Reading 8-4

Wrestling with Ethics: *Is Marketing Ethics an Oxymoron?*

Philip Kotler

Every profession and business has to wrestle with ethical questions. The recent wave of business scandals over inaccurate reporting of sales and profits and excessive pay and privileges for top executives has brought questions of business ethics to the fore. And lawyers have been continuously accused of “ambulance chasing,” jury manipulation, and inflated fees, leaving the plaintiffs with much less than called for in the judgment. Physicians have been known to recommend certain drugs as more effective while receiving support from pharmaceutical companies.

Marketers are not immune from facing a whole set of ethical issues. For evidence, look to Howard Bowen’s classic questions from his 1953 book, *Social Responsibilities of the Businessman*:

Should he conduct selling in ways that intrude on the privacy of people, for example, by door-to-door selling? Should he use methods involving ballyhoo, chances, prizes, hawking, and other tactics which are at least of doubtful good taste? Should he employ “high pressure” tactics in persuading people to buy? Should he try to hasten the obsolescence of goods by bringing out an endless succession of new models and new styles? Should he appeal to and attempt to strengthen the motives of materialism, invidious consumption, and keeping up with the Joneses? (Also see N. Craig Smith and Elizabeth Cooper-Martin, “Ethics and Target Marketing: The Role of Product Harm and Consumer Vulnerability,” *Journal of Marketing* (July 1997), pp. 1–20.)

The issues raised are complicated. Drawing a clear line between normal marketing practice and unethical behavior isn’t easy. Yet it’s important for marketing scholars and those interested in public policy to raise questions about practices that they may normally endorse but that may not coincide with the public interest.

We will examine the central axiom of marketing: Companies that satisfy their target customers will perform better than those that don’t. Companies that satisfy

customers can expect repeat business; those that don't will get only one-time sales. Steady profits come from holding onto customers, satisfying them, and selling them more goods and services.

This axiom is the essence of the well-known marketing concept. It reduces to the formula "Give the customer what he wants." This sounds reasonable on the surface. But notice that it carries an implied corollary: "Don't judge what the customer wants."

Marketers have been, or should be, a little uneasy about this corollary. It raises two public interest concerns: (1) What if the customer wants something that isn't good for him or her? (2) What if the product or service, while good for the customer, isn't good for society or other groups?

When it comes to the first question, what are some products that some customers desire that might not be good for them? These would be products that can potentially harm their health, safety, or well-being. Tobacco and hard drugs such as cocaine, LSD, or ecstasy immediately come to mind.

As for the second question, examples of products or services that some customers desire that may not be in the public's best interest include using asbestos as a building material or using lead paint indiscriminately. Other products and services where debates continue to rage as to whether they are in the public's interest include the right to own guns and other weapons, the right to have an abortion, the right to distribute hate literature, and the right to buy large gas guzzling and polluting automobiles.

We now turn to three questions of interest to marketers, businesses, and the public:

1. Given that expanding consumption is at the core of most businesses, what are the interests and behaviors of companies that make these products?
2. To what extent do these companies care about reducing the negative side effects of these products?
3. What steps can be taken to reduce the consumption of products that have questionable effects, and is limited intervention warranted?

Expanding Consumption

Most companies will strive to enlarge their market as much as possible. A tobacco company, if unchecked, will try to get everyone who comes of age to start smoking cigarettes. Given that cigarettes are addictive, this promises the cigarette company "customers for life." Each new customer will create a 50-year profit stream for the cigarette company if the consumer continues to favor the same brand—and lives long enough. Suppose a new smoker starts at the age of 13, smokes for 50 years, and dies at 63 from lung cancer. If he spends \$500 a year on cigarettes, he will spend \$25,000 over his lifetime. If the company's profit rate is 20 percent, that new customer is worth \$5,000 to the company (undiscounted). It is hard to imagine a company that doesn't want to attract a customer who contributes \$5,000 to its profits.

The same story describes the hard drug industry, whose products are addictive and even more expensive. The difference is that cigarette companies can operate legally but hard drug companies must operate illegally.

Other products, such as hamburgers, candy, soft drinks, and beer, are less harmful when consumed in moderation, but are addictive for some people. We hear a person saying she

has a “sweet tooth.” One person drinks three Coca-Colas a day, and another drinks five beers a day. Still another consumer eats most of his meals at McDonald’s. These are the “heavy users.” Each company treasures the heavy users who account for a high proportion of the company’s profits.

All said, every company has a natural drive to expand consumption of its products, leaving any negative consequences to be the result of the “free choice” of consumers. A high-level official working for Coca-Cola in Sweden said that her aim is to get people to start drinking Coca-Cola for breakfast (instead of orange juice). And McDonald’s encourages customers to choose a larger hamburger, a larger order of French fries, and a larger cola drink. And these companies have some of the best marketers in the world working for them.

Reducing Side Effects

It would not be a natural act on the part of these companies to try to reduce or restrain consumption of their products. What company wants to reduce its profits? Usually some form of public pressure must bear on these companies before they will act.

The government has passed laws banning tobacco companies from advertising and glamorizing smoking on TV. But Philip Morris’s Marlboro brand still will put out posters showing its mythical cowboy. And Marlboro will make sure that its name is mentioned in sports stadiums, art exhibits, and labels for other products.

Tobacco companies today are treading carefully not to openly try to create smokers out of young people. They have stopped distributing free cigarettes to young people in the United States as they move their operations increasingly into China.

Beer companies have adopted a socially responsible attitude by telling people not to over-drink or drive during or after drinking. They cooperate with efforts to prevent underage people from buying beer. They are trying to behave in a socially responsible manner. They also know that, at the margin, the sales loss resulting from their “cooperation” is very slight.

McDonald’s has struggled to find a way to reduce the ill effects (obesity, heart disease) of too much consumption of their products. It tried to offer a reduced-fat hamburger only to find consumers rejecting it. It has offered salads, but they weren’t of good quality when originally introduced and they failed. Now it’s making a second and better attempt.

Limited Intervention

Do public interest groups or the government have the right to intervene in the free choices of individuals? This question has been endlessly debated. On one side are people who resent any intervention in their choices of products and services. In the extreme, they go by such names as libertarians, vigilantes, and “freedom lovers.” They have a legitimate concern about government power and its potential abuse. Some of their views include:

- The marketer’s job is to “sell more stuff.” It isn’t the marketer’s job to save the world or make society a better place.
- The marketer’s job is to produce profits for the shareholders in any legally sanctioned way.
- A high-minded socially conscious person should not be in marketing. A company shouldn’t hire such a person.

On the other side are people concerned with the personal and societal costs of “unregulated consumption.” They are considered do-gooders and will document that Coca-Cola

delivers six teaspoons of sugar in every bottle or can. They will cite statistics on the heavy health costs of obesity, heart disease, and liver damage that are caused by failing to reduce the consumption of some of these products. These costs fall on everyone through higher medical costs and taxes. Thus, those who don't consume questionable products are still harmed through the unenlightened behavior of others.

Ultimately, the problem is one of conflict among different ethical systems. Consider the following five:

Ethical egoism. Your only obligation is to take care of yourself (Protagoras and Ayn Rand).

Government requirements. The law represents the minimal moral standards of a society (Thomas Hobbes and John Locke).

Personal virtues. Be honest, good, and caring (Plato and Aristotle).

Utilitarianism. Create the greatest good for the greatest number (Jeremy Bentham and John Stuart Mill).

Universal rules. "Act only on that maxim through which you can at the same time will that it should become a universal law" (Immanuel Kant's categorical imperative).

Clearly, people embrace different ethical viewpoints, making marketing ethics and other business issues more complex to resolve.

Let's consider the last two ethical systems insofar as they imply that some interventions are warranted. Aside from the weak gestures of companies toward self-regulation and appearing concerned, there are a range of measures that can be taken by those wishing to push their view of the public interest. They include the following six approaches:

1. **Encouraging these companies to make products safer.** Many companies have responded to public concern or social pressure to make their products safer. Tobacco companies developed filters that would reduce the chance of contracting emphysema or lung cancer. If a leaf without nicotine could give smokers the same satisfaction, they would be happy to replace the tobacco leaf. Some tobacco companies have even offered information or aids to help smokers limit their appetite for tobacco or curb it entirely.

Food and soft drink companies have reformulated many of their products to be "light," "nonfat," or "low in calories." Some beer companies have introduced nonalcoholic beer. These companies still offer their standard products but provide concerned consumers with alternatives that present less risk to their weight or health.

Auto companies have reluctantly incorporated devices designed to reduce pollution output into their automobiles. Some are even producing cars with hybrid fuel systems to further reduce harmful emissions to the air. But the auto companies still insist on putting out larger automobiles (such as Hummers) because the "public demands them."

What can we suggest to Coca-Cola and other soft drink competitors that are already offering "light" versions of their drinks? First, they should focus more on developing the bottled water side of their businesses because bottled water is healthier than sugared soft drinks. Further, they should be encouraged to add nutrients and vitamins in standard drinks so these drinks can at least deliver more health benefits, especially to those in undeveloped countries who are deprived of these nutrients and vitamins. (Coca-Cola has some brands doing this now.)

What can we suggest to McDonald's and its fast food competitors? The basic suggestion is to offer more variety in its menu. McDonald's seems to forget that, while parents bring their children to McDonald's, they themselves usually prefer to eat healthier food, not to mention want their children eating healthier foods. How about a first-class

salad bar? How about moving more into the healthy sandwich business? Today more Americans are buying their meals at Subway and other sandwich shops where they feel they are getting healthier and tastier food for their dollar.

There seems to be a correlation between the amount of charity given by companies in some categories and the category's degree of "sin." Thus, McDonald's knows that overconsumption of its products can be harmful, but the company is very charitable. A cynic would say that McDonald's wants to build a bank of public goodwill to diffuse potential public criticism.

2. **Banning or restricting the sale or use of the product or service.** A community or nation will ban certain products where there is strong public support. Hard drugs are banned, although there is some debate about whether the ban should include marijuana and lighter hard drugs. There are even advocates who oppose banning hard drugs, believing that the cost of policing and criminality far exceeds the cost of a moderate increase that might take place in hard drug usage. Many people today believe that the "war on drugs" can never be won and is creating more serious consequences than simply dropping the ban or helping drug addicts, as Holland and Switzerland have done.

Some products carry restrictions on their purchase or use. This is particularly true of drugs that require a doctor's prescription and certain poisons that can't be purchased without authorization. Persons buying guns must be free of a criminal record and register their gun ownership. And certain types of guns, such as machine guns, are banned or restricted.

3. **Banning or limiting advertising or promotion of the product.** Even when a product isn't banned or its purchase restricted, laws may be passed to prevent producers from advertising or promoting the product. Gun, alcohol, and tobacco manufacturers can't advertise on TV, although they can advertise in print media such as magazines and newspapers. They can also inform and possibly promote their products online.

Manufacturers get around this by mentioning their brand name in every possible venue: sports stadiums, music concerts, and feature articles. They don't want to be forgotten in the face of a ban on promoting their products overtly.

4. **Increasing "sin" taxes to discourage consumption.** One reasonable alternative to banning a product or its promotion is to place a "sin" tax on its consumption. Thus, smokers pay hefty government taxes for cigarettes. This is supposed to have three effects when done right. First, the higher price should discourage consumption. Second, the tax revenue could be used to finance the social costs to health and safety caused by the consumption of the product. Third, some of the tax revenue could be used to counter-advertise the use of the product or support public education against its use. The last effect was enacted by California when it taxed tobacco companies and used the money to "unsell" tobacco smoking.

5. **Public education campaigns.** In the 1960s, Sweden developed a social policy to use public education to raise a nation of nonsmokers and nondrinkers. Children from the first grade up were educated to understand the ill effects of tobacco and alcohol. Other countries are doing this on a less systematic and intensive basis. U.S. public schools devote parts of occasional courses to educate students against certain temptations with mixed success. Girls, not boys, in the United States seem to be more prone to taking up smoking. The reason often given by girls is that smoking curbs their appetite for food and consequently helps them avoid becoming overweight, a problem they consider more serious than lung cancer taking place 40 years later.

Sex education has become a controversial issue, when it comes to public education campaigns. The ultra-conservative camp wants to encourage total abstinence until

marriage. The more liberal camp believes that students should be taught the risks of early sex and have the necessary knowledge to protect themselves. The effectiveness of both types of sex education is under debate.

6. **Social marketing campaigns.** These campaigns describe a wide variety of efforts to communicate the ill effects of certain behaviors that can harm the person, other persons, or society as a whole. These campaigns use techniques of public education, advertising and promotion, incentives, and channel development to make it as easy and attractive as possible for people to change their behavior for the better. (See Philip Kotler, Philip Eduardo Roberto, and Nancy Lee, *Social Marketing: Improving the Quality of Life*, 2nd ed., London: Sage Publications, 2002.) Social marketing uses the tools of commercial marketing—segmentation, targeting, and positioning, and the four Ps (product, price, place, and promotion)—to achieve voluntary compliance with publicly endorsed goals. Some social marketing campaigns, such as family planning and anti-littering, have achieved moderate to high success. Other campaigns including anti-smoking, anti-drugs (“say no to drugs”), and seat belt promotion have worked well when supplemented with legal action.

Social Responsibility and Profits

Each year *Business Ethics* magazine publishes the 100 best American companies out of 1,000 evaluated. The publication examines the degree to which the companies serve seven stakeholder groups: shareholders, communities, minorities and women, employees, environment, non-U.S. stakeholders, and customers. Information is gathered on lawsuits, regulatory problems, pollution emissions, charitable contributions, staff diversity counts, union relations, employee benefits, and awards. Companies are removed from the list if it has significant scandals or improprieties. The research is done by Kinder, Lydenberg, Domini (KLD), an independent rating service. (For more details see the Spring 2003 issue of *Business Ethics*.)

The 20 best-rated companies in 2003 were (in order): General Mills, Cummins Engine, Intel, Procter & Gamble, IBM, Hewlett-Packard, Avon Products, Green Mountain Coffee, John Nuveen Co., St. Paul Companies, AT&T, Fannie Mae, Bank of America, Motorola, Herman Miller, Expedia, Autodesk, Cisco Systems, Wild Oats Markets, and Deluxe.

The earmarks of a socially responsible company include:

- Living out a deep set of company values that drive company purpose, goals, strategies, and tactics.
- Treating customers with fairness, openness, and quick response to inquiries and complaints.
- Treating employees, suppliers, and distributors fairly.
- Caring about the environmental impact of its activities and supply chain.
- Behaving in a consistently ethical fashion.

The intriguing question is whether socially responsible companies are more profitable. Unfortunately, different research studies have come up with different results. The correlations between financial performance (FP) and social performance (SP) are sometimes positive, sometimes negative, and sometimes neutral, depending on the study. Even when FP and SP are positively related, which causes which? The most probable finding is that high FP firms invest slack resources in SP and then discover that SP leads to better FP, in a virtuous circle. (See Sandra A. Waddock and Samuel B. Graves, “The Corporate Social

Performance-Financial Performance Link,” *Strategic Management Journal* 18 (4) (1997), pp. 303–319.)

Marketers’ Responsibilities

As professional marketers, we are hired by some of the aforementioned companies to use our marketing toolkit to help them sell more of their products and services. Through our research, we can discover which consumer groups are the most susceptible to increasing their consumption. We can use the research to assemble the best 30-second TV commercials, print ads, and sales incentives to persuade them that these products will deliver great satisfaction. And we can create price discounts to tempt them to consume even more of the product than would normally be healthy or safe to consume.

But, as professional marketers, we should have the same ambivalence as nuclear scientists who help build nuclear bombs or pilots who spray DDT over crops from the airplane. Some of us, in fact, are independent enough to tell these clients that we will not work for them to find ways to sell more of what hurts people. We can tell them that we’re willing to use our marketing toolkit to help them build new businesses around substitute products that are much healthier and safer.

But, even if these companies moved toward these healthier and safer products, they’ll probably continue to push their current “cash cows.” At that point, marketers will have to decide whether to work for these companies, help them reshape their offerings, avoid these companies altogether, or even work to oppose these company offerings.

Remember Marketing’s Contributions

Nothing said here should detract from the major contributions that marketing has made to raise the material standards of living around the world. One doesn’t want to go back to the kitchen where the housewife cooked five hours a day, washed dishes by hand, put fresh ice in the icebox, and washed and dried clothes in the open air. We value refrigerators, electric stoves, dishwashers, washing machines, and dryers. We value the invention and diffusion of the radio, the television set, the computer, the Internet, the cellular phone, the automobile, the movies, and even frozen food. Marketing has played a major role in their instigation and diffusion. Granted, any of these are capable of abuse (bad movies or TV shows), but they promise and deliver much that is good and valued in modern life.

Marketers have a right to be proud of their field. They search for unmet needs, encourage the development of products and services addressing these needs, manage communications to inform people of these products and services, arrange for easy accessibility and availability, and price the goods in a way that represents superior value delivered vis-à-vis competitors’ offerings. This is the true work of marketing.

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About the Author

Philip Kotler is S.C. Johnson and Son Distinguished Professor of International Marketing, Kellogg School of Management, Northwestern University. He may be reached at pkotler@nwu.edu.

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