

Marketing, Truth, and Advertising

Case Study: Direct-to-Consumer Drug Advertising

Prescription drugs are drugs that can be obtained by a patient only with or under the orders of a licensed physician. The reason for the restriction is that the drugs contain side effects, are not considered safe for casual use, and should be taken under a doctor's supervision. Some such drugs, after many years of safe use with few side effects, are allowed to become over-the-counter drugs, and can be purchased and used with a doctor's prescription.

In the United States, until 1985, prescription drugs could not be advertised directly to consumers. That year the U.S. Food and Drug Administration (FDA), which has responsibility for safety regulations governing drugs, passed a ruling that allowed direct market to consumers on the condition that a great deal of warning information was provided about side effects and other dangers.¹ This allowed for advertising the drugs in magazines, for instance, in which the manufacturer could include the necessary information in small print on several pages following the main part of the ad for the product in question. The large amount of information that had to be supplied, whether or not it was read, precluded any direct TV advertising of drugs. That changed in 1997 when the FDA ruled that TV ads containing just the major dangers of the drug were permissible.² The result was a deluge of direct-to-consumer TV ads for prescription drugs. One study showed that for each dollar of direct-to-consumer advertising on TV by the pharmaceutical company during 1999–2000 resulted in a return of \$4.20 for each dollar spent.³ In 2005, the pharmaceutical industry spent \$1.19 billion on TV ads.

¹ 56 Fed. Reg. 36,677 (September 9, 1985).

² For a detailed history, see Francis B. Palumbo and C. Daniel Mullins, "The Development of Direct-to-Consumer Prescription Drug Advertising Regulation," *Food and Drug Law Journal*, 57, no. 3 (2002), pp. 423–443, at <http://www.kff.org/rxdrugs/loader.cfm?url=/commonspot/security/getfile.cfm&PageID=14372> (accessed on October 13, 2008).

³ The Henry J. Kaiser Family Foundation, "Impact of Direct-to-Consumer Advertising on Prescription Drug Spending," June 2003, at <http://www.kff.org/rxdrugs/upload/Impact-of-Direct-to-Consumer-Advertising-on-Prescription-Drug-Spending-Summary-of-Findings.pdf> (accessed on October 13, 2006).

The United States and New Zealand are the only two developed nations that allow direct-to-consumer advertising of pharmaceutical drugs.⁴ Why are nations and people divided on the appropriateness of direct-to-consumer pharmaceutical drug advertising? The drug industry claims that such advertising benefits consumers in a variety of ways. It educates them about a variety of illnesses and informs them of possible drugs to treat them. It thus encourages people to contact their doctors if they have the symptoms described, and facilitates an open conversation between them. Informed patients are better able to pursue their health care options than uninformed ones. Seeing the ads on TV increases their trust in them when they are prescribed by their doctors, and simple name recognition makes the drugs more acceptable. In the end, it is the doctors who are the gatekeepers and must prescribe or withhold prescriptions. Hence, the good achieved outweighs any bad that might result.

Opponents, however, reply with reasons and concerns of their own. It is because the drugs have potentially serious side effects that they require a doctor's prescription. As such it should be up to the doctor to decide on and prescribe what he or she deems appropriate and best for each individual patient. Broadcast advertising creates false impressions about effectiveness and downplays possible adverse effects. Such advertising leads to self-diagnosis. Patients pressure their doctors for the drugs advertised, whether they are the best for their treatment or the most cost effective. Often a variety of drugs are available for a given condition—such as for high blood pressure. Doctors can choose from among the large variety available. The newer ones are the ones advertised and are usually among the more expensive. They are not necessarily more effective than older and less expensive ones. Yet, since they are acceptable, doctors often yield to the patient's pressure or choice, even though it is not a well-informed choice. TV ads do not claim the advertised drugs to be the best or that they are a certain percent more effective than older drugs, nor do they compare the cost of the advertised drug with available generic drugs of the same class. Even though a patient's health insurance may pay for the more expensive drug when a less expensive one would do as well, the cost of prescription drug insurance goes up for all. The cost of the ads, moreover, drives the cost of drugs even higher. The claimed educational value of the ads is not the real reason for the industry's spending all it does on ads. The real reason is the increase in purchases of the new drugs. Yet, if they were as good as advertised, they would be adopted and prescribed by doctors without the direct-to-consumer ads, and the industry could spend its money on truly educational TV ads. The calculation made by the critics yields more harm than benefit from such ads, and hence many hold them not only inappropriate but unethical. Based on this reaction, a large number of bills have been introduced into the U.S. House and Senate, and into state legislatures curtailing the direct-to-consumer pharmaceutical drug ads on TV. Some have passed on the state level.⁵

Is direct-to-consumer advertising of pharmaceutical drugs ethical? Should it be restricted or eliminated by law? These questions are hotly debated in the United States, as the pharmaceutical industry attempts to get the European Union to allow such advertising there.

⁴ "Direct-to-Consumer Advertising," *Source Watch* at http://www.sourcewatch.org/index.php?title=Direct-to-consumer_advertising (accessed on October 13, 2008).

⁵ National Conference of State Legislatures, "Marketing and Direct-to-Consumer Advertising (DTCA) of Pharmaceuticals," August 2008, at <http://www.ncsl.org/programs/health/rxads.htm> (accessed on October 13, 2008).