



Communication Law & Ethics

RU COMS 400 Unit 7

Advertising law



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Class web site:
revolutionsincommunication.com/law

On Track: Unit 7 Advertising

- Take mid term
- Read Unit 7 on web site
- Take quiz 7

Structure of this section:

- Ad regulation history / hierarchy of protected speech
- Commercial vs corporate speech
- Special regs. alcohol & tobacco



Advertising law and Regulation

Outline of advertising law

- Statutory laws
- Supreme court cases
- History of advertising regulation
- Political context of ad regulation
 - Federal vs State
 - Abortion advertising cases.
 - Other political state regulation cases
- Corporate speech
- Current advertising regulation:
 - Federal agencies with jurisdiction
 - FTC, FDA, FCC, ATF, SEC
 - State laws regulating advertising (alcohol, abortion)
- Areas of special regulation
 - Alcohol, tobacco, advertising to children
 - Stocks & securities advertising
- Public forum issues
- Corporate vs commercial speech

Outline of advertising law

- Arc of change: US advertising regulation
 - From no regulation to 1st Amendment protection
 - Print and digital similar, broadcast very different
- Advertising issues & cases
- Current advertising regulation:
 - Federal agencies with jurisdiction
 - FTC, FDA, FCC, ATF, SEC
 - State laws regulating advertising (alcohol, abortion)
- Areas of special regulation
 - Alcohol, tobacco, advertising to children
 - Stocks & securities advertising
- Public forum issues
- Corporate vs commercial speech

Outline of advertising law 2

- Hot issues
 - Dietary supplements
 - State-Federal regulation conflict
 - Opioid advertising to doctors
 - Conflicts over abortion advertising
 - Legal tests / intermediate scrutiny

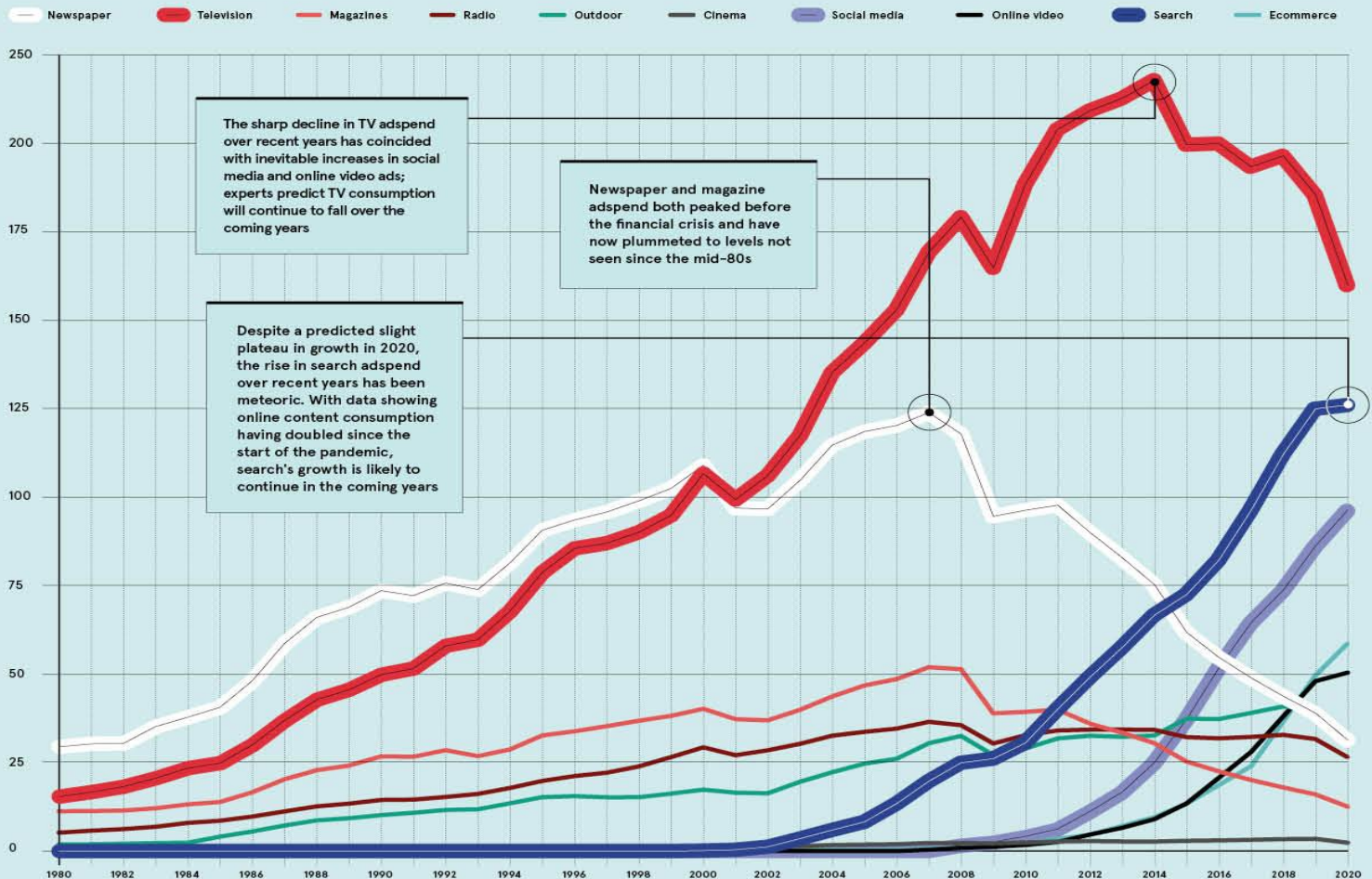
AD EVOLUTION

1980-2020

The advertising landscape has changed beyond recognition over the past three decades, with digital channels now accounting for more than half of total adspend, and strong growth in social media, video, ecommerce and search over the past ten years has come at the expense of more traditional channels, such as TV and print

GLOBAL ADSPEND OVER THE YEARS BY MEDIUM

\$ billion, current prices



Advertising laws

- Food & Drug Act 1906 (est FDA)
- Federal Trade Act 1914 (est FTC)
- Securities Act, 1933 (est SEC)
- Food, Drug & Cosmetics Act, 1938
- Lanham Act (trademark) 1946
- Truth in Lending Act, 1968
 - and similar consumer protections in banking
- Public Health Smoking Act 1970
- ATF est. in Justice Dept 1972
 - Formerly part of Treasury, FBI, others

Advertising cases

- Valentine v Crestensen, 1942
- NY Times v Sullivan, 1964
- Bigelow v Virginia 1975
- Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, 1976.
- Central Hudson Gas & Electric v Public Service Commission of New York, 1980
- Bolger v. Youngs Drug Corp 1983

Advertising cases

- **Rubin v Coors, 1995** (labels)
- **44 Liquormart v Rhode Island, 1996** (ads)
- **Lorillard Tobacco v Reilly, 2001** (labels)
- **Nike v Kasky, 2003** (sweatshops)
- **Blackhorse v Pro Football Inc 2014**
- **Matal v Tam, 2017** ('Slants' rock band)
- **Iancu v Brunetti, 2019** (Fuct clothing)
- **Barr v. Assn. Political Consultants, 2020**
(robocalls illegal)

FDA – FTC



- FDA est 1906
 - Regulates efficacy of medicine
 - Regulates drug advertising
- FTC est 1914
 - Consumer protection
 - Deceptive advertising
 - Business competition
 - monopolies & unfair trade practices





History of Ad Regulation



Introduction

- The law of advertising and public relations media involves the entire spectrum of fully protected speech to highly regulated speech, depending on the content and venue of the speech. The law has also undergone a full arc of historical change over the 20th century, from absolutely unregulated, to fully regulated and unprotected, to (most recently) partly deregulated and partly protected.

Arc of change in Ad regulation

- Historically, advertising was unregulated
- Muckraking journalism campaigns led to the creation of laws regulating foods, drugs and advertising 1906 – 1914
- Courts upheld full advertising regulation on the theory that commercial speech was 2nd to political speech.
- This began changing with issue-oriented advertising in the 1960s, especially with the *New York Times v Sullivan*
Changes in the 1970s involving generic drug advertising, abortion services, legal services and energy conservation. In each of these cases the courts found that there were political components within advertising;
Ex: seniors had a right to learn about generic drugs.
- So gradually, between 1964 and the 1990s, the theory of a secondary commercial speech began to erode.

Before 1906,
advertising
was not
regulated.

Soap was not
a problem,
but...



THE MODERN SOAP PRODUCT

Not a soap powder---not a chipped soap---not a cake---but pure essence of soap in flakes.

How many times have you hesitated over your dainty clothes, dreading the first tubbing they must have. Flimsy chiffon waists; your lustrous silk underwear; baby's soft, fluffy woollens; your loveliest table linens with their tender laces, all seem too fine to trust to soap and water.

The new way of laundering makes it so simple to wash these delicate things that you need never hesitate again. With Lux, the modern soap product, you can launder your loveliest silks, laces, woollens, with no fear for the results.

LUX WILL NOT INJURE ANYTHING THAT PURE WATER ALONE WILL NOT INJURE.

Why soap for fine laundering should be in flakes

Soap should never be rubbed directly on fine fabrics, for the rubbing weakens and will eventually destroy the fabric.

The delicate Lux flakes dissolve instantly in hot water, making a soft, creamy lather. Such white, foamy, bubbly suds you never saw before. Lux is so completely soluble that not the slightest trace of soap is left in the garment to yellow or discolor it.

No rubbing is necessary. The dirt comes out so easily! Just a little working about in the water and your clothes are all white and fresh.

Try Lux on your most delicate things

Order a package today and try it on your silks; it will not turn them yellow--on your woollens--it won't shrink them at all. It will not injure even your chiffons. Lux may be purchased at your grocers or at department stores. Lever Brothers Co., Cambridge, Mass.



How to wash silk stockings and silk underwear

Throw a handful of Lux into hot water and whisk into a lather. Add cold water until luke-warm. Colored stockings should be washed separately. Work the stockings gently in the water. Do not rub. Rinse in water the same temperature. It is not necessary to iron silk stockings.

Silk underwear should be washed like silk stockings. Squeeze gently in a thick, sudsy lather made of Lux and luke-warm water. Never rub soap on the garments. Rinse three times in water the same temperature and dry in the shade.



How to wash laces

Soap should never be rubbed directly on lace--it will ruin the lace and rot the fine threads, if any particle remains after rinsing. If the lace is at all frail it should be carefully tested to a piece of strainer, cheesecloth before washing. Drop the lace into a bowl of thick lather made of Lux and hot water. **DO NOT RUB!** The lace may be gently squeezed. Rinse three times in water the same temperature. Pull the cheesecloth taut and pin for drying. This makes ironing unnecessary. If the lace is not basted to cheesecloth it should be carefully pulled and pinned into shape and left until the lace is thoroughly dry.



How to wash delicate waists

Shake a handful of Lux into a bowl of hot water--whisk into a hooley, foamy lather. Add cold water until luke-warm, then put in your waist and gently squeeze and work up and down in the hands. Rinse three times in water the same temperature and dry in the shade. When nearly dry, iron with a warm iron. Chiffon waists should be "clapped" in a towel until dry and iron on the wrong side.

Georgette Crepe waists should be gently pulled into shape as they dry. Iron while still damp--gently shaping as you iron.



How to wash baby's woollens

Shake a handful of Lux into a bowl of boiling water. Whisk into a thick, foamy lather. Drop all the little woollens in and let them stand until the water is cool enough for the hand to bear with comfort. Then dip them up and down and gently squeeze. Rinse in clear water of the same temperature. Knitted woollens should not be hung up to dry--but should lie flat on several thicknesses of soft toweling in a moderate temperature.

You will find all of your woollens can be washed by this same method. They will not shrink a single bit and will come out soft and fleecy.



LUX 10¢

The lack of
regulation
for
medicine
was a
serious
problem

THE GREAT YAQUIS

A Guaranteed CURE

FOR

RHEUMATISM

WHETHER

ACUTE, CHRONIC,
SCIATIC, NEURALGIC

OR

INFLAMMATORY

50c a Bottle.



PREPARED FROM PURE
RATTLESNAKE OIL.

THE ONLY COMPANY IN
THE UNITED STATES
THAT MAKES THE
GENUINE
ARTICLE.

50c a Bottle.

SNAKE-OIL LINIMENT

RELIEVES INSTANTANEOUSLY

AND CURES HEADACHE, NEURALGIA, TOOTHACHE, BRACHACHE, BACKACHE, SWELLINGS, SPRAINS, SORE CHEST, SWELLING OF THE THROAT, CONTRACTED CORDS and MUSCLES, STIFF JOINTS, WRENCHES, DISLOCATIONS, CUTS and BRUISES.

It Quickly takes out the Soreness and Inflammation from Corns, Bunions, Insect and Reptile Bites.

The best External Preparation for BYCICLISTS and ATHLETES. It makes the Muscles supple and Relaxes the Cords. Loosens the Joints and gives a feeling of Freshness and Vigor to the whole System.

SNAKE-OIL LINIMENT CURES ALL ACHES AND PAINS.

If you are suffering from Rheumatism, ALWAYS take LA-CAS-KA internally for the Blood and use SNAKE-OIL LINIMENT externally. When used together we GUARANTEE A CURE in every instance or MONEY REFUNDED.

If You Are Afflicted With DEAFNESS

Get Our Specially Prepared

PURE Rattlesnake Oil

WHAT A PROMINENT BUTCHER OF COTTAGE GROVE, OREGON, SAYS

The Yaquis Medicine Co., Dear Sirs:—Please send me by express, C. O. D., two bottles of your Rattlesnake Oil Liniment. I have used one bottle of the La-Cas-Ka and one of the Liniment and am nearly cured of my rheumatism. It did me more good than anything I have ever used. I want to keep a supply always on hand. Yours resp'tly,

W. H. BRAGLE.

THE YAQUIS MEDICINE COMPANY

SAN FRANCISCO, CAL.

PORTLAND, OREGON.

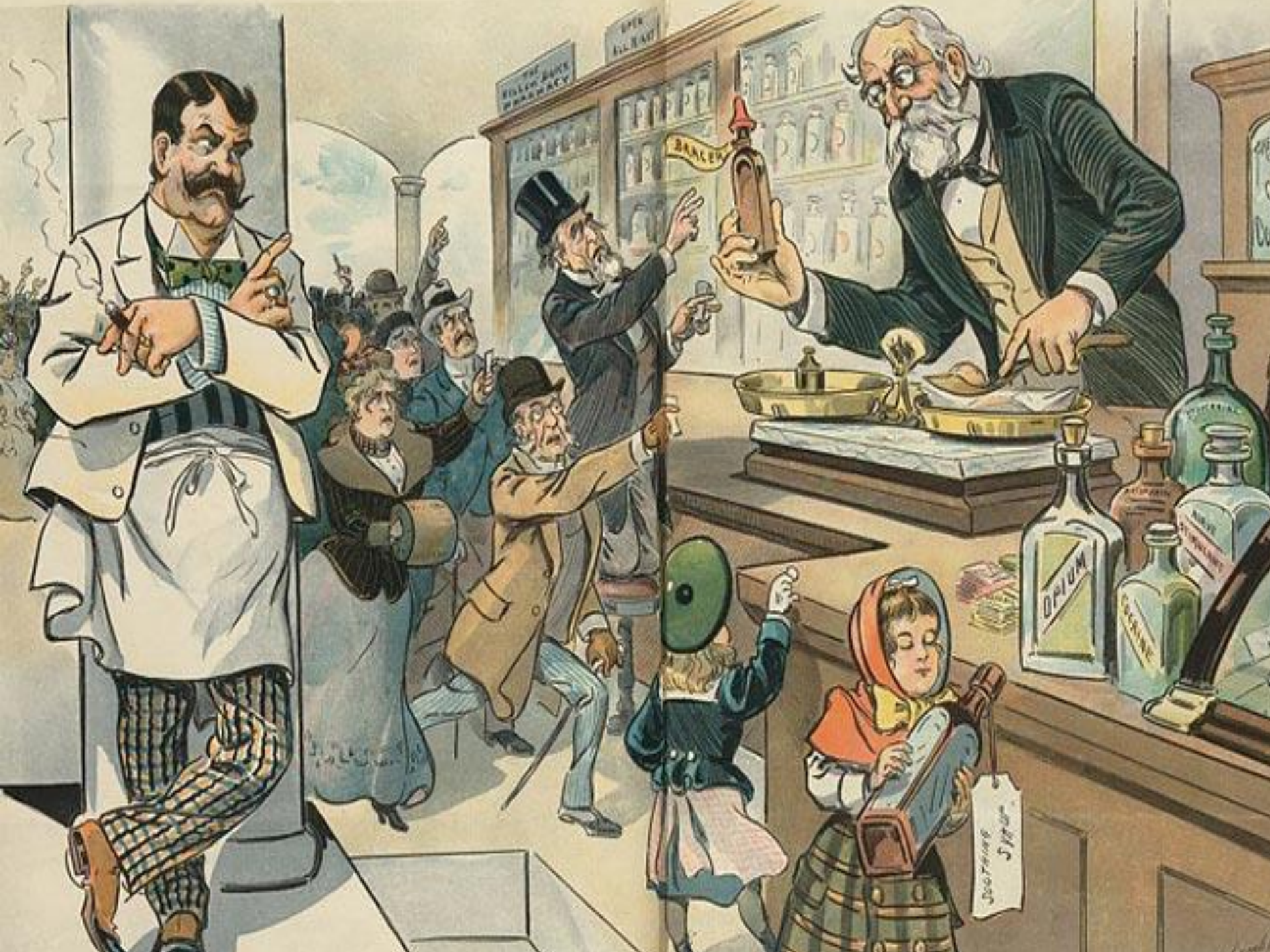
Oregon Chemical Co.,
424 Wash'n St. Portland, Oregon.



Kill'em Quick Pharmacy

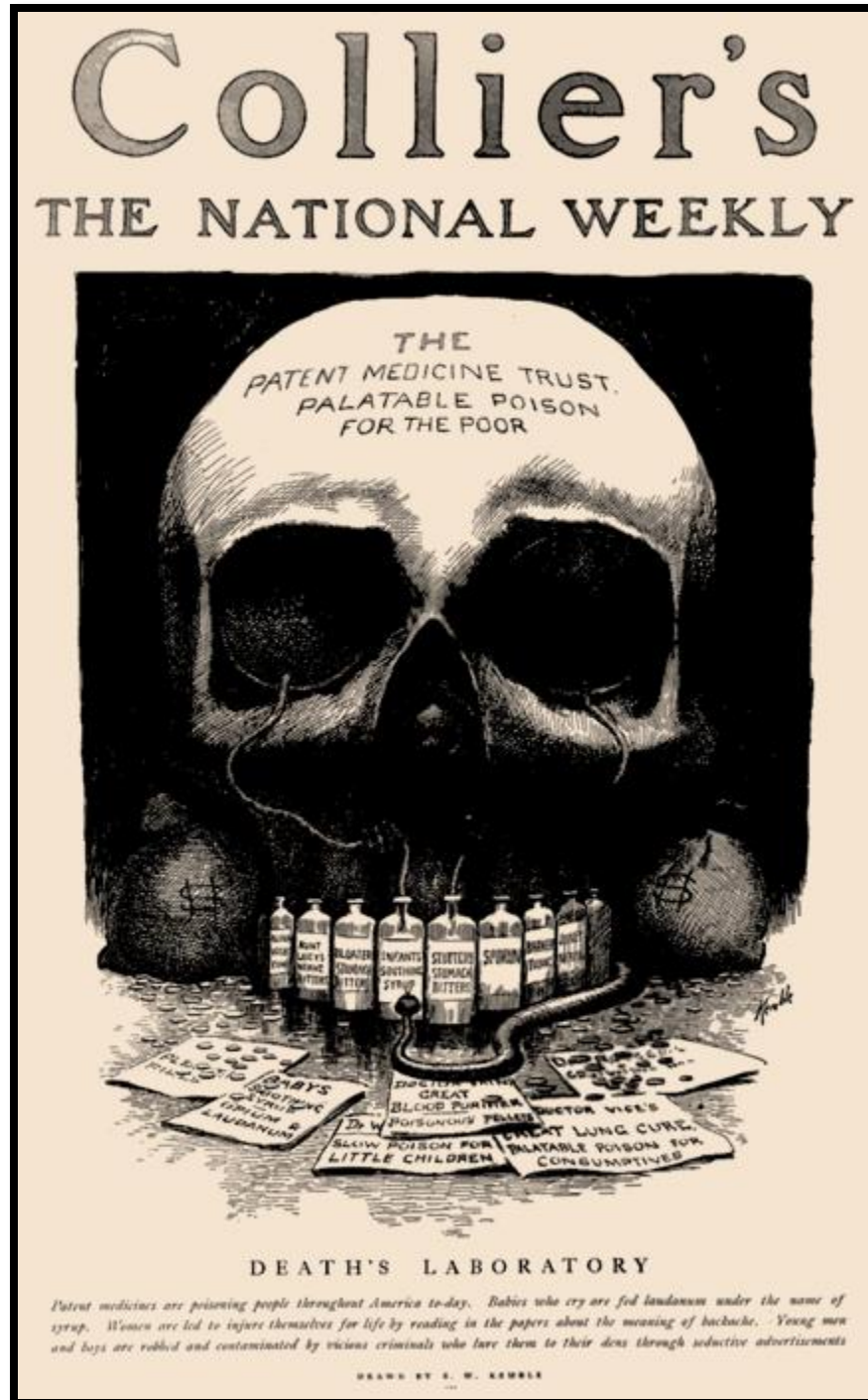
Cocaine, opium, and other dangerous drugs were sold legally as part of the patent medicine industry in 1900, when *Puck* magazine published this cartoon (previous slide).

- A bartender watches the pharmacist with envy and says: “I can’t begin to compete with this fellow.”
- It’s notable that magazines led the charge for reform; newspapers depended so heavily on patent medicine advertising that many had agreed, by contract, never to say anything negative about the patent medicine business.
- The reform movement culminated in regulation of advertising and drugs with the establishment of the Food and Drug Administration in 1906 and the Federal Trade Commission in 1914.



Muckraking
magazines
attacked patent
medicine 1905

Led to founding
federal agencies
FDA and FTC
1906-1914



Food Drug Cosmetics Act 1938

- Many problems remained, even with the advent of new federal agencies. During the first decades of the 20th century, journalists, consumer protection organizations and federal regulators saw a need for stronger regulation of harmful products still on the market. These included radioactive beverages, makeup with dangerous ingredients that caused blindness, and worthless “cures” for cancer, diabetes and tuberculosis. A new law finally followed the public outcry over the 1937 Elixir Sulfanilamide tragedy, in which over 100 people died after using a drug formulated with a toxic, untested solvent.
- This was the Federal Food, Drug, and Cosmetic Act, which became law on June 24, 1938. It increased federal regulatory authority over drugs by mandating a pre-market review of the safety of all new drugs, as well as a ban on false therapeutic claims in drug labeling. This ban was easier for FDA to enforce since it didn't require the agency to prove fraudulent intent.
- The law allowed FDA officials to block Thalidomide (anti-nausea pregnancy medicine) in the US, while horrific birth defects affected 10,000 European babies,

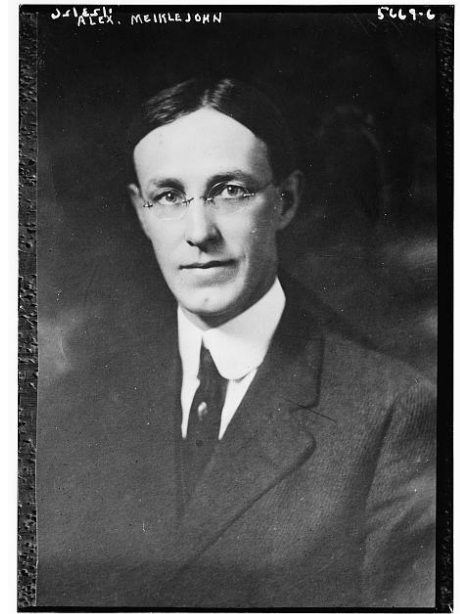


CANDY CONTAINING "PRIZES"
MAY INJURE THE TEETH
OF CHILDREN, OR MAY BE ASPI-
RATED INTO THE CHILD'S
BRONCHIAL TUBES. THROAT
COURT HELD THAT
SUCH CANDY OF A
NATURE AS TO
CONSTITUTE A VIOLA-
TION OF THE
LAW.
LEAD FROM
THE TRINITY
HAS BEEN
EXPOSED
IN THIS
CANDY



Hierarchy of speech

- Alexander Meikeljohn (20th c)
- The value in free speech is that it produces informed voters.
- First Amendment is “absolute” and should protect all political speech (Even Schenck, Debs, Abrams, Whitney)
- But not commercial speech.



Valentine v
 Chrestensen
 1942 case re-
 affirmed 2nd
 status for
 commercial
 speech

Facts

SEE THIS \$2,000,000 FIGHTING MONSTER! GO DEEP INSIDE THE FORMER U. S. NAVY

Submarine S-49

The only submarine
 used for exhibition in
 the world.

Competent
 Guides Take
 You from One
 End of the Ship
 to the Other—
 Explaining in
 Detail its
 Operation

NOW

Complete Tour Thru
 Entire Submarine at
 POPULAR PRICES

Adults . . . 25¢
 Children . . . 15¢

Now!

- SEE the Torpedo Compartments, containing a tremendous how silent Torpedoes are sent on their trip of destruction.
- SEE the sleeping quarters for 42 men—a miracle of compactness.
- SEE the 400 foot kitchen the ice food for the entire crew of 42.
- SEE the 2 great 800 Horse Power Diesel Engines costing \$100,000 each.
- SEE the mysterious Evacue Hatch—Learn how men escape in emergencies.
- SEE the Ventilators 18-20 ft high that can deliver a ship from a distance of several miles.
- SEE the thousands of pieces of mail and personal desires in the control room.
- SEE how men live in a Hell Diver.

PIER 5, EAST RIVER

2 minutes from
 South Ferry or Battery Park



See Diagram →



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* *Valentine v. Chrestensen* (1942)

- The “Commercial Speech Doctrine” established after the entrepreneurial Chrestensen challenged a New York city ordinance banning the distribution of commercial handbills.
- SCOTUS upheld the ordinance and clearly rejected “purely commercial advertising” as a category of speech protected by the First Amendment.

NYT v Sullivan 1964

libel
civil rights
advertising
Court affirms 1st
Amendment
protection for
"political" ads

The New York Times.

NEW YORK, TUESDAY, MARCH 23, 1964

"The growing movement of peaceful mass demonstrations by Negroes is something new in the South, something understandable. . . . Let Congress heed their rising voices, for they will be heard."

—New York Times editorial
Saturday, March 21, 1964

Heed Their Rising Voices

As the whole world knows by now, thousands of Southern Negro students are engaged in widespread non-violent demonstrations in positive affirmation of the right to live in human dignity as guaranteed by the U. S. Constitution and the Bill of Rights. In their efforts to uphold these guarantees, they are being met by an unprecedented wave of terror by those who would deny and negate that document which the whole world looks upon as setting the pattern for modern freedom. . . .

In Orangeburg, South Carolina, where 400 students peacefully sought to buy doughnuts and coffee at lunch counters in the business district, they were ferociously ejected, tear-gassed, and had to the skin in freezing weather with fire hoses, arrested en masse and herded into an open barbed-wire stockade to stand for hours in the bitter cold. . . .

In Montgomery, Alabama, after students sang "My Country, 'Tis of Thee" on the State Capitol steps, their leaders were expelled from school, and truckloads of police moved with whips and tear gas against the Alabama State College Campus. When the entire student body protested to state authorities by refusing to re-enroll, their dining hall was padlocked in an attempt to starve them into submission. . . .

In Tallahassee, Atlanta, Nashville, Birmingham, Grand Haven, Memphis, Richmond, Charlotte, and a host of other cities in the South, young American Negroes, in face of the entire weight of organized law enforcement and police power, have boldly stepped forth as

protagonists of democracy. Their courage and amazing restraint have inspired millions and given a new dignity to the cause of freedom. . . .

Small wonder that the Southern violators of the Constitution fear this new, non-violent breed of freedom fighter . . . even as they hear the appalling right-to-peace movement. Small wonder that they are determined to destroy the new men who, more than any other, symbolize the new spirit now sweeping the South—the Rev. Dr. Martin Luther King, Jr., world-famous leader of the Montgomery Bus Protest. For it is his doctrine of non-violence which has inspired and guided the students in their widening wave of liberty, and it is this same Dr. King who has been elected president of the Southern Christian Leadership Conference—the organization which is spearheading the emerging right-to-peace movement. Under Dr. King's direction, the Leadership Conference conducts Student Workshops and Seminars in the philosophy and techniques of non-violent resistance. . . .

Again and again the Southern violators have answered Dr. King's peaceful protests with intimidation and violence. They have bombed his home almost killing his wife and child. They have attacked his person. They have arrested him seven times—for "speaking," "libeling," and similar "offenses." And now they have charged him with "perjury"—a felony under which they could imprison him for six years. Obviously, their real purpose is to remove him physically as the leader to whom the students and millions

of others look for guidance and support, and thereby to intimidate all leaders who may rise in the South. This strategy is to belabor this effeminate movement, and then to demoralize Negro Americans and weaken their will to struggle. The dilemma of Martin Luther King, spiritual leader of the student sit-in movement, clearly, therefore, is an integral part of the total struggle for freedom in the South. . . .

Doves-minded Americans cannot help but applaud the creative daring of the students and the quiet heroism of Dr. King. But this is one of those moments in the sorry history of Freedom when men and women of good will must do more than applaud the rising trophy of others. The America whose good name hangs in the heritage before a watchful world, the America whose belief in Liberty these Southern Upholders of the Constitution are defending, is our America as well as theirs. . . .

We must heed their rising voices—you—but we must add our own. . . .

We must extend ourselves above and beyond moral support and render the material help so urgently needed by those who are taking the risks, facing jail, and even death in a glorious re-affirmation of our Constitution and its Bill of Rights. . . .

We urge you to join hands with our fellow Americans in the South by supporting, with your dollars, this Combined Appeal for all three needs—the defense of Martin Luther King—the support of the emboldened students—and the struggle for the right-to-peace.

Your Help Is Urgently Needed . . . NOW !!

- | | | | | | |
|-------------------------|-------------------|------------------------|-------------------|------------------------|------------------------|
| Stella Adin | Joseph Carter | Arthur Portman | Betty Kim | Alton P. Palmer | Frank Shreve |
| Raymond Ray Alexander | Robert Cox | Malcolm Collins | Ralph Edward King | Charles Patten | Lois Stone |
| Dolly Anderson | Wm. Kay Cole | James Pennington | Thane Lester | Paul Miller | Wynn Thomas |
| Henry Van Arsdale | Clayford Conard | Rev. Donald Pennington | John Lewis | Timothy Parker | David Johnson |
| Henry Baldwin | Donnie Davidson | Earl Sherrod | Wanda Lindholm | Michael Pender | John Lee |
| John Baldwin | Clare Davis | James Hill | David Livingston | A. Peter Randolph | George Lohr |
| Dr. Alvanor Bell | Sammy Davis, Jr. | Way Hobson | William McWhorter | Ada Ball | Rev. Gardner C. Taylor |
| Max Bittens | Ruby Day | Lee Hollis | Carl Hayden | Ernie Rice | Rev. James H. Trotter |
| William Bunn | Henry Duff | Langston Hughes | Don Wayne | Cleveland Johnson | Harvey Thomas |
| Walter Busch | Scotty Eckford | Walter Jurek | John Waters | Julia Robinson | Kenneth Taylor |
| Mr. Ralph Cantle | Dr. Peter Elliott | Walter Jurek | A. S. White | Mrs. Eleanor Roosevelt | Charles White |
| Richard Carroll | Dr. Peter Emerson | Paul Jurek | Pauline O'Hall | Robert Rabin | Shelby White |
| Dr. Alan Edgar Chastain | Frank | Walter Johnson | Tom O'Hall | Robert Rose | Rev. Thompson |
| | | John Kilian | L. Smith O'Hall | Thomas Singleton | |

We in the south who are struggling daily for dignity and freedom warmly endorse this appeal

- | | | | |
|---|--|---|---|
| Rev. Ralph D. Abernathy
(Montgomery, Ala.) | Rev. Matthew D.
McLellan
(Orangeburg, S. C.) | Rev. Walter L. Rife
(New Orleans, La.) | Rev. A. L. Davis
(New Orleans, La.) |
| Rev. Paul L. Battleground
(Birmingham, Ala.) | Rev. William Patton
Bowers
(Atlanta, Ga.) | Rev. E. L. Long
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(Shelton, N. C.) | Rev. Wm. C. Barber
(Memphis, Tenn.) | Rev. L. S. Lewis
(Mobile, Ala.) |
| Rev. W. A. Davis
(Chattanooga, Tenn.) | Rev. Wyatt Lee Walker
(Pine Bluff, Tenn.) | Rev. Daniel W. Williams
(Atlanta, Ga.) | Rev. T. J. Jordan
(New Orleans, La.) |

Please mail this coupon TODAY!

Committee to Defend Martin Luther King
and
The Struggle for Freedom in the South
312 West 125th Street, New York 27, N. Y.
UNiversity 6-1700

I am enclosing my contribution of \$ _____
for the work of the Committee.

Name _____
Address _____
City _____ State _____

I want to help Please send further information

Please make checks payable to
Committee to Defend Martin Luther King

COMMITTEE TO DEFEND MARTIN LUTHER KING AND THE STRUGGLE FOR FREEDOM IN THE SOUTH
312 West 125th Street, New York 27, N. Y. UNIVERSITY 6-1700

Chairman: A. Philip Randolph, Dr. Gardner C. Taylor; Chairman of Cultural Division: Harry Belafonte, Sidney Poitier; Treasurer: Nat King Cole; Executive Director: Bayard Rustin; Chairman of Church Division: Father George E. Ford; Rev. Harvey Emmanuel Paulik, Rev. Thomas Kilgore, Jr., Ralph Edward E. Kline; Chairman of Labor Division: Martin Luther King, Cleveland Robinson.



Political context of Ad Regulation

Bigelow v Virginia 1975

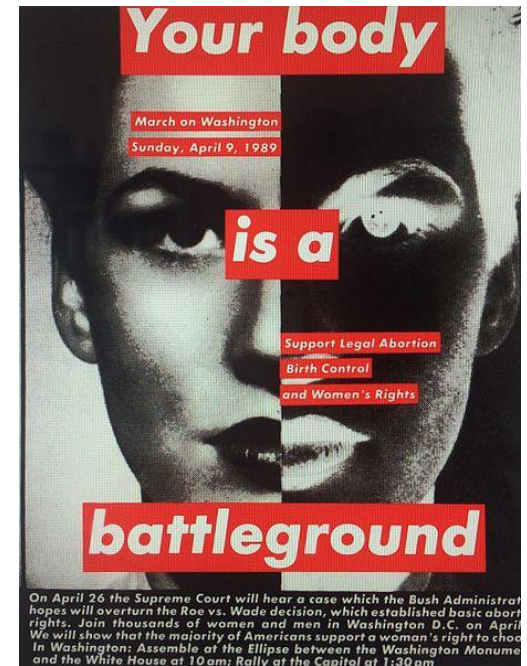
Advertising for abortion services

Jeffrey Bigelow, the then-editor of The Virginia Weekly, accepted an ad for abortion services in New York City, which violated a Virginia state law against advertising abortion services.

The court held that the ad was both political and commercial, and also upheld Bigelow's right to advertise and inform people of abortion services in other states since abortion was legal after Roe v Wade .

Bigelow was the first in a long line of Supreme Court cases dealing with states' attempts to restrict women's access to abortion services, notably Planned Parenthood v. Casey, 1992

Roe was overturned in **Dobbs v. Jackson Women's Health Organization, 2022**
There is now uncertainty over advertising abortion services



State control of advertising

- Dobbs gives states control over abortion, but what about abortion ads?
- Cross-boundary lottery ad cases:
- ***US v Edge Broadcasting*, 1993** (FCC & control of gambling ads).
- ***44 Liquormart v. Rhode Island*, 1996** — (Liquor ad price control in newspapers.)

State vs Federal vs EU

- The court said states are free to be less restrictive — but not more restrictive — when it comes to public media in the **Pruneyard Shopping Center v. Robbins case 1980**. Because California's constitution has a positive right of free speech, the case was decided in favor of permitting a petition drive that a shopping center did not want to allow.
- However, most US states are as restrictive as they can be. A similar case in the European Court of Human Rights, **Appleby v UK, 2003**, held that there is no right to advertise controversial subjects in public media in Europe.

Political advertising continued

- Similar cases with both a political and commercial context are heard.
- **Va. Board of Pharmacy v. Virginia Citizens Consumer Council 1976**
 - State regulation of drug advertising is not constitutional. Before this decision, pharmacies were not free to advertise the price of drugs and the availability of generic drugs. The decision allowing advertising is another example where the Court could no longer separate commercial and political speech.

VA Brd of Pharmacy case (cont)

In the Virginia pharmacy case of 1976, the Supreme Court opinion said:

- *“There is, of course, an alternative to this highly paternalistic approach. That alternative is to assume that this information is not in itself harmful, that people will perceive their own best interests if only they are well enough informed, and that the best means to that end is to open the channels of communication rather than to close them.”*



Bates v Arizona State Bar 1977

It wasn't just pharmaceutical advertising

Bates is another commercial speech case with political underpinnings. In this case, lawyers for a legal aid service to low income Hispanics challenged state laws forbidding advertising by lawyers and won.

Bolger v. Youngs Drug Corp 1983

- This case involved straightforward advertising of condoms through the mail.
- The US Postal Service objected.
- The Central Hudson test was applied, USPS claiming substantial government interest in preventing interference with parents attempts to discuss birth control.
- However, the court said the **Postal Service regulation was overly broad.** “The level of discourse reaching a mailbox cannot be limited to that which would be suitable for a sandbox.” This argument is often cited in obscenity cases.

Mandatory advertising

- **YES: Political campaigns in broadcast media** under the Equal Time Rule (Section 313) when a political campaign for federal office is under way.
- **NO: Print media** -- Miami Herald v. Tornillo 1974. The Supreme Court said that a Florida law imposing a “right of reply” on the print media was not constitutional... While the press should be responsible, Chief Justice Warren Burger said, “like many other virtues, it cannot be legislated.”
- **MAYBE:** For public media (bus or subway ads) the Lehman v Shaker Heights rule is used.

Mandating advertising 2

- The main controlling case is **Lehman v. Shaker Heights** 1974 — A candidate for state office wanted to advertise on a city-run bus line. The Supreme Court said that the city was free to limit its advertising to commercial products only so long as it did so consistently and from a content-neutral point of view.

Lehman v Shaker Heights (cont)

- Opinion: A rapid transit car is not a public forum, and speech there is subject to a lower level of protection.
- "The nature of the forum" is "important in determining the degree of protection." In running a rapid transit system, the City is principally "engaged in commerce."
- The provision of advertising space is "incidental to the provision of public transportation." Thus, speech restrictions designed to keep the rapid transit system "convenient, pleasant, and inexpensive" are justified as long as such restrictions are not "arbitrary, capricious, or invidious."
 - (Invidious = likely to make people angry)



Recap Important Cases

- Valentine v Chrestensen, 1942
- NY Times v Sullivan, 1964
- Bigelow v Va, 1973
- Lehman v Shaker Heights, 1974
- Miami Herald v Tornillo, 1974
- Va Brd Pharmacy v Va Consumer, 1976
- Central Hudson v PSC, 1980
- Pruneyard Shopping Ctr v Robbins, 1980



Corporate Speech (PR)



Case involved electric utility advertising during the “Energy Crisis” of the 1970s

To encourage energy conservation, the NY Public Service Commission banned promotion of electric use.

Central Hudson Gas & Electric sued the PSC, saying its First Amendment Rights were violated.

Central Hudson v PSC of NY, 1980

- US Supreme Court sided with Central Hudson
- Cornerstone of commercial speech law
- Established **4-part test** for ad regs
 - Does the ad involve a **lawful activity**?
 - Is there a **substantial government interest**?
 - Does the regulation **advance this interest**?
 - Is the regulation the **least restrictive means** to serve the interest?

The Central Hudson test

Does this involve a **lawful activity**?

Yes, energy production

Is there a **substantial government interest**?

Yes, to promote energy conservation

Does the regulation **advance this interest**?

Not very well (said the Supreme Court)

Is the regulation the **least restrictive means** to serve the interest?

No, its overly broad (too restrictive). Other methods would work just as well

Corporate Speech

1st Nat'l Bank Boston v Bellotti, 1978

First major corporate speech case. A state law said commercial businesses couldn't get involved in public affairs unless they were directly affected. Supreme Court overturned law.

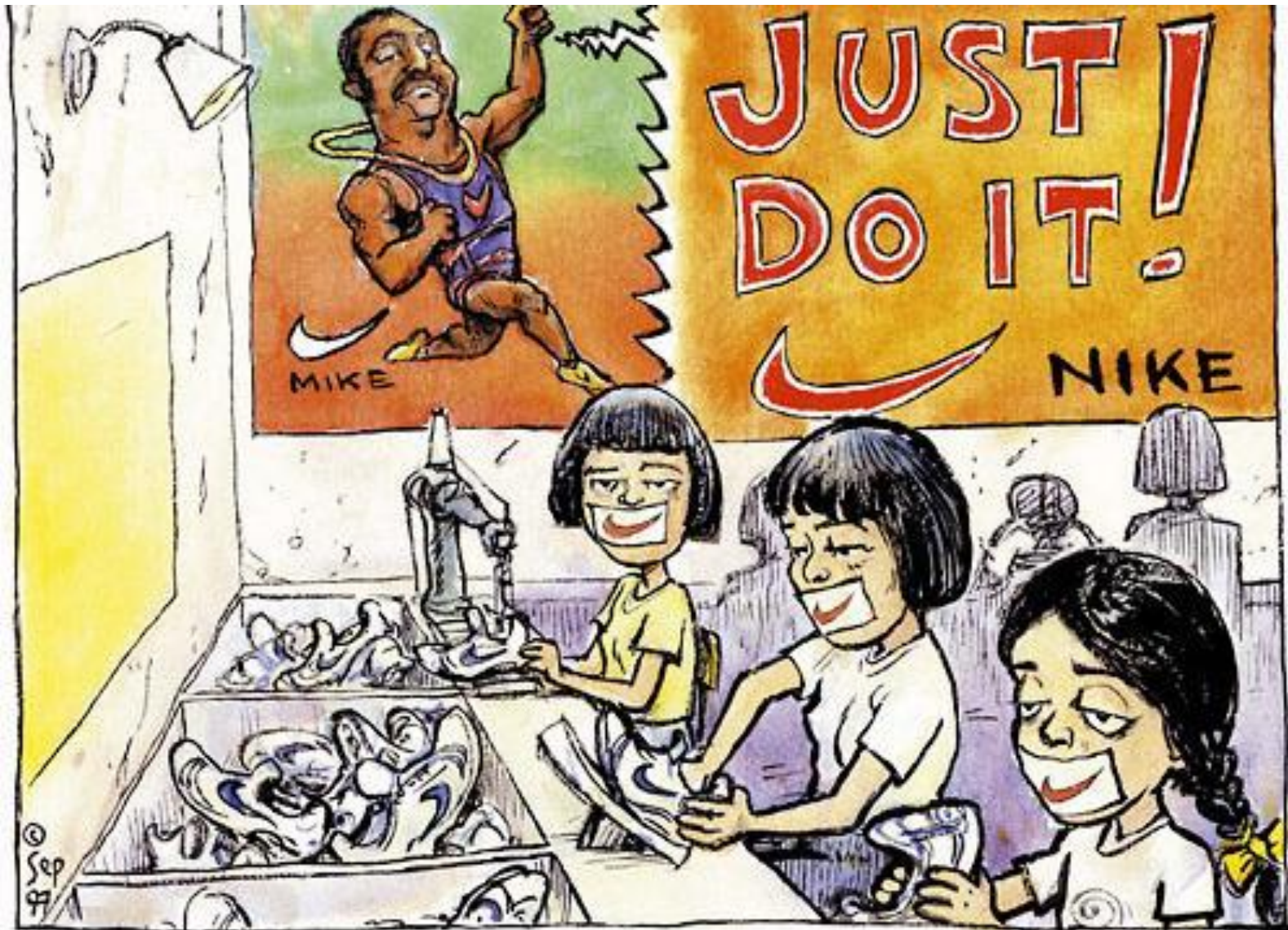
Chief Justice William Rehnquist's dissent compelling for those who believe corporate speech should be regulated:

- “A state grants to a business corporation the blessings of potentially perpetual life and limited liability to enhance its efficiency as an economic entity. It might reasonably be concluded that those properties, so beneficial in the economic sphere, pose special dangers in the political sphere... Furthermore, it might be argued that liberties of political expression are not at all necessary to effectuate the purposes for which States permit commercial corporations to exist.

More corporate speech

- **Consolidated Edison Co. v. PSC 1980** — Con-Ed inserted a promotion for nuclear power technology in its regular monthly bills. The Natural Resources Defense Council, a group opposed to nuclear power, wanted to insert their own arguments into consumers bills. Since there was no guarantee of access under *Miami Herald v. Tornillo* or *Red Lion v. FCC* (which applies only to scarce airwaves), the PSC told Con Ed to stop advertising controversial stuff.
- The NY supreme court said that was reasonable time, place and manner restriction on free speech. US Supreme Court reversed, said the ban wasn't reasonable time place restriction or a narrowly tailored way to serve a compelling state interest. Prior restraint on commercial speech has to be content neutral.

Nike v Kasky, 2003



Nike v Kasky, 2003

- In April 1998, California activist Marc Kasky sued Nike for unfair and deceptive practices under California's Unfair Competition Law and False Advertising Law.
- He said that Nike had engaged in unfair business practices by making false statements about conditions in its Asian factories
- Nike responded that this wasn't true and that it had a First Amendment right to make these statements



Mark Kasky

Nike v Kasky, 2003

- California law says advertisers can't misrepresent their products
- The case pits regulation of false advertising against free speech rights of corporations
- California Supreme Court sided with Kasky; US Supreme Court refused cert.



Federal Trade Commission



FTC Regulates Adverts



- The most important regulator for general commercial advertising is the Federal Trade Commission
- Its guidelines are extensive, but generally fall into the category of avoiding deception and backing up advertising claims.

FTC is ...



FTC is an independent agency

- Five commission members appointed by President.
 - No more than three members from same political party.
- Seven-year terms, eligible for reappointment.



FTC Operations

- Enforces laws and rules about fairness and truth in advertising
- Power to obtain data, info from parties under investigation.
- Most complaints resolved with “consent order” and the offending party agrees to stop a deceptive ad and sometimes run corrective advertising.
- Appeal route:
 - Admin Law Judge → Full FTC → District Court → US Supreme Court

FTC Principles

- **Truth in Advertising** — Advertising laws are aimed at protecting consumers by requiring advertisers to be truthful about their products and to be able to substantiate their claims. All businesses must comply with advertising and marketing laws (From SBA web site)
- **Product labeling** — Claims made on product packaging must comply with some basic truth-in-packaging and labeling rules. These claims include descriptions of ingredients, package size and volume, and discount or lower price labeling. Under the Fair Packaging and Labeling Act (FPLA), the Federal Trade Commission (FTC) and the Food and Drug Administration (FDA) issue regulations requiring all consumer commodities be labeled to disclose net contents, identity of the product, and the name and place of business of the product's manufacturer, packer or distributor. (From SBA web site)
- **Special product advertising** — Automobiles, computers and internet services, health and fitness products, housing and real estate, telephone services, and environmental or green marketing claims.

FTC guidelines

- Price claims, use of the word “free,” green products, tanning, celebrity endorsements, diet plans, food advertising
- Agencies, publishers and web sites are themselves responsible for ensuring that their advertisers claims are substantiated. It is not enough to take the claims at face value.
- Disclaimers and disclosures must be clear and conspicuous.
- Demonstrations must show how the product will perform under normal use.
- “Bait and switch” advertising is not permitted.

FTC Enforcement

- When the FTC learns of a deceptive practice, it may meet informally with a company and propose a cease and desist order. If the company agrees, and a consent order can be worked out, no further action is taken. However, companies may challenge proposed orders before an administrative law judge and appeal any decisions in federal court.
- The FTC may order fines, corrective advertising or other remedies in cases of misleading advertising. For instance, some companies have been forced to advertise that their product doesn't cure tired blood in all cases of anemia, or that there may be substantial penalties for early withdrawal from certain types of bank accounts.

FTC Enforcement 2

- Class action lawsuits on behalf of the victims of deceptive advertising have been another mechanism by which enforcement of fair trade laws take place. For instance, in March, 2006, a lawsuit against makers of sun screen products was filed claiming false and deceptive advertising, even though the Federal Trade Commission has warned consumers that sun block is not very effective or that certain debt relief services do not relieve debt.



FTC and Commercial Speech

- SCOTUS has said often upheld regulation of commercial speech as constitutional.
 - Example: Central Hudson case
- False, unfair or deceptive speech gets most attention and regulation.
- FTC jurisdiction extends to all forms of communication used for publicity and marketing purposes.

False Commercial Speech

- Frequent FTC cases
- Recent cases (Spring 2021):
 - St. Louis chiropractor deceptively marketed products containing vitamin D and zinc as scientifically proven to treat or prevent COVID-19.
 - Gennex Media – false “Made in USA” claim
 - Crackdown on illegal robocalls
 - Online marketer falsely promised consumers that it could quickly deliver facemasks and other personal protective equipment during the COVID-19 pandemic, then failed to deliver on customers’ orders or offer cancellations or refunds.

Substantiation

- FTC requires that commercial speakers provide evidence that all of the material claims made in their commercial speech have been substantiated in two independent clinical trials.
- Clinical tests, trials must be conducted by qualified, independent investigators following acceptable research plan.
- Burden of proof is with those making advertising claims. They must demonstrate that the claims have been substantiated prior to publication.

“Puffing” or “puffery”

- Commercial speech “that is not deceptive [because] no one would rely on its exaggerated claims.”
- Examples: “It’s the Best,” “There’s No Other One for You,” and “No Competing Brand Comes Close.”
- Such nonobjective claims **do not** require prior substantiation.
- But false statements of fact can lead to FTC action

Remedies for False, Deceptive Ads

- Injunctive relief: Requires showing of consumer confusion and “likelihood of damage.”
- Market (actual) financial damages.
 - Requires showing that defendant’s false or deceptive advertising materially and negatively affected the plaintiff’s bottom line or customer base.
- Court-ordered corrective advertising.

Tanning

- In extreme cases, with repeated false and deceptive speech, the FTC may require “corrective” ads.
- In 2008 – 2010, the Federal Trade Commission sued the Indoor Tanning Association over these false and misleading statements:
 - *Indoor tanning is approved by the government;*
 - *Indoor tanning is safer than tanning outdoors ..*
 - *A National Academy of Sciences study determined that “the risks of not getting enough ultraviolet light far outweigh the hypothetical risk of skin cancer.”*



Tanning 2

- These statements are provably false. The risk of cancer is not “hypothetical.” And engaging in this kind of deceptive advertising can result in fines and other penalties, according to the FTC Consumer Alert *Indoor Tanning*. Although the Indoor Tanning Association didn’t like being called on the carpet by the FTC, it was not rich enough to mount a campaign of deceptive anti-regulatory advocacy.

FTC Diet supplements

“I have two of these a day as part of my hair care routine. They are delish!”

Kim Kardashian
SugarBearHair



Supplements are unregulated but financial products like crypto currency are strictly regulated by the SEC – There is no gray area (SEC v Kardashian 2022).

FTC Diet supplements

- Deliberate legislative loopholes
- Kim Kardashian and other “influencers” are paid tens of thousands for product promotion on Instagram, Snapchat, Facebook and other social media.
- FDA regulates drugs for efficacy, but not dietary supplements.



Kardashian – Food vs \$ regs

Regulations are quite loose for product advertising and diet supplements but strong for securities and financial products.

American celebrity Kim Kardashian promotes diet supplements and hair care products, but found it was considered deceptive for her to promote a cryptocurrency product without disclosing that she had received a payment of \$250,000 for the promotion. [The SEC fined Kardashian \\$1.3 million](#) in 2022.

SEC v Kardashian, Oct 3, 2022

- June 2021, K's Instagram account:

"ARE YOU INTO CRYPTO???. THIS IS NOT FINANCIAL ADVICE BUT SHARING WHAT MY FRIENDS JUST TOLD ME ABOUT THE ETHEREUM MAX TOKEN."

- "Friends" paid her \$250,000 and she didn't disclose it
- The Securities and Exchange Commission fined her \$1.3 million and said:
 - *Federal securities laws are clear that any celebrity or other individual who promotes a crypto asset security must disclose the nature, source, and amount of compensation they received*



Securities & Exchange Commission



Securities & Exchange Commission

- Oversees the regulation of stock markets as well as the companies and investors that trade securities in these markets.
- Securities Act of 1933.
- Securities Exchange Act of 1934.
- Emerged to address stocks and their public trading.
- Latter Act established the SEC.
- Five commissioners, appointed by President to 5-year terms.

The SEC and New Securities

- Before a security can be offered for sale, a “registration statement” must be formally filed with the SEC.
- Prior to filing statement, can be no press releases, news conferences, mass-media advertising or sales promotions issued with the intent or effect of encouraging the sale of the companies’ securities.

The SEC and False, Deceptive Speech

- Commercial speech involving securities must be truthful, non-deceptive and comprehensive.
- Statements that could mislead potential consumers or investors about the ultimate decision to purchase are especially disfavored.

The SEC and False, Deceptive Speech

- Deceptive statements might include speculative or untruthful information about:
 - Changes in senior management of the corporation;
 - Potential mergers or takeovers;
 - Revenues or profits;
 - Significant new markets; or
 - Plans for new securities offerings.

The SEC and Insider Trading

- Concerns the possibility of violating a fiduciary relationship through “insider trading” or “tipping.”
- Using or sharing nonpublic information to trade in a company’s securities or engage in stock option plans without first publicly disclosing such information.

The SEC and Enforcement

- SEC has power to seek civil and criminal remedies for violations of securities laws and regulations.
- Private citizens also have right to go to court to seek money damages from companies and individuals who have induced investors to buy or sell securities to their disadvantage.



Food & Drug Administration





FDA History and Jurisdiction

- Part of U.S. Department of Health and Human Services (HHS)
- Employs more than 7,000 people at its Washington, D.C.-area headquarters and in 10 regional offices across the country.

FDA and Commercial Speech

- Detailed list and proportions of the ingredients in a product must appear in prominent, readable manner within a prescription drug ad or other commercial speech.
- For generic pharmaceuticals, the generic name must be listed in accordance with current regulation.

FDA and Drug Side Effects

- Each commercial message promoting a prescription drug must include a “summary” of specified information about its safety and effectiveness.
- Suggesting uses for drugs not given prior approval by the FDA could cause the drug to be reclassified as a “new drug.”

MICHAEL
KEATON

PETER
SARSGAARD

MICHAEL
STUHLBARG

WITH
KAITLYN
DEVER

AND
ROSARIO
DAWSON

hulu

DOPESICK

INSPIRED BY THE TRUE STORY OF HOW
AMERICA GOT HOOKED ON A LIE



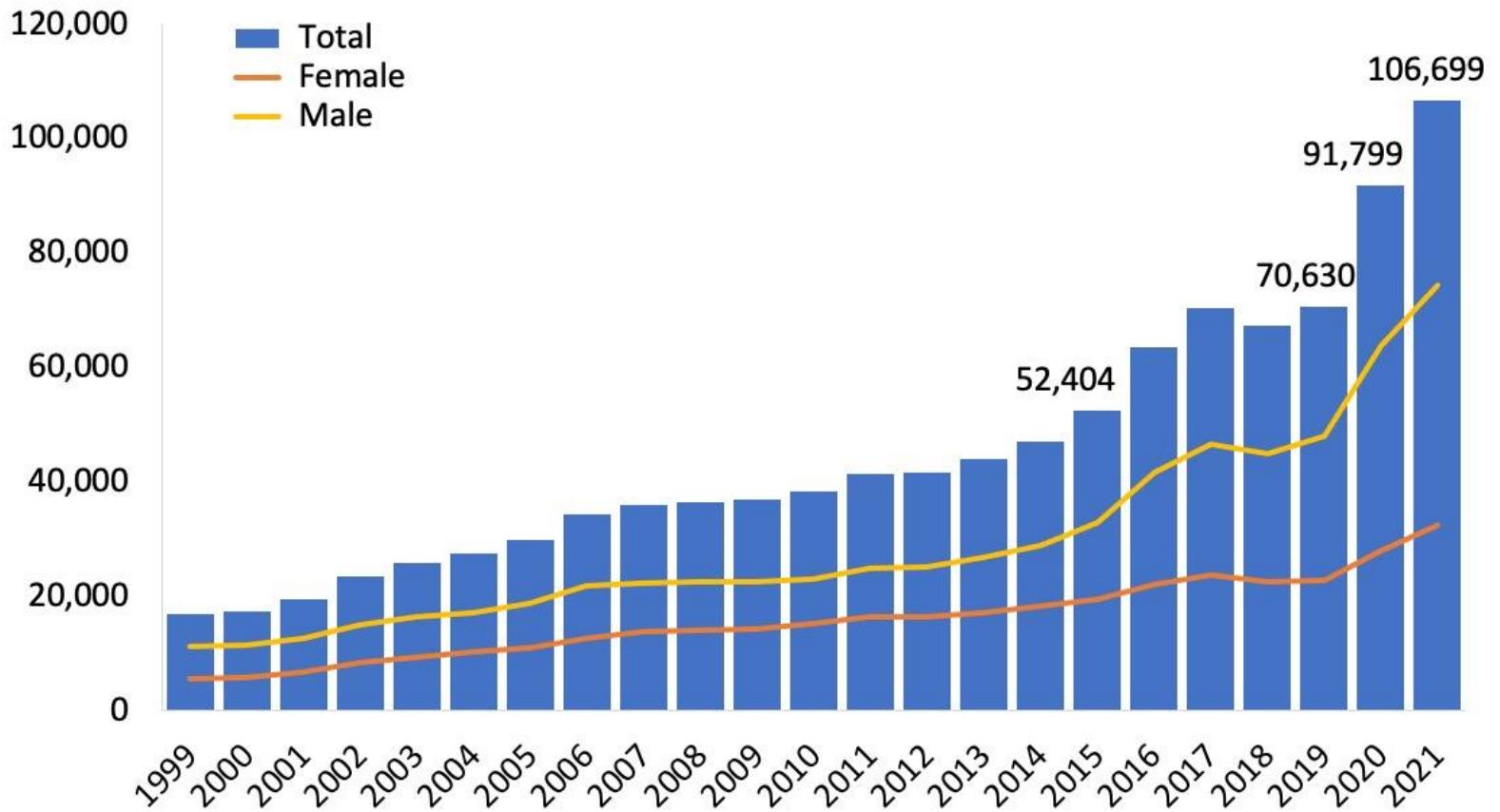
Conflicts of
interest led
FDA to accept
fraudulent
studies about
opioid
addiction

8 episodes 2021 / Beth
Macy book

Painkillers and false advertising

- **1990s** - Purdue Pharma advertised OxyContin, with statements such as this:
 - *“less than 1% of patients taking opioids actually become addicted” and that addiction to opioid medication is “rare”;*
- **By 2024**, over 700,000 people were dead from opioid abuse, [according to the CDC](#), and Purdue Pharma pled guilty to criminal fraud. “OxyContin, which came on the market in the mid-90s, is seen as an early, ferocious driver of the opioid epidemic and Purdue is regarded as the architect of muscular, misleading drug marketing.” ([NY Times, Oct. 21, 2020](#)).

Figure 1. National Drug-Involved Overdose Deaths*, Number Among All Ages, by Gender, 1999-2021



*Includes deaths with underlying causes of unintentional drug poisoning (X40–X44), suicide drug poisoning (X60–X64), homicide drug poisoning (X85), or drug poisoning of undetermined intent (Y10–Y14), as coded in the International Classification of Diseases, 10th Revision. Source: Centers for Disease Control and Prevention, National Center for Health Statistics. Multiple Cause of Death 1999-2021 on CDC WONDER Online Database, released 1/2023.

Purdue bankruptcy / opioids

- Purdue Pharma is in bankruptcy, and the Sackler family has had to give up control and pay \$6 billion into the opioid settlement funds
- BUT the Supreme Court in 2024 was considering whether the Sacklers should be allowed to keep previous profits and be personally shielded by bankruptcy protection



Opioid manufacturer Purdue Pharma LP (Purdue) pleaded guilty today (Nov. 24, 2020) in federal court in Newark, New Jersey, to conspiracies to defraud the United States and violate the anti-kickback statute.

Purdue pleaded guilty to an information charging it with three felony offenses: one count of dual-object conspiracy to defraud the United States and to violate the Food, Drug, and Cosmetic Act, and two counts of conspiracy to violate the Federal Anti-Kickback Statute.

US Dept of Justice

FDA goals & missions

- Approving new drugs, vaccines, medical devices and food additives for safety, effectiveness.
- Setting standards for foods and drug labeling; ensuring standards through testing.
- Inspect production sites
- Issuing public warnings
- Legal action when unsafe products threaten public health

Alcohol advertising

- In the past two decades, court decisions reflect a trend towards more protection of commercial speech and less regulation. This was clearly illustrated by several liquor advertising cases
- **Rubin v. Coors** 1995 — Coors was advertising the alcohol content of its beers and the Bureau of Alcohol, Tobacco and Firearms did not approve, fearing that once consumers knew which brands had higher alcohol content it would lead to market competition for high alcohol beers and more intoxication among the public. But the Court said advertising that discloses only truthful information can't be prohibited.
- **44 Liquormart v. Rhode Island** 517 U.S. 484 1996 — In this case, a business wanted to advertise its liquor prices and the state of Rhode Island said it couldn't. The Supreme Court disagreed. One justice, Clarence Thomas, said that if an activity is legal it is not constitutional to “keep people in the dark for what the government perceives to be their own good.”



Tobacco advertising

- **1966 -- Federal Cigarette Labeling and Advertising Act** US broadcast advertising for tobacco became illegal in the US on Jan. 1, 1971. Also, all tobacco companies to put warning labels on their products. The act followed a nationwide controversy over the link between smoking and cancer which exploded with the US Surgeon General's report of 1964 positively linking cancer and smoking. "Smokeless" tobacco (snuff) also came under the law in 1986
- **2005 — Bans on tobacco advertising in Europe and Asia** were consolidated and reinforced with the 2005 **World Health Organization** Framework Convention on Tobacco Control.
- **2020s – Tobacco companies still fighting** “graphic” warnings

Tobacco advertising 2

- **2009 — Family Smoking Prevention and Tobacco Control Act** — Regulations now prohibit tobacco companies from sponsoring sports or music events, or displaying logos on T-shirts, hats, or other apparel. The law has also led the Food and Drug Administration to develop extremely graphic warning labels which have been challenged in a series of court cases (such as RJ Reynolds v. FDA, below).
- **Several major cases** have tested the extent of tobacco advertising control in the US:
 - Lorillard Tobacco v. Reilly, 2001. State ad regs not OK, but point of sale regs (no minors) were OK
 - United States v. Philip Morris, 2006, racketeering case
 - RJ Reynolds v FDA, 2011, graphics violate 1st A

RJ Reynolds v FDA, 2011

- Nov. 7, 2011, the 11th Federal District Court agreed with five tobacco companies to **temporarily** halt requirements that disturbing graphic images be printed on tobacco packages. The temporary halt (injunction) was granted so that a First Amendment review could take place.
- (These extremely graphic warning labels were required under the Family Smoking Prevention and Tobacco Control Act of 2009). The basic argument, once again, is over the strict scrutiny standard, but the new twist is the idea that by forcing the tobacco companies to print disturbing graphic images, the government is “compelling” speech. (Compelled speech has been seen as unconstitutional in, for example, *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. a/Boston, Inc.*, 515 U.S. 557, 573-74, 1995 and also in *Rosenberger v. Rector & Visitors of UVA*, 515 U.S. 819, 830, 1995).
- But there are narrow exceptions to this in the arena of compelled commercial speech that allow the government to require disclosures to protect consumers from “confusion or deception, but these are for “purely factual and uncontroversial information.” And the graphic images that the FDA wants tobacco companies to use are not factual, but rather, designed to evoke an emotional reaction from smokers.
- Under a strict scrutiny analysis, the court said, the government carries the burden of demonstrating that the FDA’s rule is narrowly tailored to achieve a compelling government interest. The interest in this case is unclear (and seems to go beyond education), the court said. Also, the mandatory use of the top 50% of a cigarette package and the top 20 percent of a printed tobacco advertisement “are any thing but narrowly tailored.” Yet at the same time, the court was not persuaded that irreparable harm would occur to the tobacco companies, since the estimated \$20 million cost of pre-press work is “twelve one-hundredths of one percent of plaintiffs’ combined annual sales as reported for 2010.”⁶

425 LEXINGTON AVE.
NEW YORK 17, N. Y.
REC'D: OCT 6 1960
PLEASE RETURN TO
INFORMATION CENTER

Why don't you settle back and
have a full-flavored smoke?

try Marlboro

*—the filter cigarette with
the unfiltered taste*

If you think flavor went out when filters came in,
you've got another smoke coming. Make it Marl-
boro. This one delivers the goods on flavor.

Sort of nice to know a cigarette so good can be
so comfortable to smoke through Marlboro's ex-
clusive Selectrate filter. Make yourself comfortable
—have a Marlboro.



KING-SIZE SOFT PACK
or Flip-Top Box



You get a lot to like with a Marlboro

Tobacco ad regs have changed

- warning pictures required
- no free samples
- no logos on other products
- cant sponsor events

<https://www.fda.gov/tobacco-products>

FDA warnings 2011



WARNING: Cigarettes cause fatal lung disease.



WARNING: Smoking can kill you.



WARNING: Cigarettes cause cancer.





New FDA regulations for 2021

- Two decades of legal and political battles, FDA issues conclusive new ruling about health warnings on cigarette packs and advertisements. The 11 new warnings fill 50 percent of the package with text and graphic imagery depicting the health consequences of smoking.
- RJ Reynolds again litigating to stop the new warning labels

2021 FDA Warning label

WARNING:
Tobacco
smoke can
harm your
children.



New graphic warnings / 2021 FDA

WARNING:
Smoking reduces blood flow, which can cause erectile dysfunction.



WARNING: Smoking causes type 2 diabetes, which raises blood sugar.



WARNING:
Smoking causes head and neck cancer.



WARNING:
Smoking causes COPD, a lung disease that can be fatal.



WARNING:
Smoking causes cataracts, which can lead to blindness.



WARNING: Smoking reduces blood flow to the limbs, which can require amputation.



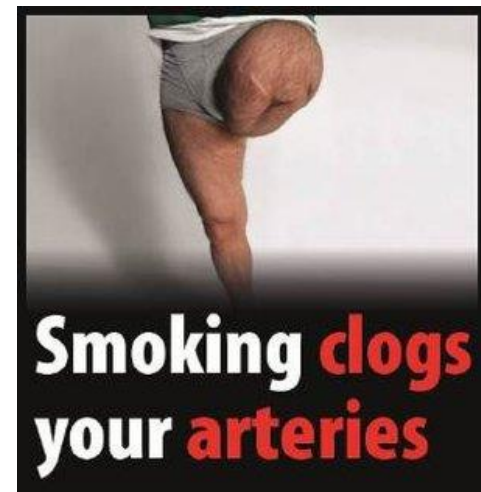
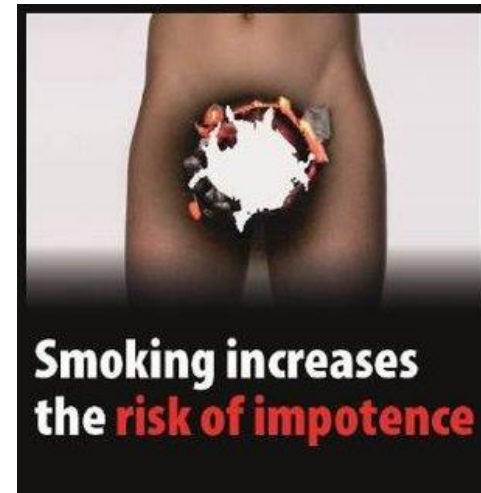
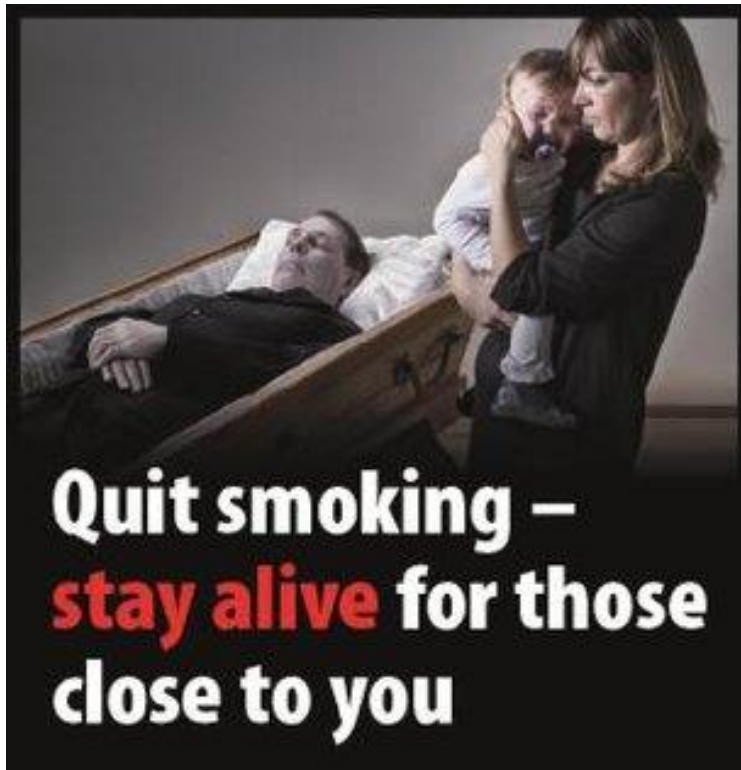
Warnings were appealed, but ...



The appeals court said in a unanimous ruling issued in March 2024 that the rule “passes constitutional muster” under a decades-old Supreme Court standard that allows the government to compel commercial speech so long as the speech is “purely factual,” “uncontroversial,” “justified by a legitimate state interest” and “not unduly burdensome.” -- CNN Nov 25, 2024

US Supreme Court declined appeal November 2024

European anti-smoking images



Other regulators

Advertising is regulated mainly by the Federal Trade Commission but also the Food and Drug Administration and the Securities and Exchange Commission. The regulations and guidelines are extensive, but they generally fall into the category of avoiding deception and backing up advertising claims.



Other advertising regulations

- Trademarks
- Fair housing
- Employment
- Banking
- Outdoor ads



US Patent & Trademark Office



Trademarks: Redskins cases

Sometimes a dispute see-saws back and forth for decades until public opinion changes and makes the legal issues moot.

- In the case of the Washington Football Team formerly known as the “Redskins,” battles over the status of the disparaging trademark took 25 years to resolve.
- Even though the team fought for the right to keep its trademarked name for most of that time, and finally won in court, public opinion about racially disparaging names had changed so much over the years that they decided in 2020 to drop the name after all.



The “Redskins” cases

The original issue was the idea that a government approved trademark was, in effect, the government speaking.

- First lawsuit filed in 1992, when Native American activists petitioned the US Patent and Trademark Office to cancel the registrations owned by the Redskins’ Pro-Football, Inc.
- Trademark law forbids registrations that are “disparaging, scandalous, contemptuous, or disreputable.”
- In 2014, the PTO decided to cancel all Redskins trademarks. Upheld by federal court in 2015, appealed to US Supreme Court.
- In the related case of **Matal v Tam**, 2017, the court said trademarks were not to be considered government speech and that parts of the Lanham Act interfered with the First Amendment.
- A similar case, **Iancu v. Brunetti** 2019 upheld Matal and the concept that trademarks were not government speech.

Matal v Tam, 2017 (trademark)

- Lanham Act – Trademark registration
- Disparagement clause prohibits trademarks that disparage people, institutions, beliefs or symbols
- Sim Tam of “The Slants” sued PTO over denial of registration
- SC said this violated 1st Amendment
- Redskins case moot

Iancu v Brunetti, 2019



Los Angeles artist Erik Brunetti, the founder of the streetwear clothing company "FUCT," leaves the Supreme Court after his trademark case was argued, in Washington, Monday, April 15, 2019. (AP)

- Justice Kagan said the PTO regulation against “immoral or scandalous” trademarks discriminates on the basis of viewpoint.
- **FUCT = Friends U Can't Trust**



Ad cases that defy categorization

Federal Fair Housing Act

- 1968 statute makes it illegal to discriminate in sale or rental of housing.
- Section 804(c) also “prohibits the making, printing, and publishing of advertisements [or other commercial speech] which state a preference, limitation or discrimination on the basis of race, color, religion, sex, handicap, familial status or national origin.”

Federal Fair Housing Act

- Prohibition applies to publishers, such as newspapers and directories, and to people and entities who place real estate advertisements.
- Exceptions recognized for commercial speech related to housing specifically designed for the elderly or the physically challenged or restricted to members of a religious sect.

Employment Issues

- Various civil rights statutes make discrimination by race, age and other characteristics illegal in employment practices.
- The Civil Rights Act of 1964:
 - Forbids employment notices that appear to discriminate by race or sex.

Pittsburgh case of 1973 ends advertising gender discrimination

- *Pittsburgh Press Co. v. Pittsburgh Commission on Human Relations*
 - Classified Ads can no longer be run under “Jobs for men” and “Jobs for women.”
 - This opens questions about advertising regulation for issues that are partly political and partly commercial

Financial Issues

- Advertising and public relations related to the banking industry are closely regulated by a variety of federal agencies.
- Focus is primarily on enforcing various provisions of the federal “Truth in Lending Act,” which regulates commercial speech involving offers of consumer credit.

Outdoor Advertising

- Most laws regulating outdoor advertising are state laws.
- Several federal statutes and regulations limit location, size of Billboards along federal highways.
 - The Federal Highway Act.
 - The Highway Beautification Act.

Citizens United v FEC 2010

- **A controversial** landmark Supreme Court decision holding that corporate financing of political advertising is free speech under the First Amendment. Previous attempts to limit corporate influence and finances in politics were not constitutional, the court said.
- Libertarian vs egalitarian direction for SC
 - Individual freedom vs Equality
 - Critics: companies aren't people

Cases / Review

- Matal v Tam, 2017
- RJ Reynolds v FDA. 2011
- Nike v Kasky 2003
- 44 Liquormart v RI 1996
- Rubin v Coors 1995
- Central Hudson v PSC 1980
- Bigelo v Va 1976
- Va Brd Ph v Va Citizens Consumer 1976
- Lehman v Shaker Heights 1974
- Miami Herald v Tornillo 1974
- Valentine v Christensen, 1942



International advertising regulation

TIFFANY & Co.



Tiffany & Co. 
@TiffanyAndCo

Eye spy new Tiffany T True designs. Shop the new band rings—now with pavé diamonds:
tco.nyc/fV2Q2u #TiffanyT #Tiffany #TiffanyAndCo



7:00 AM · Oct 7, 2019 · [Twitter Ads](#)



Ad Regs Europe

- ***Advertising Regulation in Europe***
- Advertising regulation in Europe has traditionally been more paternalistic, yet advertising graphics tend to be far more explicit than in the United States. For example, ads for tobacco and alcohol are tightly regulated in Europe, and yet ads with nudity or suggestive themes are not considered as offensive to European tastes.
- UK advertising regulation was assumed by the Advertising Standards Authority, which consolidated advertising regulatory authority from television, radio, and print commissions in 1955. A set of codes, developed soon afterwards, is described as a mixture of self-regulation for non-broadcast advertising and co-regulation for broadcast advertising. Like US advertising laws, ads cannot be misleading or cause “physical, mental, moral or social harm to persons under the age of 18.”

Ad Regs Europe 2

- Controversies about advertising in Europe often revolve around attempts to maintain traditions amid an increasing internationalization of both advertising and language. For example, French advertising laws discriminated against non-French products until around 1980, when Scotch whiskey manufacturers sued France in the European Court of Justice. The [EU has rules](#) to support traditionally located products, for example roquefort cheese and champagne in France, [feta cheese](#) in Greece, or Melton Mowbray pork pies in Leicestershire, UK.
- The Cato Institute, a conservative US policy group, questioned these regulations [in a 2016 report](#). Yet the US also has Vidalia (Georgia) sweet onions, Florida orange juice, Tennessee bourbon, and Idaho potatoes under certification marks.

Thank you



Mandating speech

- *Central Hudson* is about restricting commercial speech, but *Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio* (1985), is about mandating speech
- The government can mandate commercial speech as long as the information is
 - "purely factual and uncontroversial",
 - serves a related government interest,
 - and is meant to prevent consumer deception.

Current case : Murthy v Missouri

- Argued at SCOTUS
Monday March 18, 2024
- Brought by Missouri and Louisiana's attorneys general
- Who said fed govt's oppo to online misinformation (Covid-19 and US elections) amounted to censorship.
- US DoJ says can't restrict routine exchange of information

Current : Murthy v Missouri

- “Regardless of the means that the government tries to use to pressure the platforms to commit censorship against third parties, the Constitution really doesn't care about that. It's the fact that what the government is trying to accomplish is the suppression of speech,” J. Benjamin Aguinaga, atty for Louisiana.

Current : Murthy v Missouri

- “There are a lot of valuable ways where the government has information or expertise that it can offer to private speakers, and it would be a shame to chill that,” -- Justice Department attorney Brian Fletcher