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Keywords

advertising, ethical dilemmas

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Australian Industry Responses to Current Ethical Dilemmas – Fast Cars and Fast Food

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Abstract

This paper reviews two ethical dilemmas currently facing advertisers in Australia, which have resulted from lobby group activities and public concern over health and safety issues, and discusses industry responses to these dilemmas. In Australia the main response mechanism for advertisers has been the introduction of self-regulatory codes of practice. A review of the general and trade press, and of the records of the Australian Advertising Standards Board, finds that industry responses tend to be based on teleological ethics (focus on the ends) rather than deontological ethics (focus on the means), with the primary teleological motive being to avoid deleterious outcomes for the industry rather than for society as a whole.

Introduction

Advertisers in Australia, as in the U.S. and the U.K., are bound by an industry-designed self-regulatory code of ethics which covers permissible advertising content. A 1993 Morgan poll reported that the Australian public rated the advertising industry at 9%, where the maximum is 100%, on ethics and honesty (Phillips 1993). More recently, Brinkmann expressed the view that “there is almost a suspicion that marketers' references to values and ideals are a marketing trick, an oxymoron” (Brinkmann 2002, p. 160).

Classifying ‘ethics’

Within this paper, we will draw the distinction between the deontological and teleological perspective of the regulation of advertising. Deontologists believe that to be ethical we must use the right means regardless of the outcome (Emmanuel Kant’s categorical imperative). Proponents of this view would argue, for example, that advertisers should not use overt sex appeals in cigarette advertising as this behavior is frowned upon by society – regardless of whether doing so leads to harm. Teleologists (or utilitarianists), such as the pragmatist Jeremy Bentham, believe that it is the goodness or badness of the outcome that counts. Proponents of this view would argue, for example, that advertisers should not use characters in cigarette ads who have high appeal to young people as these characters may encourage kids to smoke, which is a bad outcome.

As we will see in the codes, some prohibited advertising practices are deontologically unethical, some teleologically unethical, and others are both, but either type of unethicality should be sufficient to prohibit an advertisement.

The following section provides a brief overview of the advertising regulation system in Australia, including the operation and recent outcomes of the complaints system. This is followed by a review of some ethical issues which are currently facing Australian advertisers and discussion of industry responses to these issues.

Regulation of Advertising in Australia

Self-regulation of advertising is the favored option of industry groups in most countries, with self-regulatory systems being readily proposed whenever there is a fear of tighter or stronger government regulation.

Following the demise of the Australian commonwealth government's Advertising Standards Council in 1996, the major industry body, the Australian Association of National Advertisers (AANA), developed the Advertiser Code of Ethics (which applies to all forms of advertising), and established the Advertising Standards Board (ASB) and the Advertising Claims Board (ACB) to deal with complaints and breaches of this code. Under the new regulatory system, the ASB deals with complaints about taste and decency in advertising, and the ACB deals with rival advertiser complaints (Baker et al. 1998). The authority of the two boards rests on the willingness of advertisers to adhere voluntarily to ethical standards.

This paper focuses on complaints lodged with, and decisions made by the ASB. Section 2 of the AANA Code (the section administered by the ASB) specifies that advertisements shall:

- not portray people in a way which discriminates or vilifies a person or section of the community on account of race, ethnicity, nationality, sex, age, sexual preference, religion, disability or political belief;
- not present or portray violence unless it is justifiable in the context of the product or service advertised;
- treat sex, sexuality and nudity with sensitivity to the relevant audience and, where appropriate, the relevant program time zone;
- for any product which is meant to be used by or purchased by children not contain anything which is likely to cause alarm or distress to those children;
- use only language which is appropriate in the circumstances and strong or obscene language shall be avoided;
- not depict material contrary to prevailing community standards on health and safety;
- comply with the Federal Chamber of Automotive Industries Code of Practice relating to Advertising for Motor Vehicles.

The ASB administers the code, which is funded by an industry body called the Australian Advertising Standards Council Ltd (AASC). It is interesting to note the very different messages that are conveyed to the two key target groups by the AASC.

On the ASB website, which provides information to the general public on the function of the ASB and the process of lodging a complaint about advertising, the following statement of intent is provided: "The self-regulatory system, now managed by the Advertising Standards Bureau Ltd ACN 084 452 666 and funded voluntarily by the industry through the Australian Advertising Standards Council Ltd, recognizes that advertisers share a common interest in promoting consumer confidence in and respect for general standards of advertising". This feel-good statement implies a deontological perspective on the purpose of regulation – the industry cares about the consumer and wants advertising to be a positive thing.

In the full-page ads that the AASC placed in *B&T Weekly* (a major trade publication) in June and July of 2001, a very different perspective is conveyed to the advertising industry readership. Each ad features a quote in large print, taking up over three-quarters of the page, from a leading industry figure (such as "Half a page of legals? We can squeeze that in. – Ron Mather, Creative Director, The Campaign Palace"; and "One person complained and you want us to pull it? No problem. – Reg Bryson, CEO, The Campaign Palace"). In each case, the smaller text at the bottom of the page reads: "Can't imagine him saying that? Neither can we. However, if the Government were to regulate our industry he may not have a choice. Thankfully, there's the Australian Advertising Standards Council which is an industry funded body. The Council promotes creative freedom within what is acceptable under law and community standards.

Without it, advertising and advertisers would be at the mercy of overly restrictive legislation. The small levy of 35c for every \$1000 of media spend is all it takes to maintain the Advertising Standards Bureau. For more information call 02 9233 8874. PAY THE LEVY OR PAY THE PRICE”. This campaign presents a far more teleological, industry-centred, argument for self-regulation of advertising.

Handling of Complaints

Harker (2003) reviewed 12 years of complaints to the now defunct Advertising Standards Council, which assessed complaints from both the public and rival advertisers, and found more than ten thousand complaints and two thousand breaches of the codes (i.e., approximately 20% of complaints were upheld).

In comparison, of the total of 1,190 decisions on complaints against advertisements which were reported by the ASB between 1999 and 2001, the most recent year for which figures are available (ASB 1999; 2000; 2001), only 24 of the decisions (i.e., 2%) were to uphold the complaint.¹ The only categories of products in which more than one complaint was upheld in the three-year period were: retail (5); vehicles (4); clothing (2); travel (3); and community awareness (2). One complaint was upheld in each of the categories entertainment, housegoods/services, media, office goods/services, restaurants, sport & leisure, toiletries, and toys & games. There were an additional 15 product categories for which none of the complaints were upheld, including those which have self-regulatory codes (alcohol, therapeutic goods, and slimming).

Table 1 shows the proportion of complaints lodged under each of the clauses of the AANA Code of Ethics which were upheld by the ASB.

Table 1: Complaints lodged, and upheld, under each section of the Code 1999-2001

	Lodged	Upheld	Percentage
Discrimination/vilification	505	10	2.0%
Violence	178	5	1.6%
Portrayal of sex/sexuality/nudity	419	3	0.7%
Causes alarm or distress to children	40	2	5.0%
Language	96	1	1.0%
Health & safety	354	10	2.8%
Other (not under specific clause)	173	0	0.0%

The following section reviews two of the major ethical issues – under the headings of fast cars and fast food – which have arisen for Australian advertisers in the last two years, generally as a result of public opinion or pressure from lobby groups or government.

Fast Cars

Road safety advocates and government authorities in several countries have raised the possibility that ads for new cars which emphasize “performance” and often explicitly show vehicles being driven at excessive speed may increase the likelihood of people exposed to these ads driving in an unsafe manner (i.e., teleological ethical argument). There has been much media attention on fast car ads over the last two years, with government spokespeople, the Australian Automobile Association, and other groups drawing a direct link between portrayals of unsafe driving and road injuries (Masanauskas 2002; Hagon 2001). It is important to note, however, that this supposition has not been put to an empirical test; and the sole voice of dissent, the Federal Chamber of Automotive Industries (Brewer 2002), has been given very little

¹ Note that this number is considerably lower than the number of complaints received (e.g., 1,705 in 2001 alone) as many ads attract multiple complaints, and other are not considered by the ASB as they fall outside of the Board’s Charter.

opportunity to respond. Despite the absence of evidence for a negative impact, the teleological argument that such ads may cause harm has resulted in an increased focus on the regulation of new car advertising. For example, in May 2001, the New Zealand LTSA ordered the withdrawal of two television ads for Mitsubishi Diamante and Ford XR8 vehicles which were deemed to be in breach of a section of the Advertising Codes of Practice, which states that ads should not “glorify excessive speed and/or unsafe driving practices” (LTSA 2001). The Mitsubishi Diamante commercial showed the car beating a bullet in a sprint. The Ford XR8 commercial showed a specialized vehicle (propelled by a jet engine) travelling along salt plains at extreme speed; the XR8 pulls up alongside, and the two passengers joke that the other vehicle “must be stuck in third” before accelerating past it. When the same advertisements banned in New Zealand were aired in Australia they drew public criticism from state transport departments and the Automobile Association of Australia. Interestingly, complaints about both ads banned by the New Zealand LTSA were dismissed by the Australian ASB. The complaint about the Ford XR8 ad was dismissed as “the advertisement was clearly fanciful and fictitious and...did not contravene prevailing community standards on health and safety” (ASB 327/00). The complaint about the Mitsubishi ad (branded a Mitsubishi Magna VR-X in Australia) was dismissed as “the advertisement did not contravene prevailing community standards on health and safety” (ASB 320/00). As with all the other reported complaint dismissals, no survey of community standards was conducted, nor a survey of opinions of the ads, to prove this deontological denial.

In the period 1999-2001, a total of 97 decisions on complaints against motor vehicle advertisements were reported by the ASB (ASB 1999; 2000; 2001), four of which (4.1%) were upheld. However, of these complaints, only 54 were considered under clause 2.6 (health and safety), with the remainder of complaints relating to issues such as vilification and portrayal of sexuality. Of the 54 healthy and safety complaints, exactly half related to portrayals of speeding or unsafe driving (with the remainder being largely about other unsafe behaviors portrayed by characters in the ads). All four of the upheld complaints fell into this category (speeding or unsafe driving), thus approximately 15% of complaints about motor vehicle ads portraying unsafe driving were upheld by the ASB.

In response to the outcry over motor vehicle advertising, the Federal Chamber of Automotive Industries (FCAI) introduced a voluntary code of practice on August 8, 2002, with a grandfather clause allowing previously produced ads to continue airing until December 2002. This voluntary code of practice restricts the use of advertisements depicting *speeding on public roads* (which theoretically would not have excluded either of the advertisements mentioned above). Specifically, the FCAI code prohibits: obviously unsafe driving, including

- reckless and menacing driving to the extent that such practices would breach any Commonwealth law or the law of any State or Territory in the relevant jurisdiction in which the advertisement is published or broadcast dealing with road safety or traffic regulation, were they to occur on a road or road-related area.
- people driving on a road or road-related area at speeds in excess of speed limits in the relevant jurisdiction in Australia in which the advertisement is published or broadcast.
- driving practices which clearly take place on a road or road-related area and which breach any Commonwealth law or the law of any State or Territory in the relevant jurisdiction in which the advertisement is published or broadcast directly dealing with road safety or traffic regulation.
- people clearly driving under the influence of drugs or alcohol to the extent that such driving practices breach any Commonwealth law or the law of any State or Territory in the relevant

jurisdiction in which the advertisement is published or broadcast dealing directly with road safety or traffic regulation.

- motorists driving while clearly fatigued to the extent that such driving practices breach any Commonwealth law or the law of any State or Territory in the relevant jurisdiction in which the advertisement is published or broadcast dealing directly with road safety or traffic regulation.
- motorcyclists or their passengers not wearing an approved safety helmet, while the motorcycle is in motion.
- deliberate and significant environmental damage, particularly while advertising off-road motor vehicles.

As with other self-regulatory codes, the industry expressed support for the new code, with the Advertising Federation of Australia spokesperson quoted as saying that the AFA “welcomed the code, saying it would preserve the ability of advertisers to use fantasy, humor and creativity, but addressed people's concerns” (Plaskitt 2002).

The new voluntary code, like the existing voluntary codes, is administered by the ASB. It will not be until the 2003 case reports are made available that we will be able to comprehensively examine the extent to which this new code has been applied. However, within months of the code being implemented the system was being criticized as being ineffectual by the Australian Automobile Association, Australian College of Road Safety, and the Pedestrian Council of Australia; with the main complaints being that advertisers were using loopholes in the code to continue promoting unsafe practices (such as the clause which applies only to ads involving public roads), and the lengthy delays in the complaints process which result in campaigns finishing before complaints about them are heard (Anonymous 2003a; Smith 2003).

Clearly the advertiser has two options: comply with the spirit of the code or comply with the word of the code. Both Holden (owned by General Motors) and Ford have been criticized for choosing the latter option. Holden’s previous ad showed an SS utility vehicle creating a dust-storm by performing doughnuts in a paddock; the new ad “ad implies a young driver has created crop circles with the new car, but there is never any direct footage of it happening. The same Thunderstruck theme song is played in the background to remind viewers of the previous ad” (Anonymous 2003b, p. 51). Ford’s previous ad showed an XR8 utility vehicle blasting past a land-speed record car on a salt pan; the new ad “shows the two drivers from the first salt-pan ad dawdling along and being trailed by police cars and helicopters, apparently waiting for the two to start speeding” (Anonymous 2003b, p. 51).

Fast Food

“The snack food industry alone spends hundreds of millions of dollars each year pushing its products to teens and pre-teens, with the likes of Coke, Pepsi, McDonald's and Pizza Hut vying for exclusive rights to cafeterias, hallways and athletic fields” (Applebaum 2003, p. 20). The obesity epidemic in the U.S. has led to heated debate about the ethicality of such advertising in schools, with many school districts moving towards limiting or banning the advertising of snack foods and other “unhealthy” products in the school environs. These prohibitions are based on the teleological perspective that such advertising leads to an increase in unhealthy eating among young people. Abbarno (2001) expressed the view that the commercialization of education by business-school partnerships with companies such as Channel One is wrong on deontological grounds. However, the deontological argument for the banning of all advertising in schools (including software, toys etc.) leads to an apparent

inconsistency in the encouraging of “healthy” food advertising in schools, such as the Dole 5 A Day Program (reviewed by Applebaum 2003).

The debate in Australia has focused largely on the advertising of fast foods, soft drinks, and high-calorie snack foods – with the fast food industry particularly being held responsible for the obesity epidemic by many critics – and widespread calls for restrictions on advertising of “unhealthy” foods during children’s viewing times (see, for example, Pritchard 2003).

Mass media interest has been fanned by the release of a series of major studies of food advertising to children. In New South Wales, a 2001 State Government survey reported that the majority of the state’s children are watching between seven and 28 food advertisements per day, most of which are for foods high in fat, sugar, or salt. Headlines were sensational, such as “Children fed an unhealthy diet of ads”, and were supported by alarming figures such as “one in four Australian children aged between two and 17 now classified as overweight or obese... children are obese and developing conditions like Type 2 diabetes and high blood pressure” (Patty 2002, p. 11). In Queensland, a 2001 University of Queensland study funded by a major health insurer found that three in four advertisements shown between 3.30p.m. and 7.30p.m. in Brisbane were for confectionery, soft drinks, chips, desserts, processed snacks and fast food. The survey results were reported in the major weekend newspaper as “The junk your children see on television” and supported by figures on childhood obesity (Tallon 2001). In South Australia, a 2002 Flinders University study found that 80 per cent of food ads shown during Children’s and General Viewing TV shows were for food with marginal nutrition value, and that most of these ads were for fast foods. News stories appeared with headlines such as “Ads for snacks breach TV laws” and the study results were again presented alongside alarming obesity statistics (Crouch 2003). An Australia-wide study conducted by the Australian Division of General Practice during the 2002/2003 Summer vacation found that more than 99 per cent of food ads shown during children’s TV were for fast foods and there were no healthy eating messages broadcast. This story received national coverage, with headlines like “GPs demand ban on junk food adverts” and even more far-reaching implications than the previous two studies, such as “Type 2 diabetes, a disease linked with poor diet and previously seen very rarely in children...children who developed this disease were at risk of an early onset of kidney failure, eye problems, poor circulation and heart disease” (Anonymous 2003c).

Industry concern was heightened after the New Zealand national press reported that the NZ government was examining a ban on junk food ads aimed at children, and Australian childhood obesity forums began to call for a ban on fast food, confectionery and soft drink advertisements targeting children (Esplin 2002). The AANA and AFA responded with strongly worded arguments that obesity was the result of personal choices not of advertising (Ligerakis 2002). Thus, the industry heartily welcomed an Australian federal government proposal for a joint task force (including the Australian Association of National Advertisers, the Advertising Federation of Australia, Commercial Television Australia, the Federation of Commercial Radio Stations, the Australian Press Council and Magazine Publishers of Australia) to develop a public awareness campaign to target childhood obesity. The AFA’s executive director Lesley Brydon was quoted as saying that “the AFA was pleased the Government had flagged that it did not consider the banning of ads an appropriate solution” (Ryan 2002). The *Sun Herald* newspaper interviewed Robert Koltai, AANA vice-chairman, about the new campaign and reported that “he conceded it was designed to take the heat off the advertising industry for its role in promoting fast food to children” (Leggatt 2003).

At an individual company level, one response to this public outcry has been to modify foods to improve their nutritional content; but a far more noticeable and prevalent response has been to modify food advertising to improve perceived nutritional content. A good example of the former is the sandwich chain Subway with its low-fat sandwich options (which have been both heavily advertised and widely

applauded); and a good example of the latter is the current McDonald's TV ad campaign with claims like "only real milk goes into our milkshakes" (as opposed to artificial milk). Many companies are making effective use of advertising to imply that the food is good for you rather than actually ensuring that it is – in the words of an Advertising Federation of Australia (AFA) executive, "...the trend is to tie products to healthful pursuits. Even in ads for burgers or pizza, you increasingly see people playing sports, working out or playing at the beach. They're working up an appetite – and burning up calories" (Pritchard 2003, p. 7). This is an ethically questionable response from both the deontological (deception in advertising) and teleological (promoting food that is bad for people will have a negative impact on the nation's health) ethical perspectives. Across the other side of the globe, McDonald's France apparently has incurred the wrath of McDonald's U.S. for its new ad campaign which advises that children shouldn't eat at McDonald's more than once a week; not surprisingly, McDonald's U.S. said it "strongly disagreed" with the nutritionist quoted in the French ad (Anonymous 2002a).

In the period 1999-2001, a total of 176 decisions on complaints against food or beverage (not including alcohol) advertisements were reported by the ASB (ASB 1999; 2000; 2001). Of these, none was upheld. The clauses under which the complaints were assessed were health & safety (69), discrimination/vilification (68), portrayal of sex/sexuality/nudity (40), violence (31), other (26), causes alarm or distress to children (10) and language (10). These numbers add to more than the number of complaints as complaints can be lodged and assessed under more than one clause. It is interesting to note that the complaints in the health and safety category were not about the nutritional value of the food, the targeting of children, or the accuracy of nutritional complaints; rather, they were about other unsafe or unhealthy practices people were engaging in while preparing or eating the foods advertised.

CONCLUSION

First, the advertising industry, at least in Australia, appears to be doing a reasonable job of demonstrating to the public that it places a high value on teleological ethics. In the two cases discussed above, the industry took action to tackle the believed negative consequences of advertising on the community. When it was argued that portrayals of fast or unsafe driving in car ads leads to speeding and unsafe driving among the general public, the industry proposed a voluntary code to regulate such portrayals. When it was argued that junk food advertising causes children to become obese and inactive, the industry offered to develop an ad campaign to encourage healthy eating and exercise. These actions, however, must be viewed with a certain degree of scepticism – particularly in light of the AASC ad campaign, the appearance of new ads that skate dangerously near the edge of the new codes, and some of the more candid comments by industry spokespeople, which may imply that the bad outcome that the industry was really trying to avoid was the industry-damaging outcome of increased regulation. However, from a teleological perspective, the important thing is that the hypothesized bad outcomes from advertising (such as increases in childhood obesity and unsafe driving) may be avoided, or at least reduced, by the industry's actions. It is also important to note that in these two, as in several other, cases there is no conclusive evidence to demonstrate that the now-prohibited advertising practices do actually lead to the bad outcomes.

Second, the advertising industry, at least in Australia, appears to be doing a poor job of demonstrating to the public that it places a high value on deontological ethics. Of the six clauses of the AANA Code of Ethics, at least four are based on a deontological perspective of right and wrong: (2.1) discrimination/vilification; (2.2) violence; (2.3) portrayal of sex/sexuality/nudity; and (2.5) offensive language. For each of these, less than 2% of the complaints lodged with the ASB have been upheld. The contradiction is seen in the communications issued by the AASC as discussed in this article: the public face of an industry that claims to freely donate a proportion of its earnings to ensure "consumer confidence in and respect for general standards of advertising" and the more private face that motivates members to contribute in order to avoid "overly restrictive legislation". While it could be argued, and indeed is in one of the AASC's trade newspaper ads, that an ad should not be removed because it

offended one person, there is no clear yardstick by which we can decide how many or what proportion of people must be offended by an ad before it is deemed unacceptable. As Fletcher (2001) argues in relation to regulation in the U.K. "...the Advertising Code of Practice does not say advertisements must not give serious widespread offence. It says advertisements must not give serious or widespread offence. An advertisement that gives serious offence to a minority - to gay men, say, or to TBWA creatives - is just as unacceptable as an ad that gives less offence to more people" (Fletcher 2001).

The ASB is composed of a group of people chosen to represent the community and currently consists largely of individuals from media-related industries. Whereas these people are arguably very knowledgeable about mass media and the arts, they could not be said to constitute a broad spectrum of everyday Australians. It could be argued that part of the problem arises from the very nature of this Board; a group of broadminded individuals who are repeatedly exposed to potentially offensive ads are likely to become jaded over time and to see the ads from a different perspective to the "average" Australian. Perhaps one solution would be to create a more reasonable yardstick for the measurement of prevailing community attitudes, such as annually selecting a random sample of Australians and obtaining their laypersons' opinions on whether particular ads are within or outside community standards in relation to portrayals of sexuality, vilification, violence, and offensive language.

It is also important to maintain a realistic view of the purpose of advertising, and of the role of the industry in the commercial world. If the industry were to agree to never use an image that may offend anyone or a message that may lead to an unhealthy behavior, there would be little left for advertising to do. As one writer pointed out in response to the current U.S. debate over whether to end the moratorium on liquor ads, "Whatever the outcome, one thing is certain - U.S. advertisers are not known for their subtlety, so ads featuring unattractive, older people not having good time would make for some very unusual viewing" (Devaney 2002, p. 33). Already in Australia, ads parodying the new codes have appeared.

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