

When it arrived in my mailbox, the monograph looked like the government or trade association reports that I receive each year, scan, and shelve for possible (but rare) further reference. But distractions of the package are not just external, with consistent layout problems that would have been easy to correct. Whereas the manuscript-style pages are single spaced for the narrative, quotations from interviews or documents are double spaced instead of the more usual and readable extra indentations with a special typeface. When something is set off with a hanging indent, the last lines lose the indent and shift over to flush left. If the publisher comes out with later printings, it is hoped that these technical distractions will be corrected.

Regardless, there is a lot of information in the publication. Tables and appendices take up as many pages as the narrative, including the specifics of the Code and later amendments through October 1992 and selected contents of an "Ethics Slide Presentation." Although not an authoritative statement on consumerism or an assessment of the effectiveness of business self-regulation, it is an important historical document, a case study that contributes to information on trade association incentives and activities.

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Please be Ad-Vised: The Legal Reference Guide for The Advertising Executive (2d ed.)

by Douglas J. Wood (New York: Association of National Advertisers, 1996, 508 pages, \$59.95 + \$5.00 shipping)

Law & Advertising: Current Legal Issues for Agencies, Advertisers and Attorneys

by Dean K. Fueroghne (Chicago: The Copy Workshop, 1995, 505 pages, \$37.50)

As someone who teaches a half-course elective in advertising law in a master of business administration program, I am always on the lookout for potential new texts. Both of these books were written primarily as desk references, but could serve as texts as well. Indeed, Fueroghne acknowledges that his book was written in part because there was no textbook available when he took an advertising law course at UCLA. As paperbacks, they are less expensive than are hardcover books on advertising law. This review examines these books for their utility as both a desk reference for practitioners and a text for business or communications students.

Both books cover the usual subjects: Federal Trade Commission (FTC) regulation and Lanham Act challenges, comparative advertising, trademarks, copyrights, and the right to publicity, contests, warranties, and relationships between

agencies and clients. Fueroghne's focus is on legal challenges to advertising, whereas Wood's perspective more involves the legal issues surrounding the technical creation and dissemination of advertising.

Consistent with his perspective, Fueroghne also addresses alcohol and tobacco, political advertising, product liability and advertising, and the First Amendment. Curiously, Wood only discusses product liability briefly when discussing advertising agencies and does not discuss the First Amendment at all. Wood's business perspective covers the acquisition of creative rights and dealing with music and unsolicited ideas in separate chapters. Wood also has a nice chapter on industry self-regulation. Last, Wood offers several chapters on the "business side of advertising" including contracts with vendors, production companies, media, and actors, and the law involving insurance, mergers and acquisitions, and employment.

Both books are well written and include either actual advertisements or descriptions of them. Fueroghne is clearly the superior storyteller, and his book is both light and amusing in style, but still contains legal substance. His case discussions are more detailed than are those in Wood's book, but there are fewer of them. Fueroghne's book is the most fun-to-read law reference or text book I have ever read. Both books are useful references or texts. However, each has two unique limitations and both share two limitations in common.

Law & Advertising's two major drawbacks are its lack of timeliness and some technical inaccuracies. Despite its 1995 copyright date, it appears to be almost an exact reprint of Fueroghne's 1989 book. In fact, the "new" book contains only two judicial or FTC decisions issued in the 1990s. This lack of recent cases leads to some inaccuracies. There is significant discussion of FTC industry guides, many of which have been repealed or revised in the 1990s. Furthermore, most are simply not enforced anymore, which Fueroghne fails to note. The book also fails to discuss the 900-Industry rule, the Telemarketing rule, or any cases against informercials. The chapter on alcohol and tobacco does not mention recent FTC actions or the California court case against Joe Camel. Similarly, materiality as a requirement for deception is discussed without mention of the most relevant case in years on this topic, *Kraft, Inc. v. FTC* (1992) and the related FTC decisions. Last, the Lanham Act discussion only mentions one case with a monetary award, *U-Haul International v. Jartran* (1984). The citation does not include the court of appeals partial affirmation. The book states that this is the largest award to date, which fortuitously is still a correct statement; but Wood also discusses *ALPO Petfoods v. Ralston Purina* (1994) and *Gillette v. Wilkinson Sword* (1992).

Fueroghne presents the *Central Hudson* test for whether a government regulation of commercial speech satisfies First Amendment concerns without the update of *State University of New York v. Fox* (1989). In the section on the First Amendment, Fueroghne does discuss *Edenfield v. Fane* (1993), but he also discusses *Posadas de Puerto Rico Associates v. Tourism Company of Puerto Rico* (1986) without mentioning the earlier decision of *City of Cincinnati v. Discovery Network* (1993), which casts serious doubt on the validity of *Posadas*. And this summer's decision in 44

Liquormart v. Rhode Island (1996) completely vitiates *Posadas*.

Law & Advertising's second major failing is simple inaccuracy, unrelated to being out of date. Details, so crucial for proper legal analysis, are often just a bit "off." For example, its unfairness discussion suggests that the FTC would follow the old *FTC v. Sperry & Hutchinson Co.* (1972) definition even though it stated otherwise in its 1980 Unfairness Statement. Furthermore, the 1980 statement is summarized inaccurately when he states that it requires actual injury instead of a likelihood of injury, just as the Deception Statement requires a likelihood of being misled. Fueroghne does not discuss the recent unfairness amendments to the FTC Act that Wood mentions. Similarly, when discussing the Volvo "monster truck" advertising challenge, Fueroghne correctly states that apologies were required in newspaper advertisements, but he also incorrectly states that corrective advertising was required. Such a result could come from examining newspaper accounts rather than legal sources.

Please be Ad-Vised also has two weaknesses. Unlike Fueroghne (in footnotes), Wood does not provide either legal citations or an index of legal references. Such information is crucial for a law book so that the reader can obtain more information, examine the specific language of the court, and understand the history of a case. Wood should correct this oversight as soon as possible. The other glaring oversight of Wood's book, as mentioned previously, is its lack of First Amendment discussion. A minor problem is that its index was not fully updated from the first edition, so some of the page references are incorrect.

Both books share two weaknesses. First, both treat Lanham Act advertising challenges (as opposed to trademark challenges) in chapters on comparative advertising. Yet only 56% of all Lanham Act advertising cases prior to the Trademark Revision Act of 1988 involved comparative advertising; almost half involved non-comparative claims. However, the trend appears increasingly to challenge comparisons. Since 1980, this same study reports that roughly two-thirds of all challenges addressed comparative claims (Petty 1992, p. 86).

The second weakness is the way the law is discussed. Little background is presented in either book on legal reasoning and analogizing from one case decision to a new set of facts. Rather, Wood, in particular, tends to give "black letter" rules with quick summaries of cases as examples. As a law teacher, I am always skeptical of one author's interpretation of judicial and regulatory decisions. I prefer to provide my students with actual court language where possible and teach them how to consider applying the reasoning and holding to a slightly different set of facts. I am not convinced that even advertising executives, Wood's target audience, are best served by this discredited "black letter" rule of law approach. It may be suitable when quoting from specific guides and regulations, but less so when trying to create a general rule of law from a single court or regulatory holding based on a single set of facts. Fueroghne's examples are better in that they contain more detail to allow for greater consideration of factual changes, but in neither case are the complexities of legal reasoning illustrated.

A recent innovation in educating managers about advertising law is to follow a conceptual model that is consistent

with the law rather than a legal model. For example, I (1993) develop the Audience Impact Model for determining whether speech is merely commercial or fully protected under the First Amendment. Petty and Kopp (1995) present a conceptual "six-tions" model for determining whether advertising is likely to be successfully challenged as misleading. This latter model encompasses challenges from industry self-regulation, competitors under the Lanham Act, and government regulatory authorities. Following such models adds an understandable framework to what otherwise is a listing of statutory language followed by case stories. Such models still represent only the views of the author(s) but are based on a wide range of legal sources and case applications.

My recommendation, albeit somewhat reluctant, is to forego Fueroghne's entertaining style and lower price in favor of Wood's second edition. Wood, but not Fueroghne, includes important developments in the past few years such as the FTC's Telemarketing Rule, the Federal Trademark Dilution Protection Act, and numerous recent decisions that further expand and define this fascinating field. Unfortunately, this means spending more but still living with Wood's inexcusable lack of First Amendment discussion and omission of legal citations. Wood's book also includes many business law topics that are outside the area of advertising law per se and might be unwanted by some purchasers. However, this latter feature could be a benefit for a text in an advertising or communication program where students are not otherwise exposed to the basics of contract or employment law. I could imagine well a two-course sequence using this text covering both advertising law and business law for advertising managers.

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Marketing and Consumer Research in the Public Interest

Edited by Ronald Paul Hill (Thousand Oaks, CA: Sage Publications, 1996, 230 pages, \$26.00)

Publications of collections of papers can serve several purposes. Two decades ago, they were vehicles to bring together journal articles focused on a particular theme and were used primarily as supplementary texts in marketing courses. In the 1980s, a new "review" form emerged that offered authors the opportunity to publish longer articles that would not fit typical journal limitations. Often these articles attempted to provide a state-of-the-art review of a particular stream of research and writing that was particularly valuable to other scholars and sometimes to students.

A third form, of which this volume is an excellent example, is the collection of original article-length essays organized around a general topic or theme written by leading authors who are offered the opportunity to address either an assigned topic or to expound upon work for which they are well known—or becoming well known. Sometimes, such a volume emerges out of a conference. Sometimes, as here, it is the result of the initiative of a particular editor. Its audience is typically fellow scholars, but often the subject matter will appeal to other interested parties, whether they be practitioners, consultants, or regulators.

This book is timely and provocative in several ways and it should be of interest to several target audiences. The book addresses the interface between consumer research and the public interest. Although in its conventional role, consumer research exists to help corporations maximize revenues, a small coterie of scholars and other writers historically have been concerned about both the potential negative consequences of consumer marketing on the broader society and the positive role consumer marketing can play beyond the commercial marketplace.

Too often in the past, criticism of the marketing system has been led by popular-culture writers such as Packard (1957), often with dubious credentials and questionable rigor, by social critics such as Nader (1965) eager to provoke change, or by politicians such as Magnuson (Magnuson and Carper 1968) with an agenda for legislative reform. But, as Hill notes in his introduction, consumer researchers have not been idle in this domain. In the early 1970s, several scholars were concerned with the problems of disadvantaged consumers (Andreassen 1975). Others, including Keith Hunt, Tom Kinnear, and Bill Wilkie, sought to bring consumer models and consumer research skills to bear on problems of the Federal Trade Commission (FTC) by both writing and actually working for the FTC for short periods of time (cf. Wilkie 1982). Since those early beginnings, inter-

est in the potential negative consequences of consumer marketing has ebbed and flowed in response to cultural changes and federal budgeting priorities. Still, many of our leading consumer researchers—including Joel Cohen, Paul Bloom, Bill Wilkie, Fred Morgan, Michael Mazis, and others—have stuck with the topic and have provided important insights into particular issues and actual cases and into fundamental consumer behavior processes. In recent years, they have been joined by a growing cohort of scholar-activists seeking under the rubric of "social marketing" to find ways that consumer marketing concepts can be brought to bear to help ameliorate problems of consumers that do not involve traditional products and services. Such work has come to have an important impact on both practice and scholarship.

Although there are exceptions, in the main, over the past two decades, scholarship on consumer behavior and the public interest has evolved out of perspectives drawn from economics or psychology and has relied heavily on positivist research and rational models of consumer choice. What is refreshing about this book is that it (1) helps revive our focus on the "public interest" as it might be affected by consumer marketing; (2) introduces to many readers the work of many new voices in this domain; and (3) dramatically extends the range of conceptual frameworks, topics, and methods of research that can be applied to such problems. It is a volume that *can* be read by those who simply wish to learn about what some of the leading scholars in this subfield are thinking about today and where some of the most pressing new problems lie. However, it *should* be read by anyone thinking of researching and writing in this broad area. Assembled here are several provocative issues, some imaginative field work, and a range of radical recommendations about what ought to be done to improve consumer welfare (notwithstanding one article that suggests that nothing should be done at all!).

The collection contains 11 articles grouped into four sections. The sections might be labeled as follows: (1) new ways of thinking about the public interest, (2) new or reemerging problems, (3) new perspectives on the *extent* of traditional problems, and (4) new perspectives on solutions. In each case, Hill has assembled scholars who have thought about their problems for a considerable time and who write crisply and logically. To the extent that they use field research, their techniques range from traditional surveys and content analysis to qualitative interviews and introspection. The overall volume is easy to read and ranks high in my judgment in the freshness it brings to the marketing and public interest literature. I suspect that the editor had a strong hand in making sure that each article begins with a clear overview of where it is going and ends with a concise summary and statement of conclusions. (Too many books of original readings seem to have motivated contributors by offering them a relatively free hand in style and content.) The one major omission is an extended essay that attempts to link the pieces together and draw major conclusions.

The Content

Part I contains two articles. This first article by Julie Ozanne and Jeff Murray extends their previous work urging marketers to use critical theory to understand how the marketing