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Review of *The Tangled Web They Weave: Truth, Falsity, & Advertisers* by Ivan L. Preston

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The Tangled Web They Weave: Truth, Falsity, & Advertisers

by Ivan L. Preston (Madison, WI: The University of Wisconsin Press, 1994. $22.50)

Part way through this thoughtful critique of advertising regulation, the author quotes an advertising executive who once said "You can expect advertising to tell the truth and nothing but the truth, but you must not expect it to tell the whole truth" (p. 62). The attitude embodied in this quotation seems to be the driving motivation behind Ivan Preston's quest for the reinvention of advertising regulation, which lies at the core of this book. Preston has long been a critic of the insufficiency of governmental oversight in consumer advertising. His analysis is rooted in the basic tenet that advertising is essentially a one-sided argument. Preston believes that by providing only partial truths about products and services, advertising contributes to a "diminishment of the truth" (p. 64), which harms consumers even though current interpretations of the law do not recognize this approach as an actionable violation.

Preston envisions the American advertising establishment as engaging not so much in systematic deception—outright deception is relatively well policed—but rather as creating numerous advertising campaigns in which the literal content of an advertisement is true but the implication drawn by many consumers is false. Preston's volume (Part Two) contains a useful primer on how sellers intentionally create advertisements in which its implication is false, though its explicit claims are true. Within this questionable arsenal of advertising are tactics, such as:

- The expertise implication—an advertisement uses an expert endorser, who actually does not possess the expertise needed to make a claim about a product, though the consumer logically assumes he or she does. Preston uses the illustration of an astronaut endorsing the quality of an automobile engine as an example of such a claim.
- The contrast implication—a brand of product explicitly contrasts one of its attributes to one of its competitor's, but the point of the contrast, such as the exact combination of aspirin and caffeine in an analgesic capsule, is something that makes no distinctive contribution to the key benefit sought from the product (i.e., pain relief).
- The halo implication—an advertisement makes a true claim in the hopes that a consumer will then believe another (untrue) related claim. Preston uses the example of Sunoco's claim that it has the "World's Highest Octane Level," which implies to some consumers that Sunoco offers the world's most powerful gasoline. In fact, octane ratings over a certain level do not affect the performance capabilities of an automobile engine.
- The proof implication—an advertisement cites a survey, but the sample used for the survey may have no generalizability, or the group surveyed may have no inherent expertise concerning the product or service at focus.

As the author's arguments unfold, the reader senses the inevitability of consumers' facing dubious claims. The argumentation proceeds along the subsequent lines. Marketing and telling the truth are difficult to combine because most brands are not sufficiently different from their competitors.

Thus, advertisers have little incentive to make claims that are true but insignificant. If advertisers do make insignificant claims (which are true), they must be made to seem significant. Alternatively, advertisers can make claims with higher significance, but which involve less than the full truth. Typical, here, is what Preston (p. 113) refers to as "the sufficient facts implication" in which a marketer will make a true objectively significant claim for a particular brand. Yet, because the seller fails to mention the negative points about the brand, he or she does not provide the sufficient additional information necessary for the buyer to make a totally informed buying decision. For instance, an advertisement about a stereo amplifier may claim that it provides the consumer with 100 watts of power (a true and perhaps valuable claim), but does not disclose that most consumers may not need that much power.

Particularly scorned by Preston are *nonfact* claims, which he implies as having "outright falsity" (p. 60) because they lack both truth and objective significance to the buying process. An example of an advertising campaign that stresses a nonfact claim was the heavily promoted "Coke is it" campaign. Preston might say, "So what?" The claim about "it" could refer to anything and has no meaningful, objective standing to aid the consumer in making a purchase decision. It is at this point that some consumers will take umbrage with the credibility of the critique provided in this book, because almost all image advertising could fall into the nonfact claim category and, thus, would be regulated out of existence if Preston could create his ideal regulatory world. Image advertising takes a particularly strong bashing because it often promises possible psychological outcomes associated with product use or makes social statements about the context in which (some) consumers may use the brand. For example, if a consumer drinks Old Milwaukee is it really true that "It Doesn't Get Any Better Than This"? Or, how can Pepsi be the "The Drink of a New Generation" when literally breast milk actually fulfills that claim? Hence, there is a certain joylessness to Preston's conceptualization that seems to imply that a substantial percentage of consumers will inevitably be mislead by the association of products with seductive images and that the buying public would be better off with a "just the facts ma'am" approach to advertising. Preston does concede, however, that many consumers would be willing to trade off occasional deception for the continued flow of entertaining and image filled commercials.

The extent to which the reader accepts many of the arguments presented in this volume depends largely on the general perspective that he or she holds regarding the "typical consumer." Are consumers "reasonable" and should they be expected to discount many claims made by advertisers as being embellishment? Or alternatively, is the typical consumer "economically impaired," both trusting what he or she hears in advertising to be true and engaging in limited information searches? Preston believes that the very existence of the many shallow claims, which can be found in the marketplace, constitutes proof that advertisers think a substantial number of consumers will rely on those claims. Importantly, he adds that the difference between these two points of view about consumers ought be adjudicated by the realization that most consumers are not "dumb" in the IQ sense of the word, but rather lack the expertise necessary to make informed buying decisions for all product categories. Hence, because of constraints for seeking further information, consumers may, by default, give the benefit of truthfulness to advertisement claims and their implications.

What can be done about the manipulative state of affairs that Preston sees in the world of advertising? He proposes the *reliance rule*, which would require advertisers who make any product claim to be willing to advocate that a buying decision ought be made on the basis of that claim. For example, a reliance rule would eliminate advertisement claims, such as a hypothetical beer company suggesting that its beer is "America's Finest," because the company probably could not objectively advocate that consumers who buy the beer are really getting "America's Finest." Thus, the reliance rule would advocate a criterion for deceptiveness that would not only be the literal truth of the claim, but would also involve the seller's willingness to substantiate the claim and offer it as a primary reason for buying the product. Preston argues that such a reliance rule would make the law concentrate on its real purpose, which is to prevent economic harm to consumers. The ingenuity of his approach is that advertisers could not say in their own defense that a particular claim meant *nothing*, because that admission would fail to show a basis for reliance. If, indeed, a claim meant *something*, advertisers would have to show why that something ought to be treated as a major reason for buying the product, or the advertiser would have to give up the claim. How would this scheme work in practice? For example, an advertiser who was promoting the mileage of its automobiles as significant must say something such as "There are many reasons for choosing a car and mileage is one of them. This may or may not be an important factor to you, but if it is, you may want to know that our brand excels on this feature" (p. 189). Preston contends that such a reliance rule would eliminate many "slippery slope" claims, including much image advertising, as well as most subjective opinions that are a part of "puffery" driven promotional campaigns.

Realistically, Preston is fighting an "up hill" battle in gaining mainstream support for his "reliance rule" approach to regulation. Advertisers will oppose it on the basis that it restricts commercial "free speech," which is guaranteed (with some limits) by the First Amendment. The Federal Trade Commission (FTC) will contend that by surveying consumers about questionable advertisements and determining what their net impression of the advertisement is, the FTC can already detect the most damaging false implications. Thus, Preston's approach is likely to be vigorously opposed by both advertising sponsors and policymakers—especially in this era of deregulation.

Despite his excoriation of the advertising industry, Preston concedes that he is not "anti-advertising". He finds advertising to be a masterful method of communicating economic incentives to the public. However, he also believes that existing regulation and consumer education alone are not the answer to advertising misimpressions because no consumer can educate him- or herself enough to know about all aspects of the marketplace. And because much advertising *is* trustworthy, consumers cannot assume that what they hear in the marketplace is false. They must necessarily believe in *some* information. The issue is how to get them to know which information they can trust. Preston argues that his reliance rule would be ideal because, if implemented and regulated by the FTC, consumers would be able to trust all advertising claims.

Preston is an articulate and worthy challenger of the advertising establishment. Surely, if his scheme were supported by new government regulation, the credibility of advertising would improve. But would advertising be as much fun? And how much would this tighter regulatory system cost? Should we assume that the typical consumer cannot reason through certain advertising puffs to make an informed decision? These are questions others must answer.

As a former FTC staffer, a president-elect of the American Academy of Advertising, and an author of numerous articles about advertising law, Preston is enough of an insider to know the true purpose of many advertising campaigns. Although the intent of most advertising may not be to deceive, it certainly may lead to false impressions that are favorable for the seller. Preston believes that the public interest demands that where such falsity can be recognized, it must be opposed, and his book is a contribution to that battle.

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