

Northwestern Journal of International Law & Business

Volume 14

Issue 3 *Spring*

Spring 1994

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Recommended Citation

Caryn L. Finkle, Nestle, Infant Formula, and Excuses: The Regulation of Commercial Advertising in Developing Nations, 14 Nw. J. Int'l L. & Bus. 602 (1993-1994)

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Nestlé, Infant Formula, and Excuses: The Regulation of Commercial Advertising in Developing Nations

Caryn L. Finkle

Advertising has been recognized as one of the most persuasive forms of communication.¹ Can it also endanger the cultural autonomy of a nation? This comment addresses the potential role of advertising in developing countries and its regulation by the international community. The central question of this analysis is whether or not the advertising of the most developed nations, particularly the advertising produced by the so called "western media,"² is a threat to the cultural survival of developing countries.³ The answer to this question as reflected in the World Health Organization's (WHO) Code of Marketing of Breastmilk Substitutes⁴ is yes. The Code recommends a complete ban on advertising and marketing of any breastmilk substitutes in developing countries.⁵ The apparent rationale behind this recommendation is the protection of the developing countries cultural autonomy.⁶ Unfortunately, a restrictive and paternalistic approach to advertising in these nations is detrimental to their economic development. Moreover, two very important factors are ignored: the wants

¹ See Mochtar Lubis, *Interaction Between Culture and Communication*, 76 INT'L COMM'N FOR THE STUDY OF COMM. PROBS. 1 (n.d.) ("modern communications [are] a powerful instrument to influence the attitudes, habits, taste, perceptions of many people around the world . . . they penetrate into the deepest layers of the societal fabric and culture.").

² The term "western" refers to the United States, Canada, and countries in Western Europe. This term does not refer to all countries in the western hemisphere.

³ The term "developing countries" refers to countries other than the United States, Canada, the former Soviet Union, and Europe.

⁴ See *International Code of Marketing of Breastmilk Substitutes*, World Health Assembly, 24th Assembly, WHA Res. 22, U.N. DOC. A34/Vr/15 (1981), reprinted in 20 INT'L LEGAL MATERIALS 1004 (1981) [hereinafter *Code* or *WHO Code*].

⁵ *Id.* arts. 5.3, 5.4, 5.5, 6.2, 6.6, 6.7, 7.2, and 8.

⁶ See Post & Baer, *The Int'l Code of Marketing of Breastmilk Substitutes: Consensus, Compromise, & Conflict in the Infant Formula Controversy*, 25 INT'L COMM'N OF JURISTS, THE REVIEW (1990).

and needs of the developing countries and the positive uses and effects of advertising.

Deregulating commercial advertising in developing countries would allow advertising to benefit these countries culturally, by reinforcing and illustrating positive behavior and value systems, and economically, by providing funding for technological advancement. Strict regulation of the industry will deprive these communities of advertising's aid in their development.

I. THE NESTLÉ EXAMPLE: THE CURRENT STATE OF REGULATION
IN DEVELOPING COUNTRIES

A. The Problem: Nestlé Corporation and Infant Formula

Nestlé S.A.⁷, a multinational corporation, began marketing infant formula in developing countries in the 1950's. By 1968, a controversy had developed over Nestlé's mass advertising and marketing campaigns. This campaign included giving away free samples to new mothers at hospitals and the use of billboards and other pictorial images.⁸ However, the most widely criticized aspect of Nestlé's campaign was the use of women dressed as nurses in the villages of developing countries.⁹ These "nurses" handed out free samples of infant formula, thus giving the impression that the Nestlé product was endorsed by the medical profession.¹⁰ The campaign also gave the impression that the infant formula was a safe and easy-to-use substitute for breastmilk in developing countries.¹¹

Unfortunately, as marketed, the product was neither safe nor easy to use. The results were tragic. The problems inherent in developing countries — illiteracy, poverty, and unsanitary conditions — combined with the deceptiveness of Nestlé's marketing practices resulted in the deaths of hundreds of infants.¹²

The immediate cause of this tragedy was product misuse. What is shocking is that in this instance, simple "misuse" led to death. Mothers, not given any meaningful instruction on the proper use of infant formula, mixed the product with contaminated water, did not

⁷ Nestlé S.A., hereinafter Nestlé, is a Swiss parent conglomerate established more than a century ago.

⁸ See Smith, *Let the Buyer Beware*, NEWSDAY, May 14, 1989, at 23.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² A. ALLAIN AND A. CHETLEY, *PROTECTING INFANT HEALTH: A HEALTH WORKER'S GUIDE TO THE INTERNATIONAL CODE OF MARKETING OF BREASTMILK SUBSTITUTES 5* (1989).

clean the bottles correctly, and failed to refrigerate after preparation, resulting in the growth of deadly bacteria.¹³ In other cases, the formula was mixed with too much water by mothers who assumed that more water meant more formula and, consequently, less money spent on baby food.¹⁴ Due to the high level of illiteracy in developing countries, the women could not read the instruction labels on the product.¹⁵ If they could, they would have realized that by diluting the formula they were starving their children.

B. The Proposed Solution: The World Health Organization's
International Code of Marketing of Breast Milk
Substitutes

The international community reacted angrily to the infant deaths and criticized Nestlé for unethical behavior and marketing malpractice. The first reaction came from the United Nations Protein Calorie Advisory Group (PAG).¹⁶ PAG warned that poverty, unsanitary conditions, and illiteracy could lead to a misuse of infant formula.¹⁷ PAG recommended careful regulation and supervision of the marketing and use of breastmilk substitutes; yet by 1974, despite PAG's warning and the link between misleading formula promotion and infant mortality, infant formula remained unregulated.¹⁸ With no international regulation in effect, the WHO¹⁹ urged United Nations members to

¹³ Stephen Solomon, *The Controversy Over Infant Formula*, N.Y. TIMES, Dec. 6, 1981, at 92 col. 1. In developing countries, the communal water source may contain the only drinking water. *Id.* In rural or jungle areas, this source may be used as a laundry and a bathroom. *Id.* Sterilization of this water, however, requires fuel to boil the water, and mothers may be hesitant to use valuable fuel for this task. *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ MAGGIE MCCOMAS ET AL., *THE DILEMMA OF THIRD WORLD NUTRITION* 4 (1985). As a non-governmental United Nations organization, PAG was one of the most active international organizations dedicated to the study and improvement of worldwide nutrition. *Id.* Prior to 1977, PAG ensured coordination of nutrition research and aid programs carried out by U.N. agencies such as the World Health Organization and UNICEF. *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ WHO was created in 1948 and currently brings together the health professionals of 188 countries. Operating under the authority of the United Nations the Organization strives for the highest standard of world health. Activities of the WHO include promoting the health of mothers and children, combatting mass malnutrition, and establishing and administering international health regulations. *POLITICAL HANDBOOK OF THE WORLD: 1993* 1149-51 (Arthur S. Banks ed., 1993) [hereinafter *POLITICAL HANDBOOK*].

review infant formula marketing and introduce restrictive advertisement codes.²⁰

In 1981, the WHO met with the World Health Assembly²¹ (WHA) and adopted as a recommendation the International Code of Marketing of Breastmilk Substitutes.²² The Code is a detailed and highly restrictive agreement that regulates infant formula. Directed at individual governments, the Code levies no sanctions but serves as a foundation upon which individual countries can enact their own legislation in accordance with the Code's principles.²³ Significantly, the Code recommends a complete ban on advertising and marketing of any breastmilk substitute.²⁴

In formulating the Code, the WHO stressed the importance of a mother's natural milk.²⁵ The language and rationale used to defend the recommended advertising ban, however, is distressing. According to the Code, mother's milk should be used rather than infant formula in developing countries, not only because poverty and the lack of sanitary conditions make formula usage unsafe, but also because the introduction of the infant formula would disrupt the cultural and political makeup of the developing country.²⁶

Apparently, the WHO wanted to avoid advocating a westernized view of life to developing countries. The introduction of infant formula in the most developed countries, like the United States, has enabled nursing mothers to maintain employment outside the home, an ability which is certainly helpful, if not essential, in combatting poverty. Yet the international community, as reflected in the Code, decided not to enhance the opportunity for women in lesser developed countries to work outside of their homes, despite the clear problem of poverty in many of these nations. The concept of the working mother,

²⁰ Non-governmental organizations, such as church and consumer groups joined the debate and publicized the issue, focusing on the alleged unethical practices of Nestlé. The formula controversy was internationally publicized in 1974 when a little known British Charity published "The Baby Killer", a pamphlet expressly accusing Nestlé of promoting infant products in developing countries through harmful practices. Nestlé did not respond to the publication until a group called Third World Action Group (TWAG) translated the pamphlet into German and renamed it "Nestlé Kills Babies."

²¹ The WHA meets annually to discuss actions necessary for the implementation of WHO objectives. *POLITICAL HANDBOOK*, *supra* note 19, at 1150. The WHA establishes policies and programs and adopts international codes through conventions and regulations. *Political Handbook*, *supra* note 19, at 1150.

²² See *WHO Code*, *supra* note 4, at 1004.

²³ See *WHO Code*, *supra* note 4, at 1004.

²⁴ See *WHO Code*, *supra* note 4, arts. 5.3, 5.4, 5.5, 6.2, 6.6, 6.7, 7.2, and 8.

²⁵ See *WHO Code*, *supra* note 4, preamble, arts. 4, 4.2, 6, and 7.

²⁶ See Post & Baer, *supra* note 6.

to the international community, was not acceptable for developing countries.²⁷

Ironically, the argument for banning marketing of infant formula was given in terms of protecting cultural autonomy. In fact, this "protection" is detrimental to the "protected" country. The implied message of the Code is that the international community wants to protect less developed countries by keeping them where they are — less developed. While the Code's concerns for health and safety are valid, the suggested ban to protect cultural autonomy is inappropriate and avoids the issue of misuse. Instead of regulating the advertising of a product made dangerous only by misuse, for example by requiring advertisers to adequately inform consumers, the recommended ban chooses ignorance over information. The United States, to its credit, did not sign the Code. The United States claimed that while it supported the regulation of infant formula, the total ban on all advertising violated the first amendment to the Constitution and unduly burdened the United States which is the largest western broadcaster.²⁸

Some developing countries apparently recognized the problems inherent in an advertising ban and did not fully accept the Code's provisions as law. By mid-1988, seven years after the inception of the Code, only seven countries worldwide had accepted the Code.²⁹ The Code's ban was clearly not universally accepted.

The ban on advertising is also illustrative of the international community's paternalistic position on the regulation of western commercial advertising in developing countries. Clearly, there can be serious problems when a new product is introduced into a developing country. Illiteracy and a lack of adequate sanitation must not be ignored. The correct way of dealing with these problems, however, is to allow developing countries a voice in what they want—not to simply deny the introduction of information.

Sadly, however, the international community has immersed itself in a paternalistic approach as illustrated by the Code's ban on advertising of a potentially beneficial product. This approach ignores the wants and needs of these countries under the guise of protecting their "cultural autonomy." The danger, however, is more serious than be-

²⁷ See Post & Baer, *supra* note 6.

²⁸ See Nancy Ellen Zelman, *The Nestlé Infant Formula Controversy: Restricting the Marketing Practices of Multinational Corporations in the Third World*, 3 *TRANSNAT'L LAW* 697, 727 n.158 (1990). In the United States, broadcasting receives most of its funding from advertising revenue. See *infra* notes 57-62 and accompanying text.

²⁹ The countries which have adopted the Code as law are the Philippines, Sri Lanka, Brazil, Guatemala, Peru, Kenya, and Mexico.

nign paternalism. This approach has two fatal flaws. First, by “protecting” these countries, the international community is depriving them of the cultural and political autonomy it claims it is trying to preserve. Second, the positive effects advertising can have on a country are eliminated.

The Code’s approach “protects” these countries by keeping them where they are, at least until they eventually develop their own technology, financial resources, and, most importantly, powerful political voices for development on their own.

II. ECONOMIC BENEFITS OF ADVERTISING

A. The New World Information Order

As early as the 1960’s, the cry of developing countries was for a New World Information Order (NWIO).³⁰ Developing countries sought many changes in the traditional free flow of information doctrine historically endorsed by western journalists and broadcasters.³¹ According to developing countries, the free flow doctrine allowed developed countries to broadcast their concepts into a developing nation without giving much international exposure to events taking place there.

The free flow doctrine originated in 1948 when the United Nations General Assembly adopted the “Universal Declaration on Human Rights.”³² In Article 19, the General Assembly explicitly recognized free expression as a fundamental human right: “Everyone has the right . . . to seek, receive, and impart information and ideas through any media regardless of frontiers.”³³ By its terms, Article 19 goes beyond the traditional notion of freedom of expression by guaranteeing the right to receive as well as to impart information. This extension suggests that the United Nations was not only interested in the rights of speakers and writers but also in the rights of listeners.

However, this free flow of information into a nation presents a problem for developing countries that do not have the communication

³⁰ The NWIO does not refer to any particular declaration or resolution, but is one of several shorthand labels that proponents, critics, and scholars have given to the international movement to restructure the flow of communications. Other labels include the New International Information Order (NIIO) and the New World Information and Communication Order (NWICO). For convenience, this article utilizes the NWIO abbreviation.

³¹ According to this principle, “[f]reedom of information implies the right to gather, transmit and publish news anywhere and everywhere without fetters.” G.A. Res. 59(I), U.N. GAOR, 1st Sess. at 95, U.N. Doc. A/64/Add. 1 (1947).

³² G.A. Res. 217(III)A, U.N. GAOR, 3d Sess. at 75, U.N. Doc. A/810 (1948).

³³ *Id.* at 74-75.

infrastructure with which to disseminate their own ideas.³⁴ Without a communications infrastructure, developing countries viewed the free flow of communication as unilateral — the West broadcasted and they received.³⁵ Furthermore, developing countries criticized the West for not focusing on the events in their countries aside from tragedy and disaster.³⁶

The United Nations Economic and Social Council (UNESCO) became the forum for debate on these issues.³⁷ The debate, which continues today, concerns the need for a more balanced flow of information.³⁸ Notably, many countries are not asking for a ban on information from the West or even strict regulation of it.³⁹ Mustapha Masmoudi, the permanent delegate of Tunisia to UNESCO and a member of the commission investigating these issues, explained what developing countries want:

The New World Information Order, founded on democratic principles, seeks to establish relations of equality in the communications field between developed and developing nations and aims at greater justice and greater balance. Far from calling into question the freedom of information, it proposes to ensure that the principle is applied fairly and equitably for all nations and not only in the case of the more developed among them.⁴⁰

Under the new order, developing countries would create national communications policies, national news agencies, and networks to facilitate improved production and exchange of programming.⁴¹

The concept of such a NWIO illustrates that developing countries consider developing their own system of communications a priority. In order to do this, these countries actively seek both financial and educational support from developed countries.⁴² Two resolutions put before the United Nation's General Assembly for approval in 1978 illustrate this.⁴³ The first, Resolution 33/115a, calls for increased assistance to developing countries in communication technology,

³⁴ Jonathan Graubart, *What's News: A Progressive Framework for Evaluating the International Debate Over the News*, 77 CAL. L. REV. 629, 631 (1989).

³⁵ *Id.* at 630.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Mustapha Masmoudi, *The New World Information Order*, in *CRISIS IN INT'L NEWS* 77 (J. Richstad & M. Anderson eds., 1981).

⁴¹ *Id.* at 87.

⁴² See Graubart, *supra* note 34.

⁴³ See Ann. Rev. U.N. Aff. 236 (1979).

while the second, Resolution 33/115b, affirms the need to establish a more effective communication system.⁴⁴

Prior to the NWIO, developing countries applied governmental controls to limit a foreign advertiser's ability to broadcast within their borders. Under the NWIO if these countries received the much needed aid in the development of their communications infrastructures, the demand for governmental control of information flow would be sharply reduced.⁴⁵ Accordingly, funding of communication systems would be beneficial to western broadcasters as well as to developing countries.

This argument was essential to western acceptance of the NWIO concept.⁴⁶ By removing governmental controls in exchange for aid from developed countries, the issue can be viewed as one of equity and not censorship. Consequently, the United States can accept the doctrine because, at least facially, it is not a restriction of free speech.

Multinational corporations likewise should not reject the NWIO concept. Their acceptance is key to the development of communication infrastructures because much of the funding for them will come from private companies who invest in developing countries. In exchange for funding, the corporations gain access to a new market. The bottom line of NWIO is that developed and developing countries need each other to fully achieve their objectives.

B. Advertising's Role in the Establishment of Communication Systems

The establishment of a national internal communications system is very costly.⁴⁷ To meet this financial need the United Nations has attempted to set up a funding system.⁴⁸ In 1980, the general conference of UNESCO set up the International Programme for the Development of Communication (IPDC).⁴⁹ The IPDC's focus was on improving the communication infrastructures of developing countries. The West supported the IPDC because its focus on technical assistance to developing countries deflected the larger normative challenges to the free flow doctrine.⁵⁰ Providing technical assistance to

⁴⁴ *Id.*

⁴⁵ See No-Hyong Park, *The Third World as an International Legal System*, 7 B.C. THIRD WORLD L.J. 37, 57 (1987).

⁴⁶ *Id.*

⁴⁷ Masmoudi, *supra* note 40.

⁴⁸ CLARE WELLS, *THE U.N., UNESCO, AND THE POLITICS OF KNOWLEDGE* 102 (1987).

⁴⁹ *Id.*

⁵⁰ *Id.*

developing countries was seen as clearly preferable to reducing commercialization in communications and regulating advertising content.⁵¹

Nevertheless, disputes formed over the proper role of the IPDC. Developing countries wanted it to be a general source of funding and information.⁵² According to this view, developing countries could obtain technical or funding assistance from the IPDC to aid them in building or improving their information structures without any consideration of the funding country's concerns.⁵³ The United States and other western countries opposed this approach because it gave the assisting country no control or benefit at all. The United States envisioned the IPDC as more bilateral in nature, allowing funding and technical assistance only to those countries who were developing communications systems in line with the expectations of the assisting country.⁵⁴

The dispute over the proper role of the IPDC has not been resolved. In 1984, the United States withdrew from UNESCO, based in part on its opposition to the organization's global communication policies.⁵⁵ This political argument over control illustrates that there is a need for funding from the realm of private investors. The multinational corporation can aid impoverished countries through the creation of an "economically symbiotic relationship."⁵⁶

Even assuming that a corporation's goals are only to increase its wealth and assets, a corporation may still help a developing country establish a communications infrastructure. Consider a highly simplified illustration. Country X wants a communications system. Companies A to Z want to increase profits. Advertising a product and opening a new market in Country X can greatly increase the Companies' profits. However, without a communications infrastructure, the Companies have little or no access to the market. By helping Country X set up a system of communication in exchange for access, Companies A to Z can increase their profits and Country X can begin building a communications infrastructure.

This type of mutually beneficial system has been implemented in terms of advertising and the media, to a lesser extent, in the United States. Advertising is an increasingly high-revenue business and has

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ See Smith, *supra* note 8, at n.229.

been used to support and develop much of the mass media industry in the United States.

Even as early as 1803, Alexander Hamilton claimed that "it is the advertisers who provide the paper for the subscribers."⁵⁷ Newspapers and magazines still receive sixty to eighty percent of their revenues from advertising.⁵⁸ Advertising, then, pays a large portion of the costs of supplying the public with newspapers.⁵⁹ This advertising "subsidy" is crucial. Without advertising, the resources available for expenditures on the "news" would decline, predictably leading to a decrease in both the quantity and the quality of the media.⁶⁰ The cost of the news would increase, restricting its availability to the public.⁶¹

Advertisers have indicated that they would be willing to pay for high quality content, outside of advertising, if it would attract a better audience for their wares.⁶² Advertising not only supports the media by paying for advertisements but also by encouraging quality writing and programming. Restrictions or bans on advertising would not only increase the cost of disseminating information to consumers but could actually lower the quantity and quality of the information itself. Without advertising, or with reduced advertising, there would be less revenue to pay for the media and, accordingly, less media production. Thus, while advertisers do assert control over media content, they also have a vested interest in providing programming that will allow for healthy development of the country and its communication systems. Advertising, then, can be beneficial as a means of funding the communication infrastructures and other necessary technological innovations of developing countries.

Applying the increased value of higher technology to the Nestlé infant formula example, it becomes clear that the deregulation of advertising will help solve one of the concerns of the international community as illustrated by the Code. One of the contributing causes of the infant formula tragedy was the lack of technology which led to unsanitary conditions.⁶³ Contaminated water, the lack of refrigeration

⁵⁷ Robert Altmann, *Newspapers and the Foundations of Modern Advertising in The Commercial Connection* 9, 14 (John W. Wright, ed., 1979).

⁵⁸ *Id.*

⁵⁹ PETER J.S. DUNNETT, *THE WORLD NEWSPAPER INDUSTRY* 25 (1988). One economic study estimates that without advertisements, newspapers would cost as much as five times their current price and concludes that "a full cost-to-the-reader general newspaper free of advertisements would not be commercially viable." *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ See *supra* notes 7-15 and accompanying text.

to store the formula, and the unavailability of hot water to sterilize bottles all contributed to the consumption of contaminated reconstituted milk. On a large scale, advertising could provide the financial backing for the introduction of new technology into developing countries. This, in turn, could increase the standard of living, creating the background for greater individual access to new technology, such as refrigeration. Increased technology, then, would address one of the problems associated with the introduction of certain products, like infant formula, into developing countries.

Advertising can help a developing country reach a higher standard of technological development, a goal that the developing countries are seeking for their culture. The Code's assumption that a strict regulation or ban on advertising could benefit a country by protecting its cultural autonomy is a non sequitur. Developing countries do not envision a future in which the rest of the world advances while they remain underdeveloped. The paternalistic approach on the part of the international community ignores the desires of developing countries for technological advancement and a more modernized way of life. Yet the phrase "cultural autonomy" implies that a country has the right to shape its culture. By making decisions for developing countries as to what information they may receive and consequently limiting cultural development, the international community is depriving these countries of both their cultural and political autonomy. Ultimately, paternalism damages the very autonomy that it has set out to protect. The economics of advertising and the technological needs of developing countries illustrate that deregulation of commercial advertising could aid in the attainment of the true goals developing countries set for themselves.

III. POSITIVE ASPECTS OF ADVERTISING

Clearly, a ban on advertising will hinder developing countries in their quest to achieve technological advancement. The inclusion of advertising in these countries will benefit them socially, politically, and economically.

A. Present State of Advertising in the United States

As illustrated by the Code, developing countries may be facing strict regulation and bans on advertising. However, this is not necessary. A review of advertising regulation in the United States illustrates a more effective form of regulation.

One of the most important developments in United States' advertising regulation may have been the demise of the common law doctrine of *caveat emptor*. In its place, the United States developed laws and procedures that have served to correct some of the imbalances that might otherwise develop between merchants and consumers.

The most powerful mechanisms to regulate advertising reside with the federal government, acting through federal agencies with specific regulatory authority. The agency most closely related to advertising is the Federal Trade Commission (FTC). The FTC is authorized to challenge "unfair or deceptive acts or practices" in order to promote truth in advertising and fair merchandising practices.⁶⁴

Federal statutes, like section 43(a) of the Lanham Act⁶⁵, are also a method of regulation. Section 43(a) has the same goal as the FTC: focusing on the falsity or deceptiveness of the advertisement.⁶⁶ It allows citizens to bring suit in federal court for deceptive advertising, and its focus is not on the intent of the advertiser but instead on the effect of the advertisement on the viewer.⁶⁷

In the last twenty-five years, all fifty states have enacted legislation that parallels and supplements federal law.⁶⁸ Many of these statutes set out a general proscription of unfair or deceptive acts or practices.⁶⁹ Similarly, industry has mechanisms to police itself and its competitors through quasi-judicial agencies such as the Better Business Bureau and the National Advertising Review Board.⁷⁰

Contrary to the blanket prohibition envisioned in the Code, the main thrust of the regulation in the United States is the regulation of *deceptive* advertising in order to protect the consumer. There is not any strict control over advertising in general, and regulations are relaxed as to truthful advertising. This approach allows the consumer, as well as the government, to make choices. The government decides how truthful the advertisement is, and the consumer determines which products to choose.

⁶⁴ 15 U.S.C. § 45 (1982).

⁶⁵ The Lanham Act recently underwent a major revision. See 15 U.S.C. §§ 1051-72, 1091-96, 1111-21, 1123-27 (1988).

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ JOHNATHAN A. SHELDON & GEORGE J. ZWEIBEL, *STUDY OF CONSUMER FRAUD LAW* 121-22 (1978) (summarizing provisions in all fifty states and the District of Columbia).

⁶⁹ *Id.*

⁷⁰ See, e.g., Counsel of Better Business Bureaus Inc., *Guide for Advertisers and Advertising Agencies* (Dec. 1983)(outlining acceptable practices for the advertising industry).

Notably, regulations in the United States are imposed by both the government and its citizens. They are not "recommended" or enforced by an outside party, as in the case of the Code's regulation of advertising in developing countries. In this way the regulations are a true reflection of the United States' culture. It is this choice, this self-determination, that makes the regulations effective.

B. Advertising's Persuasiveness

Advertising is one of the most persuasive means of communication available.⁷¹ This quality can make it a powerful vehicle for the exportation and reinforcement of culture. The fear that deregulation of western advertising in developing countries will destroy the culture of those societies by introducing products and western values into the developing countries highlights one of advertising's greatest potential benefits.

The intensely persuasive nature of advertising and its ability to subconsciously impart a message, makes it a perfect vehicle for the conveyance of positive messages that can reinforce and bring together a developing society. Mustaphu Masmoudi, as a representative of the developing countries, stated: "Information plays a paramount role in international relations, both as a means of communicating between peoples and as an instrument of understanding and knowledge between nations."⁷²

One of the most important factors contributing to advertising's persuasiveness is the depiction of "ordinary" people in "ordinary" atmospheres. A viewer perceives a familiar person doing something in a familiar surrounding. Because of this, a viewer can envision partaking in the activity the advertisement is illustrating. Such an activity need not be detrimental, like smoking cigarettes or eating unhealthy food. An advertisement could easily show people taking precautions for safety, such as sitting properly in a car or a bus, or could illustrate good hygiene, physical health, or nutrition. It is important to note that advertising need not be detrimental to a developing society. It can benefit that society in numerous ways.

C. Advertising as a Means of Educating

Advertising can also be used to inform and educate people in developing countries on a variety of topics. The most obvious area of

⁷¹ See Lubis, *supra* note 1, at 1.

⁷² Masmoudi, *supra* note 40.

education for advertising is information about a product. This is the most common goal of advertising. However, in a developing country, this aspect can take on wider dimensions. Product differentiation, the process of distinguishing one product from another based on advertised information, while important to a developed society, is even more important when taking place in a developing society.⁷³ In the West, product differentiation allows the consumer to make a choice between different types of the same product. In developing countries, it allows a consumer to make the more fundamental decision of whether or not the product type is desired at all.⁷⁴

Allowing advertising in developing countries would permit informed consumer choice and would help producers define potential markets.⁷⁵ While newly emerging countries may want to maintain control over the introduction of foreign products and may want to limit intense competition until their own industries are sufficiently developed, advertising will help manufacturers, foreign and domestic, determine what the citizens of developing countries both want and need.

Advertising can also educate people on the proper use of a new or existing product. Traditionally, consumers learn how to use a product by reading the label, but the high level of illiteracy in developing countries makes this difficult. Advertisements, however, especially pictorial advertisements, have the unique ability to show the consumer how to use a product properly. This pictorial instruction will supplement explicit instructions included with the product. It follows from this that educational advertising can make a product safer by teaching, pictorially, the correct use of a product.

Advertising, however, need not be limited to its traditional forms such as pictures, written words, or broadcasts. In the Nestlé debacle, the marketing strategy included women dressed as nurses handing out samples of the product. If modified, marketing in this manner may prove to be highly useful to both advertisers and the targeted developing country. This technique could provide not only product visibility, but also allow personal demonstrations of the product's proper use. In this way, advertising provides a forum for potential consumers to see and ask questions about the product, lowering the probability of misuse.

⁷³ James N. Rosse, *The Decline of Direct Newspaper Competition*, 30 J. COMM. 65, 67 (1980).

⁷⁴ *Id.*

⁷⁵ *Id.*

Nestlé problems arose because the women dressed as nurses did little but hand out free samples of infant formula. The only form of instruction the consumer received was a cursory lecture and the written instructions contained in the product package. In this scenario, product misuse was inevitable as many could not or would not read these instructions. The misuse, however, was avoidable. If instead, the “nurses” had held demonstrations and had been available to answer questions about the proper use of the product, much of the resulting tragedy could have been avoided. Mothers would have known how much water to mix with the powder, would have been told that the reconstituted milk needed to be kept cold, and would have known to clean the bottles after each use. Conducted in this manner, advertising can reduce product misuse and increase safety when introducing useful products into developing countries.

D. Advertising as Reinforcement of Values and Behaviors

Advertising can be used to reinforce and establish positive behavior patterns and healthy value systems necessary for the development of a country. Due in part to the underdeveloped communications system, a developing country may lack important “core” values. A great deal of the social difficulties these countries encounter may be rooted in this lack of core values and behaviors. Advertising is an effective way to identify and encourage positive, helpful, healthy behavior patterns in developing countries.

To address this problem, a country must identify what values or behavior are important in that culture. Next, these values and behaviors need to be introduced in advertising. While there are some universally important behaviors, there may also be some culture-specific values or behaviors that a developing country will want to enforce. The reinforcement aspect of the advertisement, of course, does not have to be the direct focus of the advertisement but could be the background for the product pitch.

One possible area of behavior reinforcement is hygiene and health. Thus, an advertisement could show people in the course of their everyday activities, stopping to wash their hands before dinner or brushing their teeth after a meal. An advertisement could also show people going to the doctor or receiving immunization shots.

Similarly, the promotion of family might be an area for reinforcement.⁷⁶ Parents could be shown telling their children bedtime stories. Siblings could be seen playing with each other, or the whole family might be seen enjoying a meal together. Respect for the elders in the family, parents or grandparents, could also be demonstrated. Family could be reinforced on a community level. For example, an advertisement might show neighbors helping neighbors with tasks that need to be done in the community.

The reinforcement of good nutrition might also be essential to an impoverished community. Advertisements could show citizens where to get food and how to serve it in a way that makes a meal more nutritious. There may be inexpensive sources of protein available, such as beans and other legumes, that can be mixed with the traditional starches that will provide a more adequate meal for citizens. If an ad could show caretakers purchasing or preparing these types of meals, the consumer would imitate what he or she sees and provide the family with better nutrition.

A work ethic could be reinforced in the same way by showing people of all ages doing work appropriate for them. Children could be shown helping their parents cook or plant. Men and women could be shown engaging in common employment activities in the particular country. An advertisement could show people getting rewarded for their hard work through camaraderie with co-workers, respect in the community, or financial gain.

Finally, the importance of education could be reinforced by placing advertisements in a school setting. Advertisements could show children in school learning to read and write. They could show adult education, thereby promoting the citizenry's understanding that the lack of education is nothing to be ashamed of and that there are places to go to learn, regardless of age.

The reinforcement of societal values and behaviors works subconsciously. Instead of telling people what they should do or what is important, advertising has the unique ability to show everyday people, like the consumer, engaging in activities that cause them to be healthy, aware, respected, and responsible citizens.

⁷⁶ The author recognizes that this value may be more questionable as "universal" than the others. However, as addressed previously, certain values will have different meaning in different cultures. By no means is the western concept of family being advocated as a universal goal. However, "family" has some positive connotation in all cultures, and a developing country may determine what that concept is in its culture and proceed based upon that determination.

E. Application: Infant Formula

Nestlé's advertising campaign could have aided the developing countries it targeted. More importantly, the misuse of infant formula could have been avoided. If Nestlé had taken the time and the effort, it could have educated the citizens in the proper use of the product.

Beyond avoiding product misuse, there is even more that the advertisement of infant formula could have achieved. It could have shown husbands helping their wives, or children dealing with a new sibling. It could have educated the community on the proper nutrition of an infant and explained the benefits of infant formula. Social values, such as making a mother aware of how her behavior will affect her child, and general hygiene issues could have been addressed and reinforced. The question of whether infant formula was appropriate for the targeted country should have been left to that country's citizens.

Unfortunately, the Nestlé Corporation clearly acted irresponsibly in promoting its infant formula. The World Health Organization Code, however, does not address corporate irresponsibility; it merely substitutes ignorance for misinformation.

IV. CONCLUSION

The Code of Marketing of Breastmilk Substitutes stresses the importance of breastfeeding to developing cultures as part of the reasoning behind its limits on baby formula. Yet the protection of cultural autonomy does not, and should not, imply the rejection of modernization or improvement in developing countries. While advertising may induce some or even a great deal of change in society, this is not, in the abstract, a bad thing.

This comment illustrates that advertising can reinforce values and behaviors. Furthermore, it asserts that new products will be accepted in a country only if there is a place for them in that culture. It is in the best interests of all parties to work together, to attain a "symbiotic relationship" and determine how countries and companies can help themselves by helping each other. Both monetary and social profits will be the net result of working together. Above all, it should be the decision of the developing country how to mold its society. The deregulation of advertising is a step toward an equitable solution for all involved.

The developing countries will not benefit from allowing the international community to "protect" them by keeping them in a state of

dependency. Commercial advertising enables these countries to assert some control over their own growth; it can help raise the standard of living by encouraging economic development and contribute to the development of positive social values and behaviors. Maintaining strict regulation on commercial advertising will only deprive developing countries of advertising's potential benefits.