

THE SOCIAL RESPONSIBILITY OF ADVERTISING - THE COMMISSION'S VIEW.

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**SPEECH TO BE GIVEN BY RICHARD BURKE, MEMBER OF THE COMMISSION
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It misleads. It informs. It is ineffective and boring. It persuades other people to buy things they do not want. It increases the price of goods. No, it reduces them because it permits large quantities of goods to be sold. Governments should regulate it. It should regulate itself. It, of course, is advertising, and I have tried in a few words to summarise the charges and counter-charges frequently made against it.

Where does the Commission stand in all this ? I am in the fortunate position of being able to state the Commission's attitude towards advertising. When the Commission adopted a proposed directive on misleading and unfair advertising, it submitted the directive to the Council with an explanatory note stating its standpoint in the very first paragraph :

Advertising is an integral part of the system of mass production and distribution serving the general public. Manufacturers of goods and providers of services need the opportunity to inform and remind the public of what they have to offer. Such a system of information is useful to the economics of production. Consumers need information on goods and services so that they can make their choice between the many alternatives.

Advertising has the additional effect of stabilizing employment by ensuring the steady disposal of production; it provides the basis for competition in the market place, and encourages product development and innovation and the provision of low-cost goods and services previously regarded as too expensive for the mass market. In addition, advertising makes a vital contribution towards the cost of the media.

Clearly the Commission recognises the value to the public of advertising. Nevertheless, advertising may give less than full value to the public. This is especially the case if it is misleading or unfair. Some people have suggested that these two concepts are distinct. I do not share that view. Whenever an advertiser misleads the consumers as to his products or services, he is almost invariably competing unfairly. By the same token, when an advertiser improperly casts discredit upon a competitor, or upon the goods or services offered by a competitor, then he is generally misleading consumers. In either case the consumer has a right to protection against the exercise of improper influence on his choice of goods or services.

The proposed EEC directive on misleading and unfair advertising is directly relevant to the underlying theme of this meeting, the social responsibility of the advertising industry, which I am sure, would be the first to proclaim its opposition to the publication of misleading advertisements. One would, therefore, assume that most advertising people would be in favour of the proposed directive. That does not appear to be so.

In some cases, the reaction may be due to a lack of understanding. In recent years, advertising has established itself increasingly as part of the culture of the western world. It is immi-present. Advertisements stare down at us from hoardings in our cities. Advertisements intersperse the programmes broadcast into our homes by television. Advertisements are printed on the pages of our magazines and newspapers. Very often they appear side by side with factual reports on the state of the world and there may be very little pre-disposition on the part of the consumer, who is the target of these advertisements, to differentiate between objective reporting and advertisements even though advertisements are a marketing tool and a means of persuasion. In these circumstances there is a special responsibility upon the advertising industry to recognise its social responsibility by observing the highest standards. And there is also a responsibility upon the Commission to safeguard the public against possible abuses, for example in the shape of misleading advertising.

Many countries in the EEC already have laws which, to some extent, deal with misleading advertising. But they vary from country to country and the approach to questions of definition and so on are different. The proposed directive lays down a global definition which would apply throughout the Community. It is very broad in concept. We are concerned with the effect of advertising. Whether a misleading advertisement has been issued

deliberately or negligently is immaterial. It will mislead the public whatever the intentions of the advertiser. The proposed definition in the directive, therefore, states that an advertisement which is totally or partially false is misleading. However, it also includes, within the definition, advertisements which, having regard to their total effect, mislead or are likely to mislead. Examples can be found of advertisements which, though literally true, create a false impression. For example, in the study funded by the Commission and published in 1974 by BEUC, there are examples of advertisements whose presentation draws the attention of the consumer to certain representations only. For example, an advertisement may use a large size type to give emphasis to the major selling point of a product, but additional details are given in small type. Thus an advertisement may emphasize the slimming qualities of a product in large type and then indicate much less clearly that these qualities are only effective as part of a calorie-controlled diet. Again, advertisements may be falsified by the omission of material information. For example, there was the advertisement for a motor car which claimed that it accelerated faster in top gear between 30 miles per hour and 50 miles per hour than either the Porsche 911S or the Ferrari Dino. However, it omitted to indicate that it had four gears and the high performance sports cars had five!

Our critics sometimes say that these proposed definitions are inadequate. Take the case of the advertisement which invites motorists to put a tiger in their tanks; it is literally untrue. Consequently, would it not fall within the definition of a misleading advertisement? I find such arguments unconvincing. I believe that any judge, faced by a litigant claiming that he really expected to be given a tiger to put into the tank of his motor car, would form the conclusion that he had in his court a person who suffered from some defect of the reason, rather than a person who had been misled by an advertisement!

Another attitude expressed by many members of the advertising industry is that there is no sense in having legislation at the European level. In their view, the overwhelming bulk of advertising is, and will continue to be, national. However, there is already a good deal of international advertising. For example, Belgium has no indigenous commercial television and yet it is possible to see advertisements on television transmissions emanating from neighbouring countries. Another example is that of daily advertising in the English language broadcast from Luxembourg and received in the UK, but beyond the control of the Independent Broadcasting Authority, which is the responsible body for controlling advertising in the UK. In the not too distant future, we shall have television advertising via satellite. Even with transmission via satellites in a fixed orbital position, there may be a considerable geographical overlap. Advertisements cross frontiers in magazines. Differences in national legislation may well result in this trade being affected.

While on this point, I think it is appropriate to quote the words of a director of two advertising agencies, who spoke in a recent House of Commons debate in London on the proposed directive; He said this :-

"Several Hon. Members made the point that international advertising is not a feature of today's world. With respect, that is not entirely true. There is an increasing incidence of campaigns being created in one country. Admittedly, they are put into another language, but the basic copy point is kept common, and the basic message is quite often kept common. I think that we shall see this developing over the next few years. It is not something that is declining. We should not delude ourselves that there are not pan-European campaigns, because there are."

One can readily appreciate that the possibility of using expensive advertising material, such as TV films, as part of a campaign in several countries will produce substantial budget savings, as well as making maximum use of an effective idea.

I might also mention that recently the Commission approached a number of advertising agencies as part of its plan to inform the public about the forthcoming direct elections to the European Parliament. Several of them offered to handle a campaign throughout the Community.

As to the scope of the proposed directive, some people - consumers among them - consider that it does not go far enough. There have been demands that it should be extended. Some people would like to see provisions entitling consumers to claim damages and to revoke contracts entered into on the basis of misleading advertising. However, an extension of this nature would add enormously to the burden of promoting this new legislation.

The idea behind the proposed directive is that prevention is better than cure. It is better that the consumer should not be misled in the first place. This is the aim of the directive. To implement it, we have proposed that individuals affected or associations with a legitimate interest should be able to take action at law against misleading advertising. The courts, under our proposals, should have the power to prohibit misleading advertising by an accelerated procedure. The courts should also be enabled to require publication of a corrective statement, as well as publication of their decision.

I mentioned previously that the directive would enable action to be taken at law to combat misleading advertising. Some concern has been expressed lest this should undermine existing systems of self-regulation. Nothing could have been further from the intention of the Commission. Indeed, if you look at Article 7 of the proposed directive, it clearly envisages the

continued existence of self-regulation. The effort made by the advertising industry to control the less satisfactory aspects of its activities is wholly praiseworthy. It not only involves considerable effort and devotion of time on the part of advertising executives, but also the employment of financial resources. In Great Britain the self-regulatory system is perhaps better developed than anywhere else in the Community. The advertising industry there contributes approximately £ 600,000 per annum to the cost of running the Advertising Standards Authority, which controls advertisements appearing in the press. If the theme of our meeting today is the social responsibility of advertising, then this surely is an excellent example of responsibility being exercised in practice by the industry.

Self-regulation can work well. It can be an effective force for restraining misleading advertisements. However, in order to do so, I believe that a self-regulatory system ought to fulfil certain conditions. It would be unsatisfactory if the advertising industry were judge in its own cause. It would be unsatisfactory if the self-regulatory body could simply shrug its shoulders and decide not to bother with certain complaints or not to give reasons for its decisions. It is important that such bodies should not abuse their function, for example, by failing to apply reasonable standards.

There is one more question : who is to have the last word ? In most countries of the Community, there is probably little hesitation in accepting that ultimately these issues should be decided in the courts, if they are not decided by the self-regulatory mechanism. This is less readily acceptable in Britain, although TV advertising is under statutory control there. However, even in the case of press advertising, where self-regulation has to some extent been the final control, it seems that both the British Government and the Director-General of Fair Trading are asking for increased powers to control misleading advertising.

This raises another issue. Is it necessary to have legal back-up to a successful self-regulatory activity ? Take the example of Britain. There, the Office of Fair Trading has recently published a study which found that only 7 % of the sample examined - consisting of about 3,000 advertisements - were misleading or breaches of the advertising code of practice. Strangely enough, the proportion in the national press was much larger. It amounted to about 13 %. Given this proportion is it worth introducing any new measures at all ?

Perhaps I can answer this best by an analogy. Many millions of words are printed in the press each year. Very few of them are defamatory. There is no doubt that newspapers, on the whole, exercise a considerable degree of care and caution to avoid

publishing defamatory material. But is it open to the publishers of newspapers to say that there should be no law of defamation because they go to great trouble to avoid it? Suppose there were a newspaper publishers association, defamation committee, to which all doubtful material could be submitted. Suppose further that the newspaper publishers agreed to accept the decisions of the committee on whether to publish material which might be defamatory. Would this be sufficient reason to abolish the law of defamation? Even if only a very few defamatory statements slipped through the net? I think we would all agree that is no argument at all against the existence of a law of defamation.

The same is true of misleading advertising. Even if self-regulation operates well, there will occasionally be misleading advertisements which slip through the net. What is one to do in those circumstances? Is one to say that the advertising industry has done as well as it can and the misleading advertisements should be allowed to continue in circulation? I think not. There must be a mechanism to ensure that the public is protected. The point about self-regulation is that, if it operates effectively, the mechanism to protect the public will not need to be called upon very often.

I can well see that for the advertising industry self-regulation has the advantage of certainty, especially where codes of conduct specifically indicate the standard to be applied. It is conceivable that such codes could also be adopted on the EEC level. I personally would not be unwilling to see them tried on a pilot basis.

Certainly the Commission would not want to be involved in promoting and encouraging codes unless there was a real prospect of success. I would see the Commission's role in this matter not so much as a party to a code, but as an honest broker, bringing together the parties with an interest at stake. In any event, such codes would presumably be adopted, or subscribed to, by a European association. Nevertheless, in some cases it might be appropriate for the code to stand in conjunction with an EEC directive, which would provide the broad legal framework to the specific provisions of the code, and I do not consider that a code can be useful unless it does provide a specific guide. Of course, the existence of a code can never rule out future measures at Community level. Obviously, these may be necessary if the advertising industry were not prepared to accept the code or, once it had been accepted, were not prepared to observe its provisions in practice.

The time is now right for this approach to be discussed and for the advertising industry to show what it is prepared to do. It is not enough to preach social responsibility; I would exhort the advertising industry to show that it is prepared to accept that responsibility.

From the point of view of the consumer, the code of conduct approach will not inspire much confidence unless it is demonstrated that it can produce results. This will be the case only if such codes treat the subject matter in question realistically and in some depth. There are certain fields for which a code could be

particularly well adapted. I have in mind, for example, the field of advertising for certain products which may involve health hazards - such as tobacco or alcohol - or advertising aimed at children. I know that, as regards advertising and children, some discussions are already under way and I shall look at the outcome very carefully. It would certainly be encouraging if progress is possible, not only in terms of legislation - although legislation is extremely important - but also by agreement between the interests concerned. If the advertising industry is willing to accept the challenge and to show that progress can be made in this way, then it will benefit both consumers and advertising.