CORRECTIVE ADVERTISING: THE CANADIAN SITUATION

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Abstract

The status of corrective advertising in Canada is at least five years behind the U.S. At the present time, corrective advertising as a legal remedy to deceptive advertising in Canada is about at the stage of the 1969 Campbell Soup Co. case in the U.S. However, recent occurrences in the corrective advertising area in Canada should alert Canadian marketers and politicians to review the implications of what has happened in the U.S. over the past ten years, as this may serve as a guide to what will be happening in Canada over the next five years.

Recent Developments

A recent ruling by the British Columbia Supreme Court in Stubbe et al. and Director of Trade Practices v. P. F. Collier & Sons Ltd. (1977) 3 W.W.R. is of great concern to advertisers, other marketers, and lawyers. In this case, Collier's method of selling encyclopedias was found to be deceptive. In addition to other remedies, the plaintiff asked the court to order the defendant to run corrective advertisements informing consumers that Collier's had been found guilty of deceptive advertising. This request was denied as the judge felt that the deception was to a small group of consumers, and a province-wide corrective advertising campaign was not warranted. However, the judge provided a ruling as to when a corrective advertising campaign should be used.

> An order to a supplier to advertise its delinquencies and the restraints imposed is clearly useful where a supplier has run a deceptive advertising campaign by newspaper, television, or radio. In such a case the public at large will have received the supplier's deceptive message and the supplier can only be effectively denied the benefit of its deception by bringing the deception to the attention of the public by corrective advertising, having the same coverage as that given the deception ([1977] 3 W.W.R., p. 543)

To date, corrective advertising as a legal remedy to deceptive advertising claims has not been used under Federal legislation in Canada. However, corrective advertising has been used as a legal remedy under the British Columbia Trade Practices Act which empowers the court to order an advertiser to "advertise to the public in the media in such a manner as will assure prompt and reasonable communication to consumers and on such terms and conditions as the court considers are reasonable and just" (British Columbia Trade Practices Act, S.16).

At this point in time, three firms in the Province of British Columbia have been ordered to comply with some form of corrective advertising: (1) Central Safety, a seller of smoke alarms, was ordered to run corrective advertisements in two newspapers each week for one month for grossly misrepresenting their products; (2) APT Distributors Ltd., a furniture retailer, was required to publish an apology in all Vancouver newspapers and offer a 10 percent refund to customers affected by deceptive advertising in a "close-out sale"; and (3) The Shell Oil Co. agreed to send a letter to all of its credit card holders which corrected misleading price and credit terms contained in a sales catalog.

Corrective Advertising - U.S.

Although the Federal Trade Commission was established in 1914 to control unfair methods of competition, which includes false and misleading advertising, it was not until 1969 that corrective advertising was suggested as a remedy for deceptive advertising.

> The concept of corrective advertising as an F.T.C. remedy was first proposed in a Commission proceeding in 1969, by Students Opposing Unfair Practices, Incorporated ("SOUP"), composed of George Washington University law students. In Campbell Soup Co., the respondent was alleged to have misrepresented the proportion of solid ingredients in its soups by placing marbles in the bottom of the soup bowls used in filming television commercials. This technique forced most of the soup's solid ingredients to the surface, where they were easily detected by the camera, thereby giving the soups a deceptively rich appearance. Shortly after the Commission had accepted a provisional consent agreement ordering Campbell to cease and desist from the practice, and had placed the order on its public record for comment, SOUP filed a petition to intervene on the ground that the order as announced was inadequate to protect the public interest. (Thain, 1973-4, p. 2)

SOUP wanted an order which would have required Campbell's to disclose in all future advertising, for a specified time, that they had used advertising which the FTC had found misleading. The order was denied but the Commission established standards to determine when corrective advertising would be an appropriate remedy.

In August 1971, the FTC issued its first order requiring corrective advertising. The order was issued against the Continental Baking Company, which markets Profile Bread. The order stated that Continental must cease all Profile advertising unless 25 percent of future expenditures state that Profile Bread is not effective for weight reduction, a position contrary to the interpretation of earlier advertising.

Since the Continental order, the FTC has been involved with seventeen major corrective advertising cases. Two recent and important cases involved Warner-Lambert and American Home Products. Warner-Lambert had represented Listerine mouthwash as a preventative and a cure for both colds and sore throats since 1879.

> A complaint charged Warner-Lambert with making statements in advertising that Listerine would ameliorate, prevent and cure colds and sore

throats. It also alleged that through the use of the statement, "Kills Germs by Millions on Contact," Warner-Lambert falsely represented that Listerine's ability to kill germs is of medical significance in the treatment of colds and sore throats. (Journal of Marketing, July 1976, p. 118)

The FTC issued a cease and desist order that required Warner-Lambert to spend a sum of money equal to the average advertising budget for Listerine, for the period April 1962 to March 1972, on corrective advertising. Estimates of the expenditure have ranged from $10 to $20 million. The FTC also required the company to disclose in all future advertising for the defined period the statement, "Contrary to prior advertising, Listerine will not help prevent colds or sore throats or lessen their severity" (562 Federal Reporter, p. 763).

Warner-Lambert appealed to both the U.S. Court of Appeals and the Supreme Court. The courts ruled that the FTC's standards for the imposition of the corrective advertising, and the duration of the disclosure requirement, were entirely reasonable.

> If a deceptive advertisement has played a substantial role in creating or reinforcing in the public's mind a false and material belief which lives on after the false advertising ceases, there is clear and continuing injury to competition and to the consuming public as consumers continue to make purchasing decisions based on the false belief. Since this injury cannot be averted by merely requiring respondent to cease disseminating the advertisement, we may appropriately order respondent to take affirmative action designed to terminate the otherwise continuing ill effects of the advertisement. (562 Federal Reporter, p. 762)

In the case of American Home Products, the FTC administrative law judge

> ripped into past advertising for American Homes Products' Anacin and ordered $24,000,000 of future Anacin ads to disclose that "Anacin is not a tension reliever" . . . The $24,000,000 figure is FTC's estimate of the average annual Anacin ad budget from 1968 to 1973. The one-year run for the correction is the same rule of thumb upheld by the courts in the Listerine case. (Advertising Age, September 18, 1978, p. 1)

As can be seen from these examples, corrective advertising is used as a remedy for deceptive advertising in the U.S.

However, corrective advertising is not an automatic penalty for deceptive advertising. In fact,

> The Federal Trade Commission has declined to issue a proposed trade rule that would have required automatic corrective advertising whenever an ad campaign of a year's duration on health, safety or nutritional products was found to be misleading . . . In rejecting the proposal, the FTC noted that it "possesses sufficient authority to deal with corrective advertising on a case-by-case basis." (Jennings, 1980, p. 16)

Corrective Advertising - Canada

The need for consumer protection against false and misleading advertising in Canada is described in a statement by Andre Ouellet, Minister of Consumer and Corporate Affairs.

> False and misleading advertising and unethical promotional practices distort our free economic system which is built on honesty and fair play. They deny the consumer the information required to make wise and effective buying decisions, and they deprive ethical promoters and honest advertisers of the deserved rewards for offering better quality, more competitive prices, or simply the undoctored facts. (Amirault and Archer, 1977, p. 9.1)

Statutory control of advertising in Canada is exercised under various federal and provincial statutes. The federal legislation includes the Food and Drug Act, the Broadcasting Act, the Consumer Packaging and Labelling Act, the Textile Labelling Act, the Criminal Code of Canada, and the Combines Investigation Act. The provincial statutes include the Trade Practices Act in British Columbia, the Unfair Trade Practices Act in Alberta and the Business Practices Act in Ontario. It should be further noted that many other provincial statutes not dealing directly with trade or business practices often contain a section covering misleading advertising. For example, Section 28 of the Ontario Mortgage Brokers Act provides injunctive power to the provincial registrar in the case of false and misleading or deceptive statements in any advertising brochure circulated by a mortgage broker (Amirault and Archer, 1977).

At the federal level, the majority of prosecutions for false and misleading or deceptive advertising result from charges filed under the Combines Investigation Act (Thompson, 1977). The relevant sections of the Act are 36 and 37.

Section 36 (1) (a) refers to advertisers making a representation to the public which is false or misleading in a material respect--for example, the price to be charged. Section 36 (1) (b) refers to a false or misleading representation to the public as to the performance, efficacy or length of life of a product. Section 36 (1) (c) refers to a false or misleading representation as to the price at which a product is ordinarily sold.

The remaining paragraphs of Sections 36 and 37 of the Combines Investigation Act deal with specific technical abuses. They include the misuse of test and survey results, comparative advertising, dangling comparisons, meaningless superlatives, visual representations, testimonials where only the laudatory portions of the testimonials are isolated, promotional contests, warranties or guarantees that are worded in such a way that no significant benefit is conferred on at least some people to whom they are given, and specials where the word implies a reduction below the regular price that is not in fact offered (Thompson, 1977).

There is a provision in the CIA for the defence of "due diligence." The accused must prove three things for the defence to apply: honest error, due diligence, and immediate corrective action. Honest error means that the accused must show that the mistake arose from ignorance or an erroneous notion about the product at hand. Due diligence means that the accused made every effort to provide accurate information. Corrective action means that reasonable measures were used to bring the

error to the attention of those persons likely to have been affected by the original mistake. Accordingly, if the misrepresentation was made during prime television viewing time, the corrective action must be taken during the same viewing time to the same class of viewers. This due diligence test requiring immediate corrective action, therefore, is the federal statute giving rise to error correction notices in Canada (Amirault and Archer, 1977).

The use of corrective advertising in Canada might better be termed 'advertising corrections.' That is, if an incorrect statement appears in an advertisement, an advertising correction notice, appearing under substantially similar circumstances, would generally be expected to qualify under the 'due diligence' test as a defence against false, misleading or deceptive advertising. As a defence, the only requirement of the advertiser is to have the portion of the ad which contained the mistake published or broadcast correctly in the next issue of the publication or during similar programming. This only has to be done once.

Past Research

American studies (Hunt, 1973; Dyer and Kuehl, 1974; Mazis and Adkinson, 1974; Kassarjian, Carlson and Rosin, 1976) show that there exists conflicting evidence as to whether the use of corrective advertising as a remedy for deceptive advertising is effective in reducing consumer intentions to buy caused by misleading ads. As well, administrative difficulties exist in achieving compliance with corrective advertising orders issued by the FTC which results in long time lags between the date of issue of the order and the date of compliance. These lags can be up to four years, during which time misleading attitudes become deeply entrenched in the minds of consumers and are, therefore, difficult to dislodge.

Sawyer (1976) hypothesized that favorable attitudes caused by misleading ads may reassert themselves over time. Dyer and Kuehl (1978) found evidence of this phenomenon in their research study, providing an indication that the present FTC corrective advertising policies may not be effective.

Wilkie (1974) suggests that the present implication of the corrective advertising remedy by the FTC is imprecise. That is, the specification of an arbitrary time period during which corrective advertisements must run does not ensure the eradication of favorable consumer attitudes caused by misleading ads. He suggests that a reduction in specific consumer beliefs toward a product, which the advertiser would be required to attain regardless of the time it might take to accomplish such a reduction, would improve the system. Problems arise, however, in developing the means by which beliefs could be monitored over time.

Research in Canada is, of course, limited as 'advertising corrections' rather than corrective advertising as a remedy for deceptive advertising is the usual case. In recent years, however, concern has been expressed by consumerists and provincial government agencies over the increasing frequency of advertising corrections (DeVilliers, 1978). As such, Wyckham (1978) undertook an inventory of corrective ads over the 1976 calendar year in the Vancouver Sun and Vancouver Province newspapers. Wyckham's results can be summarized as follows: (1) During 1976, 375 corrective advertisements were found in the two Vancouver dailies; (2) The great majority (84 percent) of the corrections were for advertiser errors, only 16 percent were for newspaper errors; (3) More than 90 percent of the corrections were placed by retailers, the bulk of these by four large department stores; (4) Price and product descriptions were the most common types of errors corrected; (5) The vast majority of corrections were published within three days of the error; and (6) Corrections were placed about equally in the front and back sections of the newspapers.

A follow-up to the Wyckham study was conducted by Lapp (1979). For this study, Lapp examined all issues of The Windsor Star from January 1, 1977 to June 30, 1978. Over this eighteen month time period, 43 firms placed a total of 248 corrective ads in The Windsor Star. Ninety-one of these ads (37 percent) contained multiple item corrections. The largest number of errors (over 40 percent) involved clothing items. Errors as to price, description, and availability of merchandise accounted for over 88 percent of the correction notices. Approximately 91 percent of the error notices were placed within three days of the error. Over half of the notices (58 percent) were placed in the first section of the newspaper, while 28 percent of the notices were placed adjacent to the firm's regular advertising. Finally, the most common size for the error correction notices was two columns wide by 3 or 4 inches deep.

Recently, Gordon Charles (1979), a project officer in the Marketing Practices Branch of the Federal Ministry of Consumer and Corporate Affairs, surveyed two Ottawa daily newspapers for a three-month period. Charles found 87 separate error correction notices for an average of 29 per month. Nothing beyond this was reported.

Methodology

The Wyckham and Lapp newspaper inventories represent the extent of published corrective advertising research in Canada. As such, the present study was undertaken to determine consumer awareness of and attitudes towards corrective advertising in Canada.

The research was undertaken in Windsor, Ontario, a city with a population slightly in excess of 200,000. Telephone interviews were conducted using a structured-nondisguised questionnaire. The questionnaire contained 38 questions, including the demographic data gathered and took approximately 20 minutes to administer. The respondents were selected in a random fashion, using a table of random numbers, from the Windsor Area telephone directory. Respondents had to be at least 18 years of age. In the case of a busy signal or no answer, a maximum of three call backs were made. All interviewing took place during April 1980 and 100 completed interviews were obtained. Refusals and no answers after three call backs resulted in 193 numbers being selected to obtain the 100 interviews. Prior to the survey being undertaken, the questionnaire was pretested on a sample of ten respondents to check for clarity, misleading questions, and feasibility of asking 38 questions via telephone.

Findings

The results of this research will be presented here in point/summary form, concentrating on the main findings of the study.

1. The majority of the respondents (59 percent) stated that they had not heard the term "corrective advertising." However, 82 percent of the respondents

indicated that they have seen advertising corrections at some time over the past two years. In fact, most (51 percent) had seen an advertising correction in the past week.

2. When asked, "If a company makes an honest advertising mistake, does it have an option available to remedy that mistake?," 70 percent of the respondents believed that some remedy was available. In fact, 24 percent of the respondents were correctly able to identify that option.

3. Eighty-one percent of the respondents felt that there should be a law requiring advertisers to inform the public when they make an advertising mistake. If the advertising mistake is an honest one and the advertiser informs the public of the mistake, 74 percent of the respondents felt that the advertiser should not be subjected to any additional fine or penalty.

4. The majority of the respondents (51 percent) felt that error corrections should be brought to the attention of the public within one day of the error. An additional 34 percent of the respondents indicated that the error correction should appear as soon as possible after the error has been made.

5. When asked, "How often should the error correction appear?," 33 respondents indicated once, 15 responded twice, 21 felt the error correction should appear three times, 17 felt it should be "as often as is necessary," while 14 gave some other answer.

6. While 51 percent of the respondents felt that advertisers should be required to file a report with the government concerning any advertising errors that they might make, most respondents (66 percent) did not know whether this was currently required or not.

7. Most respondents (70 percent) felt that advertising corrections appeared for stores they normally deal with. This is most likely the case, as the major department stores (who do the most advertising) accounted for a significant proportion of the advertising corrections.

8. When asked about the size of corrective ads, 60 percent of the respondents felt they were too small, 28 percent felt they were the right size, while the remainder had no opinion. Not one respondent felt that the corrective ads were too large. However, 70 percent of the respondents agreed that advertising corrections were "easy to read."

9. When asked who was to blame for advertising errors, the responses were advertisers, media and advertising agencies, in that order.

10. Most respondents (57 percent) felt that advertising corrections were "helpful."

11. Only 5 percent of the respondents held a less favorable opinion of firms that used advertising corrections. On the other hand, 46 percent of the respondents had a more favorable opinion toward these firms. The remainder indicated that their opinion did not change.

12. When asked if newspapers should set aside a specific location for all ad corrections, 65 percent of the respondents were in favor of this. If such a location were not provided, 38 percent of the respondents felt that ad corrections should appear in the same place as the original ad. The other respondents provided a wide range of opinions.

13. Interestingly, the respondents were almost evenly split as to whether the party responsible for the advertising error should be identified. Thirty-nine percent felt that the party responsible should not be identified, 37 percent felt that the responsible party should be, while 24 percent had no opinion.

14. Finally, an attempt was made to correlate selected demographic characteristics of the respondents with their attitudes/opinions about corrective advertising. However, no meaningful correlations emerged.

Discussion

The purpose of this study was to determine the awareness and attitudes of Canadian consumers towards corrective advertising in order to identify the direction the government should take on this important issue.

While the great majority of consumers have seen advertising corrections, they were not familiar with the term "corrective advertising." This may be attributable to the fact that newspapers label corrective ads with the heading "CORRECTION" rather than "ADVERTISING CORRECTION" or "CORRECTIVE ADVERTISEMENT." In addition, less than one-fourth of the respondents were able to identify the option available to advertisers who make an advertising error. This would seem to indicate that most consumers are not aware of the provisions of Sections 36 and 37 of the Combines Investigation Act.

Presently, an advertiser who makes an advertising mistake is only required to correct it in the next publication. The advertiser does not have to submit a report to the government describing the basis of the mistake. This survey indicated that, although most respondents do not know if the advertiser is required to do this, they feel the company should be required to file such a report. If this was necessary, it is felt both advertisers and the media would have to be more cautious in the preparation of advertisements. An error would cause the party responsible for it the time, energy and cost to file the official report.

Currently, it is very easy for an advertiser to make a mistake, temporarily gain some benefits, and place a correction the following day. A report filing procedure would enable the Department of Consumer and Corporate Affairs to maintain a file on advertisers who frequently make ad errors. Steps could then be taken to investigate these advertisers to see if all errors were honest mistakes.

Although a large segment of consumers feel that advertising errors should be brought to the public's attention within one day of the mistake, or otherwise as soon as possible, they also believe that repeating the ad once is sufficient. This contradicts studies conducted by Dyer and Kuehl (1978) and Olson and Dover (1978) in the U.S.

The majority of respondents believed that corrective ads were helpful but too small. The primary reasons for their size would be a matter of economics and the law. Legally, an entire ad does not have to be repeated in an advertising correction, just the portion of the ad that was inaccurate, along with the identity of the advertiser. If the advertiser was at fault, the

the correction is an expense to the advertiser. If the advertising medium was at fault, it costs the medium time/space and the revenue that could have been generated by that time slot or space. As such, corrective ads are generally no larger than necessary as no particular benefit is felt to be derived from them.

Is this always the case, however? Most respondents indicated that they have seen corrective ads from the stores at which they normally shop. Does this discourage them from shopping at these stores? The evidence is that it does not. In fact, the opposite may be the case. This study found that nine times as many respondents indicated that their opinion was more favorable towards advertisers after the appearance of a corrective ad than less favorable. The corrective ad brought about the impression of honesty through admitting openly to a mistake. As such, corrective ads may enhance the consumers' feelings toward the firm. This is an area that required further exploration. If ad corrections have the potential of enhancing the image of firms making the advertising error, it is possible that some other remedy to advertising errors is necessary.

Summary

This study has shown that Canadian consumers are not aware of the provisions of Sections 36 and 37 of the Combines Investigation Act. This situation is attributable to the lack of funds available to the Department of Consumer and Corporate Affairs to educate the public plus the lack of media exposure given to deceptive advertising cases as many of these advertisers are heavy media users.

A major revelation from this study is that consumers tend to view a firm that makes use of an advertising correction more favorably. As a consequence, it might be hypothesized that a firm that frequently used corrective advertising could enhance its image with the public. Thus, the firm could get the benefit of the advertising error to draw traffic and create a favorable image by afterwards admitting to the error.

At this time, it seems appropriate that two studies should be undertaken. The first should examine consumer attitudes towards firms that make use of corrective advertisements to confirm or reject the findings of this study. The second should measure the attitudes of consumers towards firms identified in the advertising correction as being responsible for the error. If it is shown that identifying the party responsible for the error is detrimental, maybe identification should be required. This would serve to overcome the temporary benefits gained through the advertising error.

Finally, Canadian regulators should be closely monitoring the evolution of corrective advertising regulation in the United States. Recent FTC actions and their outcomes may provide insight to Canadian regulators as to appropriate courses of action.

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