ANA

Status of Legislative, Regulatory and Legal Issues Affecting Advertising

Report from ANA's Washington Office • November 5, 2009

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NOTE: This report covers all legislative, regulatory and legal issues affecting advertising from January 1, 2009 to November 5, 2009.

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Report from ANA's Washington Office

Introduction

2009 has been an extremely challenging year for ANA and the ad community. We have faced an unprecedented broad proposal to remake financial advertising and marketing regulation, threats to the tax deductibility of direct-to-consumer prescription drug advertising and food advertising, the passage of a landmark tobacco bill, and newly energized regulatory agencies looking into endorsements and testimonials, commercial ratings and blocking technologies, product placement, interactive advertising, and green marketing. Contemporaneously, our industry has strengthened self-regulation in the food marketing and behavioral advertising arenas and reached an important new contract with the actors who appear in commercials.

Below is a summary of our activities in some of these key areas:

1. CFPA and the FTC: Congress is considering a proposal to create a new Consumer Financial Protection Agency (CFPA) that will have sweeping jurisdiction over all financial products and services, and would have broad authority over the marketing of these services. The bill being considered by Congress, and already passed by the House Financial Services and House Energy and Commerce Committees would also dramatically enhance the authority of the Federal Trade Commission (FTC), giving it highly expedited rulemaking powers, new aiding and abetting authority, and greater power to impose immediate civil penalties for violations of the FTC Act.

2. Behavioral Advertising: ANA, along with the 4A's, IAB, DMA and in conjunction with the CBBB, has developed and promulgated a breakthrough self-regulatory approach to the internet ecosystem including seven principles for online behavioral advertising. These principles aim to give consumers choice and control over how advertisers use their data to target ads to them. We are now working out issues related to consumer education and enforcement of the principles.

3. Direct-to-Consumer Prescription Drug Advertising: The tax deductibility of DTC prescription drug advertising remains under threat. Earlier this year, both Representative Charlie Rangel (D-NY), Chairman of the House Ways and Means Committee, and Senator Bill Nelson (D-FL) of the Senate Finance Committee proposed to totally eliminate the deduction to raise $37 billion for health care reform. In October, Senators Al Franken (D-MN), Sherrod Brown (D-OH), and Sheldon Whitehouse (D-RI) introduced a bill to end the deduction, which they threatened to add to health care legislation either in committee or as an amendment on the floor of the Senate.

4. Tobacco Advertising: President Barack Obama signed a bill into law in June that gives the Food and Drug Administration (FDA) authority over tobacco products, including advertising. ANA has long argued that the provisions, the most sweeping and restrictive ever passed in the United States for a legal product, are unconstitutional under the First Amendment. There is an ongoing court challenge to these provisions, and ANA is preparing to file a "friend of the court" brief in the case by November 30th.

5. Endorsement and Testimonial Guidelines: The FTC has finalized the most significant changes to the guidelines for endorsements and testimonials in a generation. The new guidelines generally spell the end of the safe harbor for "results not typical" disclaimers. Instead, the FTC will increasingly require substantiation of the generally expected results a consumer would receive through use of an advertised product. The guides also make sharp distinctions in regulatory treatment between old and new media and celebrity endorsers are now open to increased liability for statements they make about a product.

6. Maine Predatory Marketing Law: Maine passed a law that severely restricted the collection, transfer and use of "personal information" or "health-related information" from minors. ANA contended that the law violated the First Amendment and the dormant commerce clause and was preempted by the Children's Online Privacy Protection Act (COPPA). In a suit ANA supported, the Maine Attorney General agreed not to enforce these provisions, and the Maine Legislature's Judiciary Committee has urged the repeal of the law.

7. FCC NOI on Children and the Evolving Media Landscape: The FCC issued its report required under the Child Safe Viewing Act of 2007, which discussed the availability of parental content blocking technologies. It also questioned whether commercials should be rated so parents could block them for content by using the v-chip. In a new, comprehensive Notice of Inquiry (NOI) asking for a vast array of data and more research, the FCC raised an extraordinarily detailed array of questions about how children are being protected from "objectionable" content in advertising and other media. The Commission in particular focused on how to apply and extend its powers to the internet and other new media platforms.

8. Food Advertising and Children: In October, Representative Dennis Kucinich (D-OH) proposed ending the tax deduction for certain food advertising directed to children. Also in October, a new report from the Rudd Center for Food Policy and Obesity alleged that cereals containing the most sugar were the most "frequently and aggressively marketed" to children. The report also attacked the Children's Food and Beverage Advertising Initiative, set up in 2006 by the industry to encourage a shift in marketing directed to children to healthier options and healthier behaviors, as insufficient and ineffective. ANA

and others in the ad community will testify at a December FTC workshop on food advertising issues.

9. SAG/AFTRA: The Joint Policy Committee on Broadcast Talent Union Negotiations and SAG and AFTRA reached a new three-year contract in April. The new contract includes a modest increase in compensation and an agreement to conduct a major pilot study of a new compensation model based on gross ratings points.

10. Green Marketing: The FTC is currently studying how consumers perceive green claims such as "eco-friendly" "sustainable," and "carbon neutral." This is a follow-up to its 2008 workshops, which the FTC staff stated did not find satisfactory data on this issue. This effort is part of a major review of the FTC's green guidelines promulgated in the early 1990's. The Commission still plans to release its revised guidelines for green marketing by the beginning of 2010.

11. Digital Issues: ANA strongly encouraged Congress to implement a four-month delay from February to June in the transition from analog to digital over-the-air broadcasting, which was approved. We were also encouraged that Congress appears ready to let industry develop new voluntary self-regulatory standards governing the volume of commercials, rather than immediately requiring the FCC to adopt mandatory standards with which industry would be forced to comply.

This is just a small sampling of the issues ANA's DC office has been involved in this year. More information is contained on these and many other issues in the pages that follow. As always, we post regular updates on these and any other issues on which we are currently working at http://www.ana.net/advocacy. If you have any questions, the DC office can be reached at 202-296-1883 or individual staff can be reached as follows:

Dan Jaffe, Executive Vice President, Government Relations: djaffe@ana.net
Keith Scarborough, Senior Vice President, Government Relations: kscarborough@ana.net
David Buzby, Senior Manager, Government Relations: dbuzby@ana.net
Meghan Salome, Executive Assistant/Office Manager: msalome@ana.net
Lauren Albrecht, Administrative Assistant/Receptionist: lalbrecht@ana.net

The Obama Administration

The historic election of President Barack Obama brought a Democratic administration to the White House for the first time in eight years. The change in party meant a raft of new appointments to the agencies that oversee the advertising and marketing industries, potentially taking these agencies in a new direction.

At the Federal Communications Commission, the biggest change is at the top. Julius Genachowski, a former Chief Counsel to Chairman Reed Hundt and Special Counsel to General Counsel (later Chairman) William Kennard during the Clinton administration, has returned to the FCC as Chairman. Chairman Genachowski has stated that he remains concerned about violence and indecency on television, and intends to restart the FCC's stalled proceeding on interactive advertising.

There are also two new Obama-nominated Commissioners, Mignon Clyburn, a Democrat and Meredith Attwell Baker, a Republican. They replaced Jonathan Adelstein and Deborah Taylor Tate.

As expected, President Obama promoted Commissioner Jon Leibowitz to Chairman of the Federal Trade Commission, replacing William Kovacic, who remains as a Commissioner. Leibowitz has recently pushed for possible intervention in online behavioral advertising. There is currently one vacancy at the FTC, and the administration has also indicated it will not reappoint Commissioner Pamela Jones Harbour. With two Republicans already serving as commissioners (Kovacic and J. Thomas Rosch), that creates two Democratic appointments for the administration to fill. At the staff level, Chairman Leibowitz named David Vladeck to head the Bureau of Consumer Protection. Vladeck spent over two decades at Public Citizen, a Naderite public interest group. In an August interview with *The New York Times,* Vladeck indicated that his bureau will be redefining how it looks at online privacy, including behavioral advertising.

To lead the Food and Drug Administration, the President has selected Margaret Hamburg, a former New York City Health Commissioner and Assistant Secretary at the Department of Health and Human Services. Her second in command is Joshua Sharfstein, the former Baltimore Health Commissioner. Sharfstein is on record as a critic of over the counter (OTC) drug advertising regulation.

These administration appointments, coupled with an enhanced Democratic majority in the House and a filibuster-proof majority in the Senate, means our industry is looking at a more activist government than we have seen in a generation.

Advertising Tax Deductibility

Background

Advertising is deductible as a business expense under the Internal Revenue code. With steep deficits projected far into the future, and with the potential costs of health care reform and two ongoing wars, it is likely that the administration and Congress will need to find additional sources of revenue. This clearly puts advertising and its deduction in the crosshairs. While we have not seen a proposal to eliminate the advertising deduction across-the-board in nearly 20 years, certain categories of advertising are definitely receiving serious attention.

The Advertising Coalition is in the process of updating a 2004 study by Global Insight, a leading economic think tank, that examined data from every Congressional district on the economic activity created by advertising. This study, guided by Nobel Laureate in Economics Lawrence Klein, has found that advertising for all products and services helps generate $6 trillion in U.S. economic activity annually and supports more than 21 million jobs. The Global Insight study has played a major role in educating policymakers about the economic importance of our industry.

Congressional Activity

Much of the debate regarding the tax deduction for advertising centered on direct-to-consumer (DTC) prescription drug advertising in the current Congress. In June, Representative Charlie Rangel (D-NY), the powerful Chair of the House Ways and Means Committee, was quoted that ending the tax deduction for prescription drug ads would raise $37 billion that could be used to pay for health care reform. Later in the summer, as the Senate Finance Committee was considering its health care bill, Senator Bill Nelson (D-FL) suggested he would take a run at eliminating this tax deduction, floating the same $37 billion figure in a Letter to the Editor to the *St. Petersburg Times*. Fortunately, both proposals have yet to be included in health care reform legislation as other funding sources have taken center stage.

This October, however, Senator Al Franken (D-MN) and cosponsors Sherrod Brown (D-OH) and Sheldon Whitehouse (D-RI) introduced a bill (S.1763) entitled "Protecting Americans from Drug Marketing Act," which would disallow the deduction for DTC prescription drug advertising and promotional expenses. The Senators are trying to add their bill to the health care legislation currently being drafted or planning to offer the bill as an amendment on the Senate floor. We sent a letter to the Senate staff explaining why taxing DTC advertising is a detrimental idea. While the pharmaceutical industry would be targeted immediately, this proposal raises serious threats for the deductibility of marketing costs for all other products and services. Our letter to the Senate can be viewed at http://www.ana.net/advocacy/getfile/15365.

Proposals to end the tax deduction for tobacco advertising have been discussed in previous Congresses as well. Also, some in the academic community have urged that ending the deduction for food and beverage marketing to children would lower obesity rates in the United States. Recently, Representative Dennis Kucinich (D-OH) has discussed such a proposal.

Outlook for 2010

As has been demonstrated by the Global Insight study, advertising is important to America's economic health. Additionally, any attempts to use the tax code to punish speech would likely be found unconstitutional under the First Amendment. Congress should not set a precedent of picking and choosing which industries should receive an ordinary and necessary business tax deduction and should not. All advertising expenses, no matter the product being advertised, have been treated the same as any other business expense since the inception of the federal income tax code and that approach should be maintained.

State Advertising Tax Deductibility

Background

There have been ongoing efforts by policymakers at the state level to tax advertising and this year proved to be no exception. Generally, these state tax proposals remove existing sales tax exemptions for advertising and impose this tax on them. Facing a struggling economy and an unstable housing market, states are under enormous financial pressure to find other funding sources to help pay for programs and fill budget gaps. ANA has actively worked to oppose tax proposals over the past twenty years and we have continued this effort this year. Through the State Advertising Coalition (SAC), created through collaboration with the American Association of Advertising Agencies (4A's) and the American Advertising Federation (AAF), we have been able to defeat a multitude of advertising tax proposals throughout the country.

Additionally, the Advertising Coalition (TAC), of which we are a founding member, developed the Global Insight study, directed by Nobel Laureate in Economics Lawrence Klein. This important study identifies the economic impact that advertising has in every state and congressional district throughout the United States. We have used this data to demonstrate how an advertising tax would be highly detrimental to the states' economy and business activities.

State Ad Tax Proposals in 2009

This year, several states introduced bills that would tax or restrict advertising.

In the South Dakota House of Representatives, H.R. 1266 was introduced by Assemblyman Ryan Olson, Chairman of the House Taxation Committee. The bill would have imposed a four percent gross receipts tax on all advertising services in the state. ANA wrote to all members of the committee expressing our opposition to the proposed legislation. It was defeated in the Taxation Committee this February.

In Arizona, Democrats in both the Senate and House were prepared to offer an alternative budget plan that would place a tax on most business services, including advertising. The Arizona Legislature passed an advertising tax in the 1980's, but it was phased out in 1986 with the current exemption. ANA wrote to the Senate and House expressing our opposition to any proposal to tax advertising. The proposal did not come to a vote.

Two ad tax bills also were introduced in the New York State Assembly this year, both product-specific in nature. Assemblyman Richard Brodsky introduced Assembly Bill 5030, which would have eliminated the corporate income tax deduction under state law for any DTC prescription drug advertising. Assemblyman Felix Ortiz introduced Assembly Bill 2455 which would have imposed a tax on certain food and drink products, movies and video games. Under the Ortiz bill, companies would not be

allowed to deduct from income the New York share of expenditures for advertising food, video games and equipment, movies, videos or DVDs on TV shows watched primarily by children under age 18. Both bills were referred to the Assembly Ways and Means Committee and are still pending.

Outlook for 2010

This year, many state governments experienced severe financial pressures and budget deficits because of the sub-prime lending crisis and the economic downturn. Many states were able to fill these gaps by using stimulus money from the Federal government and "rainy day" reserve funds. Though no ad tax bill proposals were passed in state legislatures yet this year, we expect that more advertising tax proposals will come up next year once rainy day reserves and stimulus funding has been depleted. This, of course, in the product specific ad tax area, raises serious constitutional concerns for the advertising industry as certain ads are threatened with differential tax treatments based on content. We will continue to closely monitor this issue to ensure that the advertising industry is taxed in ways that are economically sound and easy to administer.

Direct-to-Consumer Prescription Drug Advertising

Background

The Food and Drug Administration (FDA) has permitted broad direct-to-consumer (DTC) prescription drug advertising in the United States since 1997. This advertising serves as an important health information resource for consumers, as has been demonstrated in studies from groups such as the National Medical Association (NMA), *Prevention* magazine, and the FDA itself. However, DTC advertising has come under severe fire in Washington and elsewhere. Critics allege that it drives up the cost of brand name prescription drugs, while others allege the information in the ads is deficient. Various proposals have been put forward to restrict DTC advertising in response to these criticisms. These proposals have ranged from completely ending the tax deduction for DTC ads to mandating the ads contain substantially increased adverse indications disclosures to banning ads for new drugs altogether for a set period of time.

The drug industry's trade association, the Pharmaceutical Research and Manufacturers of America (PhRMA) has attempted to counter this criticism with a set of self-regulatory Guiding Principles that set guidelines for ad placement, FDA voluntary preclearance, a balance between risk and benefit information and other restrictive requirements. Those principles can be viewed at http://www.phrma.org/files/PhRMA%20Guiding%20Principles_Dec%2008_FINAL.pdf.

The Health Care Debate and the Deductibility of Advertising Expenses

Washington was consumed throughout 2009 with President Obama's plan to overhaul health care, a task that has bedeviled many of his predecessors.

As Congress was considering the various proposals to fund health care reform, the tax deductibility of direct-to-consumer prescription drug advertising came under repeated threat. The first threat came from the powerful Chairman of the House Ways and Means Committee, Representative Charlie Rangel (D-NY). Chairman Rangel was quoted in *Congressional Quarterly* that the exemption could raise $37 billion to pay for health care reform. Chairman Rangel later turned to other funding mechanisms for his proposals and dropped his efforts to eliminate the DTC ad deduction.

The second threat to the ad deduction came in September, when Senator Bill Nelson (D-FL), a member of the Senate Finance Committee, also claimed that ending the deduction would raise $37 billion. Senator Nelson made this claim in a September Letter to the Editor in the *St. Petersburg Times*. Fortunately, Senator Nelson backed off this proposal to offer an amendment to the Senate Finance Committee's bill a few days later.

In October, Senator Al Franken (D-MN) and cosponsors Sherrod Brown (D-OH) and Sheldon Whitehouse (D-RI) introduced a bill (S.1763) entitled "Protecting Americans from Drug Marketing Act," which would end the deduction for DTC prescription drug advertising and promotional expenses. These Senators have threatened to add their bill to the health care legislation currently being drafted or offer the bill as an amendment on the Senate floor. We sent a letter to the Senate staff explaining how the proposal raises serious threats for the deductibility of marketing costs for all other products and services. Our letter to the Senate can be viewed at http://www.ana.net/advocacy/getfile/15365. Representatives Jerrold Nadler (D-NY) and Daniel Lipinski (D-IL) also have proposed eliminating the deduction for DTC ads.

Other Legislative Proposals

In 2007, ANA succeeded in defeating a number of potentially serious attempts to greatly restrict prescription drug advertising. These included a two- or three-year moratorium on ads for new drugs, mandatory preclearance of advertising content by the FDA, and extensive mandated warning language. Instead of these proposals, the industry agreed to accept stiffer civil penalties for false or misleading ads. However, many of these other proposals continue to be considered and be pushed by Chairman Henry Waxman (D-CA) of the House Energy and Commerce Committee. In past Congresses, for example, these proposals have included legislation by Representatives JoAnne Emerson (R-MO) and Rosa DeLauro (D-CT) to place a three-year moratorium on ads for new drugs, and legislation by Representative Pete Stark (D-CA) that would require a "fair balance" between risk and benefit information in drug ads or face a loss of the tax deduction for DTC advertising. The late Senator Ted Kennedy (D-MA) and Chairman Waxman also have introduced proposals to extend the FDA's authority to advertising to over-the-counter drug products as well.

Moran ED Bill

In April, Representative Jim Moran (D-VA) reintroduced legislation that would prohibit ads for drugs treating erectile dysfunction (ED) or ads for so-called "male enhancement" drugs from airing on broadcast television or radio between the hours of 6:00am and 10:00pm. Congressman Moran's bill would require the FCC to classify such ads as indecent. ANA has strongly opposed this legislation as unconstitutional. The industry has agreed to place these ads only on programs with an audience of a vast preponderance of adults.

FDA Warning Letters on Sponsored Links and Hearing on Use of Social Media

In March, the FDA's Division of Drug Marketing, Advertising and Communications (DDMAC) sent an unprecedented number of warning letters to drug companies about the use of sponsored links that appeared in internet searches. The letters alleged that the ads were misleading because they did not also include adequate information about the drug's risks. Previously, drug marketers relied on the so-called "one click

away" rule, in which a sponsored link would direct a consumer to a site containing more information about a drug, including risk information. An *Advertising Age* article in October stated that the use of paid search ads has declined by 84% since DDMAC's action.

After the FDA's strong action in this area, it is finally coming out with a more systematic review of these issues. Nearly all of the FDA's guidance relating to DTC prescription drug advertising presently concerns broadcast and print ads. In an ongoing attempt to devise guidelines dealing with newer forms of marketing, in September the FDA announced a hearing for November 12th and 13th into the use of social media, such as blogs, podcasts and social networks to promote drugs and medical devices. The Federal Register notice (http://www.ana.net/advocacy/getfile/15348) raised a number of questions on which the FDA seeks input, including how marketers can fulfill regulatory requirements while operating in the online space and when the use of links is appropriate. ANA plans to provide input to the FDA in response to its questions.

Outlook for 2010

As Congress searches for ways to cover the vast costs of health care reform, the tax deduction for direct-to-consumer prescription drug advertising will remain under threat. DTC prescription drug advertising in general will remain under attack on various other fronts as well. ANA continues to work both independently and through The Advertising Coalition (TAC) to educate policymakers on the Hill and in the executive branch on the benefits of DTC prescription drug advertising and the steps the industry is taking to make these ads, already a valuable health resource, even more beneficial to consumers.

Tobacco Advertising

Background

Under the 1998 Master Settlement Agreement (MSA) between the tobacco companies and 46 state attorneys general, tobacco advertising is severely restricted. This voluntary agreement settled many of the lawsuits at the state level against the tobacco companies in exchange for restrictions on advertising, which include limits on ad placement, ad content and sponsorships. These limits, coupled with FTC authority over false or deceptive advertising, made tobacco advertising one of the most restricted categories of advertising in the United States.

Prior to the Master Settlement Agreement, in 1996 the FDA attempted to promulgate a rule governing tobacco products, including broad restrictions on tobacco advertising. This rule was later struck down by the U.S. Supreme Court, which held that the FDA had not been expressly granted authority over tobacco products by Congress. Since that rule was struck down, attempts to give the FDA that authority have been introduced in every subsequent Congress. This legislative effort, spearheaded by the late Senator Ted Kennedy (D-MA) and Congressman Henry Waxman (D-CA), finally reached fruition in 2009.

The Family Smoking Prevention and Tobacco Control Act

In March, Chairman Waxman of the House Energy and Commerce Committee introduced H.R. 1256, the Family Smoking Prevention and Tobacco Control Act. Meanwhile, Senator Kennedy introduced an identical version of the bill, S. 982, in the Senate in May. Among other things, the bill mandates the FDA to promulgate a rule similar to its 1996 rule to ban outdoor advertising within 1,000 feet of a school or playground, requires all advertising in publications with a readership less than 85% adult to be in black text on a white background, which cannot include any other colors, illustrations or pictures, and bans promotional items and brand name sponsorships. It also lifts the existing federal preemption in this area and allows states and localities to impose even stronger restrictions on tobacco advertising.

ANA wrote a letter to the House and Senate Committees that were considering the bill, which can be read at http://www.ana.net/advocacy/getfile/15175. It noted the multitude of problems with the legislation. These restrictions would severely limit the ability of companies to communicate to adults about a legal product and would allow local governments to impose potentially inconsistent advertising restrictions. We noted that First Amendment experts from opposite ends of the political spectrum - from Judge Robert Bork to Harvard University constitutional expert Laurence Tribe, from the ACLU to the Washington Legal Foundation - have all argued that the provisions are unconstitutional restrictions on truthful, non-deceptive commercial speech. Additionally, the Supreme Court struck down a number of similar restrictions in its 2001 *Lorillard v. Reilly* decision and in its 1985 *Zauderer* case. We urged the

committees to drop these potentially unconstitutional provisions, or at the very least, require a new rulemaking that would take into account these constitutional considerations.

Despite our efforts, the bill passed the House in April on a 298-112 vote. It then passed the Senate on a 79-17 vote in June, and the House accepted the Senate's minor changes to the bill on a 307-97 vote. President Obama signed the bill into law later that month. Currently, there is a challenge to the advertising provisions of the law pending in federal district court in Kentucky. ANA, joined by others in the ad community, will file a "friend-of-the-court" amicus brief in this case by November 30th pointing out the severe threat to First Amendment values and the ability to communicate effectively to adults about a legal product. This case is likely to set major advertising precedents far beyond the tobacco area.

Outlook for 2010

ANA strongly supports the suit that has been filed in Kentucky. We remain opposed to the advertising restrictions in the new bill, which we believe are clearly unconstitutional.

Privacy and Data Security

Background

The ability to provide interest-based and behavioral targeted advertising has led to far more efficient and effective communications that benefit consumers and businesses alike. Privacy watchdogs, however, argue that many people are not sufficiently aware that their online activities are being monitored and have urged policymakers and industry leaders to create more restrictive laws and policies relating to data collection, security and online privacy.

FTC Consumer Privacy Roundtables

The FTC announced that it will hold a series of day-long public roundtable discussions on the collection and use of consumer information and the challenges to consumer privacy presented by the 21st century technological landscape. The FTC states that these roundtables are an attempt to find a balance between protecting consumers and encouraging technological innovation. The first roundtable is scheduled for December 7th in Washington, DC. Other roundtables will be held next year, including one on the west coast.

ANA plans to submit a filing to the FTC on our activities in this area over the past year, including our self-regulatory principles for online behavioral advertising (more information can be read on this program beginning at page 18).

Congressional Activity

Legislation in the privacy arena this year has continued to focus on data security and spyware concerns. Representatives Bobby Rush (D-IL) and Cliff Stearns (R-FL) introduced H.R. 964, the Data Accountability and Trust Act in the 110th Congress, but it failed to receive floor action. Their bill would have required businesses to adopt reasonable security policies, provide notice in the event of a breach, and establish procedures to protect consumer information. This year, Representative Rush re-introduced the bill as H.R. 2221. The Subcommittee on Commerce, Trade, and Consumer Protection held a hearing on the bill in May. It passed the subcommittee on a voice vote and was referred to the full House Energy and Commerce Committee for further action, which approved it in September.

Representative Rick Boucher (D-VA), Chairman of the House Energy and Commerce Committee's Subcommittee on Communications, Technology and the Internet, announced this July that he will introduce a bill on online privacy and information security that will impose new rules on websites and advertisers. He plans to examine technologies such as online deep packet inspection, which track online activities, and data-tracking devices. Chairman Boucher has said that his bill will benefit consumers while preserving the underlying economic structure of the internet that relies on

advertising to provide consumers with free content. He has stated that his bill will require an opt-in regime for all collection of consumer information from third party websites. He is working with Representative Cliff Stearns (R-FL) and Representative Bobby Rush (D-IL) on this legislation. We believe that a mandatory across-the-board opt-in approach is counter productive, unnecessarily rigid and could undermine internet commerce hurting both businesses and consumers.

Outlook for 2010

We understand that consumer privacy is highly important and as technology improves and Internet capabilities expand, we will continue to play an active role in ensuring that user data is protected and secure. We support FTC enforcement efforts in this area and we hope that our self-regulatory efforts will create a framework that encourages online advertising efforts and supports consumer trust in the online industry. We believe overly restrictive legislation could threaten the online advertising industry and undermine consumers' ability to receive free online content. We are working with policymakers and industry representatives to examine existing self-regulatory programs to ensure that it responds to changing technology and promotes a competitive and safe online environment.

Behavioral Advertising

Background

Behavioral advertising involves collecting information on consumers' online activities, including browsing habits, search queries and content viewed, in order to provide him or her with more targeted advertising related to specific interests and preferences. Often this type of advertising does not require personally identifiable information, and online advertising allows consumers to access and enjoy free content and services while generating higher returns for advertisers and companies. Despite an active effort by the online marketing industry to establish detailed privacy policies and procedures, critics and consumer advocates continue to push for greater restrictions on consumer data collection and behavioral advertising practices.

FTC Principles

To begin addressing these privacy concerns, the Federal Trade Commission (FTC) held a behavioral advertising town hall in November 2007. Just before this town hall meeting, a coalition of privacy and consumer groups proposed a "do-not-track" list similar to the "do-not-call" legislation passed by Congress. Representative Ed Markey (D-MA) also called on the FTC to investigate online behavioral tracking. The following month, the FTC released a set of draft principles on this issue. These were intended to be a guideline for self-regulation in this area that addressed privacy concerns and still encouraged online advertising competition. The principles stated that advertisers must provide clear notice when data is collected for advertising purposes, data must be securely stored and kept for a limited amount of time, and express consent must be obtained from the consumer when "sensitive" data is used for behavioral advertising purposes. The FTC's principles can be viewed at http://www.ftc.gov/opa/2007/12/principles.shtm.

ANA and a large group of trade associations responded to the proposed self-regulatory guidelines asking the FTC to apply current self-regulatory principles to online advertising. We indicated in our comments that we would help with this task and urged the Commission to consider the benefits that behavioral advertising provided to both consumers and advertisers. Our comments, written by Stu Ingis of the Venable law firm, also noted that the definition of behavioral advertising adopted by the Commission did not differentiate adequately between personally identifiable, pseudononymous and anonymous data collection.
Our comments can be viewed at http://www.ana.net/advocacy/getfile/1364.

In February of this year, the FTC revised its online privacy principles to expand and clarify certain aspects of the original guidelines. In the new report released with the principles, the FTC stated that it was continuing its examination and public dialogue of behavioral advertising. The FTC report can be viewed at http://www.ftc.gov/os/2009/02/P085400behavadreport.pdf.

Self-Regulatory Program for Online Behavioral Advertising

This July, in an unprecedented cross-industry regulatory effort, ANA, the American Association of Advertising Agencies (4A's), the Direct Marketing Association (DMA), the Interactive Advertising Bureau (IAB) and in conjunction with the Council of Better Business Bureaus (CBBB) released our "Self-Regulatory Program for Online Behavioral Advertising." The initiative addressed concerns about the use of online consumer information for behavioral advertising purposes while citing the importance of advertising in supporting consumer access to free online content. The seven principles (education, transparency, consumer control, data security, changes, sensitive data and accountability) outlined in the program were intended to enhance consumer confidence in the online medium and encourage practices that would foster transparency, understanding and choice for consumers. The principles can be viewed at http://www.ana.net/advocacy/getfile/15279.

New York State Behavioral Advertising Legislation

Last year, the New York Legislature considered two bills that impose onerous state-specific restrictions on online behavioral advertising. Both bills, Assembly Bill 9275-B and Senate Bill 6441-B, would subject all internet advertising, no matter where it originated, to a rigid set of notice, choice and security rules related to the use of non-personally identifiable information. The bills also failed to make adequate distinctions between how personally identifiable data, pseudonymous and anonymous data should be treated. Additionally, these bills raise severe constitutional issues by burdening interstate commerce. They could lead other states to act, creating a wide net of inconsistent state laws on the collection and use of non-personally identifiable information.

We responded to the members of the committees urging them to oppose the legislation. Those letters can be viewed at http://www.ana.net/advocacy/getfile/1374. These bills are still pending and have not moved out of committee.

This year, Assemblyman Brodsky reintroduced his Third Party Internet Advertising Consumers' Bill of Rights Act as Assembly Bill 1393. ANA responded to the proposal arguing that it could have significant adverse effects on both consumers and Internet advertising. Additionally, we stated that current self-regulatory policies appropriately address any concerns associated with internet advertising. As a response to our comments and additional opposition from the online advertising industry, the bill was pulled from the Codes Committee agenda and is still pending in the committee. A companion bill to Assembly Bill 1393 was introduced in the New York Senate by Senator Liz Krueger late in the session. The bill, Senate Bill 5801, which was referred to the Rules Committee, would apply the same restrictions on online advertising as Assembly Bill 1393.

Congressional Activity

At a behavioral advertising hearing in July, Rep. Rick Boucher (D-VA), Chairman of the House Energy and Commerce Committee's Subcommittee on Communications, Technology and the Internet, announced that he will introduce a bill that would require companies to notify users about behavioral advertising practices and obtain opt-in consent. He is working with Rep. Cliff Stearns (R-FL), the top Republican on the subcommittee, and Rep. Bobby Rush (D-IL), chairman of the Committee's Subcommittee on Commerce, Trade and Consumer Protection. The Senate is likely to examine these issues as well. It is uncertain whether Congress is likely to propose that marketers should obtain users' explicit opt-in agreement to certain forms of online ad targeting, or if proposed legislation will require opt-out consent.

Outlook for 2010

The continuing battle over online behavioral tracking is likely to focus on whether industry self-regulation is sufficient to protect the privacy of Internet users.
We share the commitment of policymakers in the states and at the federal level in protecting the privacy of consumers online. Broad overreaching regulatory efforts could have a tremendous negative impact on businesses and the advertising community. We urge Congress to consider carefully these negative impacts before moving forward with legislation that would unfairly and unconstitutionally restrict the rights of advertisers and marketers. We will continue to work closely with the FTC in examining its privacy guidelines and ensure that our self regulatory guidelines are effective and reflective of the changing online landscape.

ICANN Generic Top Level Domains (gTLDs)

Background

A top level domain is the portion of an Internet address that is to the right of the dot. They are used to route traffic through the Internet. Currently, there are 21 generic top level domains available, which include .com, .edu, .org, and others which make up some of the most widely-known website addresses. Top level domains are managed and maintained by the Internet Corporation for Assigned Names and Numbers, or ICANN. As the Internet has grown, a need has opened up for new top level domains as the existing ones are exhausted.

ICANN Proposal To Expand Number of Top Level Domains

In 2008, ICANN proposed to expand drastically the available generic top level domains. The proposal would allow a company, group, or individual anywhere in the world to purchase a new top level domain that included virtually any word or phrase, including product categories, company names, and brand names.

ANA filed comments with ICANN arguing against opening up top level domains without further investigation of the risks and benefits of such a proposal. We argued that the proposal could lead brand holders and advertisers, especially those with multiple brands, to have to expend vast sums of money in protecting their brand names from cybersquatters, brokers, and even competitors. These comments can be viewed at http://www.ana.net/about/getfile/14886. ICANN also received comments from the United States Department of Commerce that urged the same cost/benefit analysis be conducted before proceeding further. These comments can be viewed at http://www.ntia.doc.gov/comments/2008/ICANN_081218.pdf.

ICANN received over 300 comments from 24 countries around the world. In response, it revised its proposal in February, yet we were still concerned with the harm the proposal could cause our members. We filed supplemental comments in response to the revisions which reiterated our concerns about the costs of the proposal to brand and trademark holders. These comments can be viewed at http://www.ana.net/advocacy/getfile/15119.

Outlook for 2010

ANA remains concerned about the effect ICANN's proposal would have on advertisers, but we are hopeful it will take into account the views of the business community. ICANN is preparing to launch its program in the beginning of 2010, and we will continue to provide input on the effects of the proposal on our members.

Consumer Financial Protection Agency and the FTC

Background

The financial crisis of 2008-2009 has triggered major reform efforts in Washington. Part of this reform effort has been directed at the marketing and sale of financial products and services that are alleged to have contributed to the financial meltdown. This has led to proposals from the Obama Administration that would amount to the greatest regulatory reorganization of the financial sector since the Great Depression.

Consumer Financial Protection Agency Act of 2009

In July, Representative Barney Frank (D-MA), the Chairman of the House Financial Services Committee, introduced legislation (H.R. 3126) to create a new Consumer Financial Protection Agency (CFPA). The bill, despite having since been amended by both the Financial Services and Energy and Commerce Committees, has a number of unprecedented provisions impacting the advertising industry:

- The new agency would be given jurisdiction over financial products and services, which it defines extremely broadly. The bill takes that jurisdiction from various federal agencies, including the Federal Trade Commission (FTC). The FTC would retain substantial residuary responsibility in many of these areas.
- The bill would give the new CFPA broad "unfairness" rulemaking authority that goes far beyond the FTC's unfairness authority in the FTC Act. Unfairness is an elusive concept, and has been clearly defined and limited by Congress. This bill does not contain these same limits, giving the CFPA extraordinary power to base its decisions on public policy considerations.
- It does not contain a broad federal preemption provision, meaning states would be free to impose even stricter regulations, leading to balkanized and inconsistent national regulation.
- In exchange for its loss of authority over financial products, the FTC is given broad new powers, including the ability to conduct rulemakings in just 180 days, without first identifying a pattern of activity rather than one instance and without first conducting an economic analysis of the rule. This overturns limits imposed on the FTC in the 1970's, the so-called "Magnuson-Moss" procedures, which Congress put into place to ensure all FTC rulemakings were carefully considered and all sides were heard. It also gives the FTC an enhanced ability to go after "aiders and abettors," which would cast a large net over the entire advertising and media industries. Finally, an amendment approved by the Energy and Commerce committee gives the FTC independent litigating authority for civil penalty actions.

Both ANA and The Advertising Coalition sent letters to the members of the House Financial Services Committee prior to the markup in that committee. This letter can be viewed at http://www.ana.net/advocacy/getfile/15353. We also sent a letter to the House Energy and Commerce Committee, which can be viewed at

http://www.ana.net/advocacy/getfile/15367. We also met with various members of the House Financial Services Committee and House Energy and Commerce Committee, on our own and as part of a broader business industry coalition. In these meetings, we have tried to convince staff that the bill is too broad and goes too far in the powers it gives both the CFPA and the FTC.

Chairman Frank released a new draft of the bill in September, making a number of changes but not substantially affecting the impact on the FTC, and the Financial Services Committee held a markup of the bill in October. The bill was approved by the committee on a 39-29 party line vote. The House Energy and Commerce Committee took up the bill soon after, and passed it on a party line 33-19 vote, making minor changes. House leadership hopes to have the bill on the floor by late fall.

Outlook for 2010

Financial reform is a priority for the Obama Administration and Congressional leadership. As the bill progresses through the House and then the Senate, we will continue to meet with staff and encourage changes to the broad powers the bill gives to both the CFPA and the FTC. Otherwise, the advertising industry will be facing a far more activist and unfettered FTC.

Endorsement and Testimonial Guidelines

Background

The Federal Trade Commission first established guidelines governing endorsements and testimonials in advertising in 1972. These guidelines were updated in 1980. The original guidelines allowed marketers to use truthful testimonials and endorsements that are not generally representative of what consumers can expect from the advertised product so long as the marketer clearly and conspicuously disclosed either: (1) what the generally expected performance would be in the depicted circumstances, or (2) the limited applicability of the depicted results to what consumers can generally expect to receive, i.e., that the depicted results are not representative or typical.

The FTC announced a review of the guidelines in 2007 to better respond to the changing media landscape. The changes it proposed would require additional substantiation of generally expected results, thereby eliminating a "safe harbor" for marketers using non-typical endorsements and testimonial disclaimers. The Commission stated this change was necessary because non-typicality disclaimers alone generally are not enough to overcome false or deceptive impressions that the results would in fact be typical. ANA filed comments, which can be viewed at http://www.ana.net/advocacy/getfile/152, contending that the Commission already has sufficient power to review endorsements for false or misleading claims. We also argued that requiring substantiation prior to publication would be more extensive than necessary in advancing the government's interest in preventing deception, and would thus impose an unconstitutional burden on advertisers. Our comments noted that the two surveys of consumer perceptions of endorsements and testimonials used by the FTC in formulating the studies had serious methodological flaws as well.

FTC's Revised Guidelines

In November 2008, the FTC, largely following its 2007 proposal, released a Federal Register notice detailing the proposed changes to its endorsement and testimonial guidelines. In doing so, the Commission discounted many of the arguments ANA and others had raised. In response, ANA, with the assistance of John Feldman of Reed Smith LLP, filed additional comments with the Commission in March 2009, which can be viewed at http://www.ana.net/advocacy/getfile/15028. We again emphasized the fact that the studies relied upon to draft the revisions were severely limited, and that their results could not be extrapolated to the multitude of categories of advertising that use endorsements and testimonials. We argued that the longstanding guidelines provided the correct balance between governmental and business interests and would have a chilling effect on truthful speech. We noted further that the FTC's blanket approach was not suited to emerging media. We instead urged that the FTC allow a flexible and organic self-regulatory approach to develop in response to new forms of marketing.

We also provided further analysis of the FTC's studies in a separate filing overseen by William MacLeod of the Kelley Drye & Warren law firm, which can be read at http://www.ana.net/advocacy/getfile/15029.

The FTC's final revised guidelines were published in October. The new guidelines require disclosure of generally expected results, basically doing away with the use of a "results not typical" disclaimer as a safe harbor. The FTC, in the guides, has expanded the examples illustrating when "material connections" (in the form of payment or free products provided to an endorser) must be disclosed to include bloggers and word-of-mouth marketers. The new guides also clearly expand liability for statements made in an endorsement to endorsers as well as advertisers, even when endorsers are operating outside the context of traditional ads.

The FTC's revised guidelines can be viewed at http://www.ftc.gov/os/2009/10/091005endorsementguidesfnnotice.pdf. They go into effect on December 1st.

Outlook for 2010

Advertisers and marketers that use endorsements and testimonials often will have to modify their ads in response to the major changes to the guides. ANA and its legal counsel will provide further guidance and input to our members as we analyze these changes.

Maine Predatory Marketing Law

Background

The Children's Online Privacy Protection Act (COPPA) protects children 13 years and younger in the online environment. It was passed in 1999 with broad industry support. It gives parents control over what types of information is shared about their children in cyberspace. It also provides substantial preemption of state regulations in the privacy area.

Status

In June, the Maine legislature passed a law (LD 1183, http://www.maine legislature.org/legis/bills/bills_124th/chappdfs/PUBLIC230.pdf) sponsored by Senator Elizabeth Schneider (D-Orono) that prohibits marketers from knowingly collecting, receiving or using personal or health-related information from children without obtaining verifiable parental consent. Personal information is defined to include an individual's name, physical address, or anything else that can be used to individually identify a person. Additionally, even with verifiable parental consent, the law still prohibits the use of personal or health-related information regarding a minor in the marketing of products or services or in promoting a course of action to a minor, and terms this "predatory marketing." It also contains a bounty hunter provision and a private right of action with injunctive relief and recovery of actual damages for each violation, and allows for civil fines over $20,000 for repeat offenses.

Many of our member companies who do business in Maine were alarmed at the broad scope of the law. The law would effectively cut off minors from receiving information from a wide variety of industries, from educational institutions and testing services to class ring manufacturers. We worked with a coalition of industry partners to alert lawmakers in Maine to the problems with the law. Specifically, the law raised serious First Amendment and dormant commerce clause concerns, as well as the strong possibility it was preempted by COPPA.

Since the law was to take effect on September 12th, and since the legislature was not scheduled to reconvene until January, ANA strongly supported a lawsuit in Maine federal court seeking a preliminary injunction against enforcement of the law. The suit also alleged the law was invalid both on constitutional and federal preemption grounds.

Fortunately, the Maine Attorney General stepped in after the lawsuit was filed and, noting the First Amendment concerns involved, stated that the Attorney General's office would not carry out any prosecutions utilizing these provisions. The court, while not granting the injunction, noted this agreement in its order, and held that any private suit that was filed would suffer from "the same constitutional infirmities." With the court coming down on the side of the law's unenforceability, the parties

agreed to dismiss the lawsuit without prejudice, allowing further action if a third party attempted to enforce the law.

The Maine Legislature's Joint Standing Committee on the Judiciary agreed to conduct hearings into the law's constitutionality in October. The committee concluded at that hearing that the existing statute should be repealed, but that new legislation should move forward to address these concerns with some guiding parameters.

Outlook for 2010

ANA filed a statement (http://www.ana.net/advocacy/getfile/15354) at the committee's hearing and has encouraged our members who do business in Maine to continue to express opposition to the law. We are very hopeful that the hearings will provide a springboard for the business community an opportunity to work with the Attorney General, the bill's sponsor and others in the Maine Legislature to resolve the serious defects with the legislation once and for all.

Food/Beverage Advertising and Obesity

Background

The food and beverage industry has come under increased focus as concerns about childhood obesity continue to arise. Some consumer critics and policymakers have called for taxes, bans and restrictions of food and beverage advertising. ANA continues to work closely with the food, beverage and restaurant industries in combating childhood obesity, restructuring marketing practices and strengthening industry self regulatory efforts. An excellent example of this is the Children's Food and Beverage Advertising Initiative (CFBAI), a highly successful voluntary self-regulatory effort that was launched in 2006 to address the demand of consumers and policymakers for more advertising that supports good nutrition and healthy lifestyles. It now has a membership of 16 major food company representatives and has helped drastically alter the composition of children's food and beverage advertising to focus more on healthier food and lifestyle choices. Last July, the CBBB issued a report indicating that all of the program members had met their pledge obligations in the first year of the program.

Congressional Activity

In March, President Obama signed H.R. 1105, the Omnibus Appropriations Bill. The bill will establish an "Interagency Working Group" of the FTC, FDA, CDC and USDA to study and develop recommendations for food marketing directed at children 17 years old and younger. The group will also be responsible for establishing nutritional standards for food marketing to children so that it contains language citing the positive and negative affects of certain foods on children's diets. The group must report its findings to Congress by July 15, 2010. The FTC will hold a workshop on Food issues on December 15th where this study will be discussed. ANA will be one of the witnesses at the workshop.

CDC Funding

ANA has taken an active role in a large business and consumer initiative that has pushed for increased funding for the Center for Disease Control and Prevention's Division of Nutrition, Physical Activity and Obesity. This coalition was comprised of not only ANA and several large advertisers, but also the Center for Science in the Public Interest (CSPI), the Grocery Manufacturers of America (GMA) and the American Heart Association. Without adequate funding, the division has not been able to provide every state with the resources they need for obesity programs covering nutrition and physical education programs in the schools. Our goal has been to advocate for enough funding to cover obesity programs in all states at least at minimal levels.

ANA/GMA Report and Follow-Up Analysis

In September 2008, ANA and GMA submitted a report from Georgetown Economic Services (GES) on advertising food and beverages to children, entitled "Food, Beverage and Restaurant Advertising in 2007 - Children's Impressions and Expenditures on Children's Programs" to a joint State Appropriations Subcommittee hearing. The report, which was an update to a previous study, analyzed Nielsen Media Research data from 2007 on food, beverage and restaurant advertising to children 12 and under and found that over the past several years, children are seeing a decreasing amount of food and beverage TV ads. The CFBAI also helped drastically alter the composition of the ads themselves to focus on healthier food choices.

This past January, GMA and ANA sent a letter to then-FTC Chairman William E. Kovacic, as a follow up to this report with new analysis by GES on food, beverage and restaurant advertising to children. GES found that CFBAI participants accounted for over 80 percent of the food, beverage and restaurant commercials that children between the ages of two and eleven see on children's television programming. This new GES report (which can be viewed at http://www.ana.net/advocacy/content/1613) clearly demonstrates that our proactive self-regulatory efforts are making substantial progress. A follow up GES study is now under way with the support of the ANA and GMA and should be released later this year.

Studies on Food Advertising

The Rudd Center for Food Policy and Obesity at Yale University released a study in October examining the nutritional content and marketing of breakfast cereals to children. The study claims that the "least nutritious" cereals are those most often advertised to children and that marketing messages are often misleading and deceptive. The report argues that the government should place stricter limits on the amount of sugar in foods advertised to children and directly criticizes the Children's Food and Beverage Advertising Initiative for not reducing the amount of highly sweetened cereal advertising to children on television. The study can be read at http://www.cerealfacts.org/media/Cereal_FACTS_Report.pdf. The Rudd Center study creates its own definition of nutritiousness and health and ignores that the companies in the CFBAI program are meeting the HHS/USDA criteria for healthy foods. In fact, sugared cereals provide only 5% of the sugar intake of children 12 and under.

Two studies released this year tried to link obesity to the proximity of "junk food" outlets to schools. In the study published by the National Bureau of Economic Research, economists at the University of California, Berkeley, examined how the availability of fast-food restaurants affects obesity rates in children and weight gain among pregnant women. In addition to finding a positive correlation between geographic location and obesity rates, researchers also argued that policies restricting access to fast food near schools would make a significant impact on obesity rates

among school children. The study can be found at http://www.econ.berkeley.edu/~sdellavi/wp/fastfoodJan09.pdf

Another study published in the American Journal of Public Health examined the relationship between fast-food restaurants and obesity rates among middle and high school students in California. Using information gathered by survey responses, researchers asserted that both advertising and the proximity of food outlets to schools have major effects on adolescent eating patterns and obesity rates. This study can be viewed at http://www.foodpolitics.com/wp-content/uploads/fast-food.pdf.

A November 2008 study conducted by Dr. Ezekiel Emanuel, the brother of White House Chief of Staff Rahm Emanuel, focused on the impact of media consumption on obesity and found the association to be positively correlated. The study pushed for limiting "junk food" television advertising and the amount of TV and other media consumption in order to prevent childhood obesity. This study can be found at http://www.commonsensemedia.org/sites/default/files/CSM_media+health_v2c%20110708.pdf.

Finally, a second study released in November 2008 used data from the 1970's to the 1990's to hypothesize that a ban on fast food advertising would lower the number of obese children ages 3-11 by 18% and would reduce the number of obese children ages 12-18 by 14%. It also argued that reducing the tax deductibility of food advertising would lower obesity rates, but at a lower percentage. This study can be viewed at http://www.journals.uchicago.edu/doi/abs/10.1086/590132?journalCode=jle.

Smart Choices Program

In August 2008, a group of nine major companies in the food and beverage industry launched a program to identify and highlight foods that meet certain nutritional standards. The program, called "Smart Choices," was developed with the awareness of the FDA and identified these foods with a green label placed on the front of their packaging. In October, in a seeming reversal, the FDA announced that labeling for the Smart Choices program might mislead consumers about the health benefits of certain foods. It said that it would like to evaluate and eventually standardize criteria for food nutrition labels, but did not indicate when this process would begin. The group has voluntarily postponed active operations of the Smart Choices program while the FDA investigates the issue. Following this, two of the major companies, Unilever and General Mills, announced that they decided to phase out of the Smart Choices program.

Outlook for 2010

We expect the obesity issue to continue to be a hot topic of discussion among consumer critics and policymakers who repeatedly attempt to draw links between

obesity rates, advertising efforts and the food and beverage industries. Recently, Senator Tom Harkin (D-IA) became the Chairman of the Senate Health, Education, Labor and Pensions (HELP) Committee when Senator Ted Kennedy succumbed to cancer. Senator Harkin has continually focused on food advertising issues. As concerns over childhood obesity increase and intensify, there is no doubt that marketers and food and beverage companies will experience increased scrutiny and negative attention surrounding this issue. We have taken major steps in working to enhance and strengthen industry self-regulation and expand efforts such as the Children's Food and Beverage Advertising Initiative. We remain active in monitoring and tracking Congressional activity and are confident that any future attempts to restrict, ban or tax food and beverage advertising will face significant limits due to the First Amendment's protection of commercial speech.

Product Placement

Background

Product placement is a widely used and popular form of advertising that involves a branded product or service being presented in the context of a broadcast television program, video game or movie. If executed correctly, it can add a sense of realism and credibility to both fiction and reality programming and at times, launch a product into mainstream popularity. The increasing use of digital video recorders (DVR) such as TiVo, which allow viewers to fast forward through ads has increased the use of product placement, as companies try to find more creative marketing strategies. Federal Communications Commission (FCC) rules require television programmers to disclose paid promotional placements either at the beginning or end of the program in which they are featured. Several consumer groups and members of Congress have expressed concern that the FCC's current rules are not strict enough and are pushing for additional disclosures, even to the extent that they come at the end of the product placement.

FCC Activity

In June 2008, 23 consumer and media advocacy groups sent a letter to the FCC urging it to conduct a Notice of Proposed Rulemaking (NPRM) on product placement. This letter was released not long after Representatives Ed Markey (D-MA) and Henry Waxman (D-CA) sent a letter to the FCC also requesting that it conduct an inquiry into the practice. As a response, the ANA and several other trade associations sent a letter urging the Commission to conduct a Notice of Inquiry (NOI) instead. ANA argued that product placement issues were too complex for the Commission to conduct an NPRM, and a NOI would provide an opportunity to carry out a balanced and fair investigation. Our letter can be accessed at http://www.ana.net/advocacy/content/987. In a speech to the Media Institute later that same month, FCC Commissioner Jonathan Adelstein, suggested that the Commission conduct a formal NPRM into product placement that focused specifically on product placement in children's programs. His speech can be viewed at http://www.ana.net/advocacy/content/1254.

Following Commissioner Adelstein's remarks, the FCC published a Notice of Inquiry and a Notice of Proposed Rulemaking on product placement. The Notice can be viewed at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-08-155A1.pdf. The Commission asked for comment on several issues related to product placement and the adequacy of current disclosures. One of these proposed rule changes would require disclosure to have lettering of a specific screen size and to air for a specific amount of time during a program.

ANA helped organize a large and diverse coalition of media and marketing companies to respond to the FCC's proposals. The group submitted comments urging the

Commission to reject any new disclosure rules as unnecessary, overly restrictive and burdensome to both broadcasters and viewers. The comments, drafted by Robert Corn-Revere of David Wright Tremaine LLP, argued that the current requirements are fully adequate to inform the public about various forms of sponsorship practices. Our comments can be viewed at http://www.ana.net/about/getfile/14760.

The FCC received comments from a wide range of groups and individuals in response to its NOI/NPRM. Three groups that were strongly critical of product placement filed comments pushing the FCC to take even more drastic actions than the NOI/NPRM. The Campaign for a Commercial-Free Childhood, Commercial Alert and The Marin Institute all argued that product placement should be treated as broadcast indecency and only be allowed to be run during times when children were less likely to view them.

ANA and other industry groups thought it was imperative to respond to these proposals and filed reply comments soon thereafter. These comments (http://www.ana.net/about/getfile/14843) argued that the FCC has no statutory authority to impose time-restrictions on product placement and there is no adequate proof that children are negatively affected by product placements. Furthermore, these comments argued that the FCC proposals were unnecessary and overly restrictive and would raise serious First Amendment concerns. The comments also urged the FCC to terminate the proceeding and simply clarify how standing FCC rules and policies apply to product placement.

This September, a coalition of consumer groups sent a letter to newly appointed FCC Chairman, Julius Genachowski, arguing that sponsor identification is "buried in closing credits and hard to read." The coalition, called Fairness and Integrity in Telecommunications Media, included Consumers Union, Commercial Alert, The American Academy of Child and Adolescent Psychiatrists, Morality in Media, Public Citizen and The Salvation Army. The coalition argued that FCC should amend its rules to inform viewers when product placement is being utilized and protect them from what the coalition call "stealth and misleading commercial propaganda." The letter also claimed that "embedded ads" for harmful or addictive products do not adhere to advertising codes and parental guidelines.

Outlook for 2010

The FCC stopped accepting comments in regards to the NOI/NPRM last November, and it has not taken any further formal action on this matter. We believe that the FCC should reject proposals that would place substantial and unnecessary restrictions on product placement. Current FCC rules already sufficient in this area. Drastic regulatory proposals would not only disrupt the television viewing experience for consumers, but also violate important First Amendment rights as they would be overly restrictive.

Commercial Ratings and Blocking

Background

Under the landmark Telecommunications Act of 1996, television manufacturers are required to include a "v-chip" in each television 13 inches or larger sold after January 2000. The v-chip works in conjunction with the television industry's voluntary ratings system, developed in 1997 with input from the movie industry. The v-chip allows a consumer to block programs with a certain rating, with the goal being to prevent children from viewing what is considered by their parents or guardians as objectionable content. To date, the ratings system has only covered programming content. However, concerns have been raised about commercial content as well.

FCC Notice of Inquiry

In March, the FCC issued a Notice of Inquiry (NOI) on the availability of content blocking technologies compatible with various communications devices or platforms. The NOI was promulgated to gather information for a report the FCC was required by Congress to complete pursuant to the Child Safe Viewing Act of 2007. In the NOI, among the questions posed by the FCC was whether commercials should be included under the ratings system. Commercials are not currently covered in the TV rating guidelines. However, certain advocacy groups have asked the FCC to take action against commercial content. Rating commercials would allow them to be blocked by the v-chip or other blocking technologies based on content, just like programming.

In response, ANA asked Robert Corn-Revere of Davis Wright Tremaine LLP, a First Amendment expert, to draft comments in response to the NOI. Our comments (which can be viewed at http://www.ana.net/advocacy/getfile/15125) argued that content ratings are unnecessary and would seriously undermine broadcasting and other ad-supported media. Allowing consumers to broadly block all ads while continuing to receive the content paid for by those ads would seriously diminish the value of all TV advertising. Additionally, requiring that all ads be rated would be a case of regulatory overkill, as very few ads give rise to controversy, and would very likely be unconstitutional. It would also, because of the large quantity of ads involved, be an administrative nightmare. Instead, we urged the FCC to allow industry self-regulation, which is already in place, to address concerns about ad placement and content.

In response to concerns put forward by advocacy groups providing a long "wish list" of programming and commercial content they would like to be able to block, including ads for violent video games and related movies and alcohol beverage products, programs with product placements and numerous other categories. We filed reply comments in May. These comments argued that in light of the economic situation faced by the media industry, the last thing the FCC should consider is a speculative regulatory regime that would seek to target and eliminate advertising. We

were joined in these comments by the American Association of Advertising Agencies (4A's) and American Advertising Federation (AAF). These comments are available at http://www.ana.net/advocacy/getfile/15197.

The FCC issued its final report in August. It did not draw a final conclusion regarding the commercial ratings, but it stated the Commission was not satisfied with the record established by the initial inquiry. It instead will specifically issue a Notice of Inquiry into the "economic and technical issues surrounding use of the v-chip" to block commercials. The report was highly critical of the v-chip itself in preventing children from viewing "objectionable" content.

The FCC's report can be viewed at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-09-69A1.pdf

Outlook for 2010

ANA has long supported the development of various voluntary private sector initiatives, from parental advisories to blocking or filtering technologies which would empower parents to more effectively control the programming that comes into their homes. However, we remain opposed to any attempt to allow commercials to be blocked based on content. We believe this would prove disastrous for ad-supported programming. We will continue to monitor the FCC's actions and will strongly respond to any Notice of Inquiry it publishes in this area.

Children's Television Act and Interactive Advertising

Background

In 1990, Congress passed the Children's Television Act (CTA) to encourage educational and informational children's television programming and limit marketing to children 12 and under on broadcast television. Regulations in the CTA establish a 3 hour per week mandatory minimum for educational children's programming (defined in the act as "core programming"). The CTA requires that television stations provide advance notice when these programs are aired and display an E/I symbol during programs that meet educational and informational guidelines. The CTA also requires that commercial television broadcasters and cable operators limit the amount of commercials aired during children's programs to no more than 10.5 minutes per hour on weekends and no more than 12 minutes per hour on weekdays. In addition, broadcasters must file a quarterly Children's Television Programming Report with the FCC identifying their core programming and other efforts to comply with their educational programming obligations and to make these files available to the public.

A Changing Digital Landscape

Since the CTA was passed almost two decades ago, the media environment has changed drastically and Americans now interact regularly with an expanding array of media choices. Children in particular engage with new forms of media that extend far beyond traditional broadcast and cable television. Computers, cell phones and video games are only a few examples of these new media platforms. This changing technological landscape has raised a whole new set of issues and concerns among media advocates, parents and policymakers related to program content, parental controls and advertising limits. In 2004, the FCC expanded the CTA by placing core program requirements on both traditional analog television and digital television formats. In 2006, the act was updated again mandating that website addresses displayed on children's television programming meet certain content and time criteria.

This year, the Federal Communications Commission (FCC) was urged to re-evaluate the rules of the CTA to ensure that they were up-to-date and relevant in this new digital age. Some have argued that as children continue to interact with newer forms of media and are exposed to more online marketing, content should be more closely monitored and regulated.

"Rethinking the Children's Television Act for a Digital Media Age"

In July, the Senate Commerce Committee held a hearing entitled "Rethinking the Children's Television Act for a Digital Media Age." The hearing examined how the CTA might be updated to apply to the new media environment. Newly appointed FCC

Chairman Julius Genachowski testified before the committee on behalf of the FCC. In his prepared testimony, he acknowledged the need for the FCC to re-examine how youth interact with the digital media world and stated that any examination of the CTA must examine the state of the online media and youth, particularly in social networks, online video, games, and mobile devises. In revisiting the CTA, he proposed that the FCC expand the restrictions on commercial advertising to apply to interactive media and video content.

This proposal raises serious jurisdictional concerns and may be a serious threat to the constitutional rights of advertisers. Restrictions placed on broadcast advertising two decades ago based on spectrum scarcity do not automatically justify application to online advertising efforts today. While FCC Chairman Genachowski was right in stating that the goals of the CTA should be to help educate and protect children and empower parents, an reevaluation of the CTA must be done while respecting and complying with the First Amendment rights of advertisers and online marketers.

In October, the FCC issued a Notice of Inquiry (NOI) entitled **"**Empowering Parents and Protecting Children in an Evolving Media Landscape**."** This NOI, which can be viewed at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-09-94A1.pdf builds on a FCC public report to Congress required under the Child Safe Viewing Act of 2007 on new parental control devices for video and digital technologies. The FCC has asked for comments on an unusually broad and wide ranging set of issues related to advertising and children in the digital age. These issues include parental controls, new digital media, and current self regulatory efforts. ANA plans on filing comments with the FCC and will continue to follow the developments of this inquiry.

Outlook for 2010

The changing media landscape will undoubtedly continue to evolve as technology improves and people seek out new media platforms. Children in particular are forming new and enhanced relationships with online services and video content. Advertisers have a unique opportunity to take advantage of these new media, but face increasing threats from policymakers who are working to further restrict and limit marketing efforts.

Green Marketing

Background

Green marketing issues are receiving increasing consumer and media attention due to concerns about climate change and other environmental issues. Green marketing encompasses advertising and marketing of products that are claimed to be either improved or less detrimental for the environment than traditional products. Green marketing messages often focus on so-called "green activities" such as changes in production, packaging, advertising and makeup of these products. This growth in green marketing has prompted regulatory agencies and environmental organizations to focus on so called "greenwashing," where marketers are charged with making inaccurate or insufficiently supported environmental claims for their products and services.

FTC "Green Marketing" Guidelines

In 1992, in an attempt to prevent deceptive and misleading green marketing practices, the Federal Trade Commission (FTC) issued "Environmental Marketing Guides," also referred to as the environmental "green guides." Though only interpretations of laws and not independently enforceable, they were intended to establish general principles for the use of "green" claims such as biodegradable, compostable and recyclable. Updated in 1996 and 1998, they attempted to provide guidance on how marketers must substantiate and specify the implied and expressed claims about their product's impact on the environment. Additionally, the guidelines state how third party endorsement of a product must be explicitly detailed and fully independent from the advertiser.

The FTC also collaborated with the Environmental Protection Agency (EPA) to create tips and advice for consumers to interpret green marketing claims. They include information about different types of recycled products and materials, toxicity and biodegradable levels and third party endorsements. ANA, at that time, worked closely with the regulators to facilitate the development of the guides.

FTC Workshop

Noting the increased number of green marketing claims, the FTC held several public workshops beginning in January 2008 to collect information on green claims and evaluate its green guidelines. The goal of these workshops was to examine if the guides were still relevant in light of changes in the marketplace and in consumer perception of environmental claims.

The FTC was unsatisfied with the information gathered from the workshops and announced that it would be conducting its own research on consumer perception of green claims such as "eco-friendly" "sustainable," and "carbon neutral." The FTC

expects to complete the study and analysis by the end of this year and then release the revised Green Guides in 2010.

Outlook for 2010

The advertising community likely will face increased scrutiny over its green marketing practices as consumers become more invested in buying green products and services.

In June, James Kohm, Director of the Enforcement Division at the FTC, testified before a House Energy and Commerce Committee hearing on green marketing practices. He announced the FTC's latest enforcement efforts and continuing consumer perception research. The FTC will use this evaluation period to assess if more stringent guidelines should be established given new green marketing practices and efforts. ANA intends to play an active role in monitoring the review process and ensuring that any changes to the green guidelines do not infringe on First Amendment commercial speech rights.

Legislation on "Loud Commercials"

Background

In 2008, Representative Anna Eshoo (D-CA) introduced legislation requiring the FCC to conduct a rulemaking to set guidelines requiring that the volume of television commercials not substantially exceed the average sound levels of the programming in which they are aired. ANA's Washington office received a number of calls and emails from the public complaining about the volume of commercials and in favor of the legislation. In response, we began working both internally with our Television Advertising and Production Management Committees and externally with our industry allies on a solution.

The Commercial Advertisement Loudness Mitigation (CALM) Act

In February, Rep. Eshoo again introduced her legislation as H.R. 1084. A hearing on her bill was held in June in the House Energy and Commerce Committee's Subcommittee on Telecommunications and the Internet. At that hearing, representatives from the broadcast industry spoke on behalf of a subgroup of the Advanced Television Systems Committee (ATSC), which was working to develop voluntary principles dealing with commercial loudness. They urged, as did some of the members of the subcommittee, that a legislative fix be postponed while industry worked to develop their own response to the issue. The ATSC approved the principles in September and plans to release the final standards by early 2010.

The subcommittee held a markup of the bill in October. At the markup, Rep. Eshoo introduced a substitute that requires the FCC to implement rules adopting the ATSC's standards. The substitute also gives industry one year after enactment of the FCC's rules to comply and provides the Commission with the power to grant up to two one-year waivers in the event of severe financial hardship. The substitute was reported to the full committee by voice vote.

Outlook for 2010

ANA is pleased that the subcommittee decided to take into account the industry's attempt to develop its own voluntary standards rather than impose them legislatively. We look forward to working with the full House Energy and Commerce Committee as it takes up the bill. It is to everyone's benefit, from consumers to advertisers, that an effective solution to this problem be realized.

Digital Transition

Background

In 2005, Congress mandated February 17, 2009 as the date that all analog broadcasts would cease and the United States would convert to digital transmission of broadcast television. However, as the date approached, it was apparent that millions of consumers of over-the-air broadcasting were unaware of or unready for the switchover and faced losing their television signal and access to broadcast programming and advertising. Additionally, the government's voucher program for digital converter boxes, necessary to translate the signals on older television sets, was running short of money, requiring a waiting list including millions of viewers by early 2009. ANA called for the digital conversion to be extended from February to June to provide more time for the conversion. Other groups also called for this extension.

DTV Delay Act of 2009

In light of these issues, Congress acted early in 2009 to extend the date for the digital transition. Senators Jay Rockefeller (D-WV) and Kay Bailey Hutchison (R-TX), respectively the Chairman and Ranking Member of the Senate Commerce, Science and Transportation Committee introduced the DTV Delay Act of 2009 in mid-January. While awaiting action in the House of Representatives, ANA wrote to the Congressional leadership urging them to pass the bill. Our letter can be viewed at http://www.ana.net/about/getfile/14973. We noted the numerous consumers who would be left without a television signal as well as the problems with the government's voucher program.

Fortunately, the House acted in early February to extend the date to June 12, 2009. Television stations, however, were given the option of ending broadcasts on the original February date or before the new June date, with FCC approval. The President signed the bill into law on February 11th.

The June deadline was maintained, and now nearly all American television stations, except for a few "low power" stations, are transmitting their signals in digital. FCC Chairman Julius Genachowski was reported to state that the transition "succeeded far beyond expectations."

SAG/AFTRA Developments

ANA and the American Association of Advertising Agencies (4A's) conduct broadcast talent negotiations with the Screen Actors Guild (SAG) and the American Federation of Television and Radio Artists (AFTRA) through the Joint Policy Committee, or JPC.

The pending two-year contract with SAG and AFTRA was set to expire in October 2008. While under that contract, the JPC and the unions set out jointly to study a major revamping of the talent compensation model to reflect the tremendous changes in the media landscape that have taken place over the last fifty years. Because of some outstanding issues, the parties agreed to extend the contract by another six months. It expired at the end of March.

Formal negotiations began on February 23rd. After 25 days of negotiating, the parties reached an agreement at 5:30am on April 1st. The industry agreed on an increase in compensation in the first year of the contract with no increase in the second or third year. The parties also agreed to conduct a major pilot study of the compensation model (based on gross ratings points, or GRP) developed by Booz Allen that could lead to its adoption as early as the next contract in 2012. Finally, the contract includes a cap on pension and health fund payments, liberalized terms for public service announcements, an exemption for the use of CEO's in ads, and protection for agencies working with non-signatories. The unions received concessions from industry related to session fees, Spanish language provisions and payments to extras for travel.

The negotiations between the industry and the unions represented an important new stage in the relationship between the parties, as both sides sought diligently to find solutions to each other's key issues rather than simply acting as negotiating adversaries. We believe that the conviction by all parties to seek a fair agreement rather than emphasizing areas of disagreement resulted in a fair and balanced contract for both sides.

Legal Developments

Background

The First Amendment to the U.S. Constitution affords substantial protection to commercial speech. Every year, there are cases filed in both the federal and state courts that would restrict or limit the rights of advertisers. ANA actively follows these cases and often intervenes as appropriate. We have played a major role in the strengthening of commercial speech rights that has taken place since the 1970's.

Pending and Recently Decided Cases

Allergan, Inc. v. United States of America
Allergan is suing the Food and Drug Administration in the U.S. District Court for the District of Columbia challenging the FDA's ban on communication of "off-label" uses for prescription drugs. Off-label uses of approved drugs are not illegal, but the FDA has long taken the position that drug companies should not be allowed to promote prescription off label uses. Allergan alleges that the ban is an unconstitutional restriction on truthful and non-misleading speech. It is represented in its suit by Paul Clement, the former Solicitor General of the United States under George W. Bush. This challenge may provide signals as to the Court's views on the parameters of First Amendment protection in the context of prescription drugs and possibly other categories of advertising.

Commonwealth Brands, Inc. et al v. United States of America
This suit, filed in federal district court in the Western District of Kentucky, challenges the advertising provisions of the Family Smoking Prevention and Tobacco Control Act, which was signed into law by President Obama in June. The suit alleges that the advertising restrictions contained in the legislation, which include bans on color and graphics in ads, mandated warning text and images, and a ban on outdoor advertising and point-of-sale communications, violate the Constitution. Specifically, under the U.S. Supreme Court's *Central Hudson* test, restrictions on advertising must be "no more extensive than necessary" in directly advancing the governmental interest at issue. The suit contends that the government goes too far in restricting speech directed at a legal audience in advancing its interest in reducing youth tobacco use. Many of these restrictions have been struck down by the Supreme Court in prior cases as well, most notably its decision in *Lorillard v. Reilly* and in the *Zauderer* case.

ANA plans to file a "friend of the court" brief. We believe that these restrictions, which are the most extensive for any legal product in the United States, would create broad and severely damaging precedents for the ad community.

IMS Health v. Ayotte and IMS Health v. Sorrell
These cases cover similar laws passed in New Hampshire and Vermont that ban the use of physician prescription histories for commercial purposes, including their use in marketing drugs to doctors – a practice known as "detailing."

The First Circuit Court of Appeals held that the New Hampshire law was immune from First Amendment scrutiny since it regulates "conduct" and not "speech." Thus, the court held that since the protection afforded to commercial speech under the Supreme Court's *Central Hudson* test were not applicable in this case, the law was examined under a less-strict constitutional test (known as rational basis scrutiny) and upheld.

ANA filed a "friend of the court" brief in the appeal to the U.S. Supreme Court (which can be viewed at http://www.ana.net/advocacy/getfile/15130). The brief argued that whole portions of the dissemination of truthful, nonmisleading speech for advertising and marketing purposes, if analyzed under this lesser standard of constitutional scrutiny, would be impermissible and open to further overly restrictive censorship and regulation. ANA stated that to treat data mining activity as not speech-related was clearly inaccurate and that this type of restriction would severely undermine commercial speech, not just in regard to prescription drug advertising, but also in many other categories. The U.S. Supreme Court denied review in the case, but the Second Circuit Court of Appeals is currently considering a challenge to the Vermont law that could create the opportunity for the Supreme Court to finally resolve this important issue.

FCC v. Fox Television Stations et al.
In 2004, the Federal Communications Commission changed its policies regarding so-called "fleeting expletives," making any broadcast of an expletive, even inadvertent, a violation of its indecency rules. Up until this change, the FCC had followed the policy it adopted after the Supreme Court's landmark *Pacifica* ruling (the famous "seven dirty words" case), and issued fines against broadcasters only for repeated indecency violations. The FCC, in this reversal of policy now has proceeded to levy substantial fines against broadcasters that had aired live events where such fleeting expletives were used. However, the Second Circuit Court of Appeals overturned these fines and raised questions about the FCC's indecency actions as they relate to the First Amendment.

The Commission appealed to the U.S. Supreme Court, and in a highly fragmented 5-4 decision, the Court reversed the Second Circuit. However, the case was decided on other grounds and did not reach the First Amendment issues raised by the FCC's order. The Court instead sent the case back to the appeals court for consideration of the important First Amendment considerations. If the Court ultimately hears the First Amendment issues, the resulting opinion could have significant ramifications for content control generally. The Court may consider proposals to regulate other types of content, including potential advertising restrictions based on indecency. Justice John

Paul Stevens, in a dissenting opinion, specifically alluded to certain ads as raising potential indecency issues.

Justice Clarence Thomas, in a concurring opinion, questioned the continued constitutional viability of the Court's holdings in both *Red Lion* and *Pacifica* in light of technological advances. These decisions provided support for increased regulation of the broadcast media based on spectrum scarcity. If the Court were to decide that these decisions are no longer valid, this finding could dramatically change the regulation of programming and advertising on broadcast television.

The Court's opinion can be viewed at http://www.supremecourtus.gov/opinions/08pdf/07-582.pdf.

Outlook for 2010

We will be watching this series of pending key cases as they make their way through the courts. Many of them deal with issues that could have a profound impact on future commercial speech jurisprudence. It is critical for all advertisers that their rights provided by the First Amendment remain fully protected.

International Developments

Background

ANA regularly follows advertising developments overseas. We are a member of the Board of the World Federation of Advertisers (WFA), a global federation of multinational companies and national trade associations that advocates responsible and effective advertising practices around the world. The following are some important recent developments in the international advertising arena.

Spanish Ban on Advertising on Public TV

In July, the Spanish Senate approved a government proposal to ban advertising on public television. Some Senators did object that the proposal was being considered without taking into account the negative effect it would have on the advertising industry and the economy in Spain as a whole. All contracts entered into before the proposal was approved will be honored until the end of 2009. Sports and cultural sponsorships will be permitted.

Netherlands Ban on Children's Advertising Defeated

In September, the Dutch parliament voted down a ban on advertising of high fat, salt and sugar foods directed to children. The parliament instead urged industry to adopt stronger self-regulatory measures to promote healthier lifestyles and encourage personal responsibility.

Australian Obesity Report

A report from the Australian government examined the causal relationship between advertising and obesity. The report stated that this type of causal link "may not be possible to determine" and has declined to restrict food advertising directed at children, noting the tremendous cost a ban would have on commercial television. The Australian report also indicated support for further enhanced industry self-regulatory initiatives. This report can be viewed at http://www.acma.gov.au/WEB/STANDARD/1001/pc=PC_310262.

Outlook for 2010

ANA will continue to work with our international partners in helping to educate policy makers worldwide on the value of advertising and the benefits of self-regulation. As policies overseas are often used as models for regulation in the United States, it is important that we keep a watchful eye on trends in other countries.

Coalitions

ANA remains an active member of The Advertising Coalition; the Alliance for American Advertising; the Freedom to Advertise Coalition (FAC); and the State Advertising Coalition (SAC). These coalitions enhance the efforts of the diverse groups that share the common interest of protecting the rights of advertisers. They provide the industry with a more unified front when lobbying Congress and government agencies, and serve to strengthen our individual efforts.

The Advertising Coalition

The Advertising Coalition was established in 1988 to direct the fight against federal advertising tax proposals. It has since expanded its scope to include general advertising issues. In 2004, the Coalition sponsored the Global Insight study, carried out by Nobel Laureate in Economics Lawrence Klein, which demonstrated the enormous impact of the advertising industry on the national economy. There are currently eight member associations including: the ANA; the American Advertising Federation (AAF); the American Association of Advertising Agencies (AAAA); the Grocery Manufacturers of America (GMA); the Magazine Publishers of America (MPA); the National Association of Broadcasters (NAB); the National Cable & Telecommunications Association (NCTA); the Newspaper Association of America (NAA); and the Pharmaceutical Research and Manufacturers of America (PhRMA).

In 2009, The Advertising Coalition played an important role in opposing several proposals to eliminate the tax deduction for direct-to-consumer prescription drug advertising, including proposals from House Ways and Means Chairman Charlie Rangel (D-NY) and Senators Bill Nelson (D-FL) and Al Franken (D-MN). ANA will continue to forcefully oppose these types of advertising restrictions.

The Alliance for American Advertising

The advertising and media industries have created The Alliance for American Advertising (AAA) to demonstrate to policymakers and to the general public the commitment of the advertising industry to responsible advertising. The Coalition consists of major national advertisers, manufacturers, and advertising and media professionals who are prepared to increase their already significant efforts to educate the public on the general causes of obesity and support effective ways to reverse this trend.

The ANA, along with the American Advertising Federation (AAF); the American Association of Advertising Agencies (AAAA); and the Grocery Manufacturers of America (GMA) are charter members of the AAA. Other members include the Snack Food Association, the National Restaurant Association (NRA), the Magazine Publishers of America (MPA), the Point of Purchasing Advertising International

(POPAI), the National Cable & Telecommunications Association (NCTA), the National Association of Broadcasters (NAB), General Mills, Inc., Kellogg Company, Kraft Foods, Inc., and PepsiCo, Inc.

The Alliance has been instrumental in setting up grassroots meetings between members of Congress and local advertisers to educate members on a number of concerns relating to food and beverage advertising.

Freedom to Advertise Coalition

The Freedom to Advertise Coalition (FAC) is an informal coalition whose purpose is to oppose proposals that restrict truthful and non-deceptive advertising for any legal product or service. FAC's members include the ANA and the American Advertising Federation (AAF); the American Association of Advertising Agencies (AAAA); the Magazine Publishers of America (MPA); the Direct Marketing Association (DMA); the Newspaper Association of America (NAA); the Outdoor Advertising Association of America (OAAA); the National Retail Federation (NRF); and the Point of Purchasing Advertising International (POPAI).

State Advertising Coalition

The ANA, the American Association of Advertising Agencies (AAAA), and the American Advertising Federation (AAF) formed the State Advertising Coalition (SAC) in 1986 to provide information and resources necessary to combat overly restrictive state and local advertising proposals. Since its formation, SAC has responded to more than 120 ad tax proposals in over 40 states. Our activities on the state level in 2009 are detailed on page 9.

www.ana.net

Association of National Advertisers
708 Third Avenue, floor 33
New York, NY 10017-4270
212.697.5950