

Advertising, Marketing And Promotions: What's On The Agenda For 2008?

The Editor interviews **Ronald R. Urbach**, Co-Chair, Advertising, Marketing and Promotions Group, Davis & Gilbert LLP, and **Adonis E. Hoffman**, Senior Vice President and Counsel, American Association of Advertising Agencies.

Editor: Would each of you gentlemen give our readers some idea of your professional experience?

Urbach: I have been with Davis & Gilbert since graduating from law school at Washington University in St. Louis and am currently a member of the firm's management committee. I am also Co-Chair of the Advertising, Marketing and Promotions Group. The firm represents more advertising, communication, marketing and media enterprises than any other firm in the world, ranging from start-ups to large, publicly-traded multinationals. For these clients we provide a full range of services, but most particularly as specialized counsel in advertising and marketing.

Hoffman: I joined the American Association of Advertising Agencies (AAAA or 4 A's) as Senior Vice President and Counsel in the Washington office in 2000 following service as counsel to the chairman of the Federal Communications Commission, and later as the Deputy Bureau Chief of the FCC's Cable (now Media) Bureau. In government, I also served as counsel to the Committee on Foreign Affairs in the U.S. House of Representatives, as staff director of the Subcommittee on International Operations, and as counsel to a Member of Congress. Before coming to Washington, I was an economic advisor to the California Legislature and the Lieutenant Governor. My private sector experience includes law practice with Hopkins & Sutter; work as a lobbyist and communications counselor for corporations and foreign governments; director of the international law program at the Carnegie Endowment for International Peace, and teaching at the New School and Georgetown University. The American Association of Advertising Agencies (AAAA), founded in 1917, is the national trade association representing the American advertising agency business. Its nearly 450 members, comprised of large multi-national agencies and hundreds of small and mid-sized agencies, maintain 2,000 offices throughout the country. Together, AAAA member advertising agencies account for nearly 80 percent of all national, regional and local advertising placed by agencies in newspapers, magazines, radio and television in the United States. AAAA is dedicated to the preservation of a robust free market in the communication of commercial and noncommercial ideas.

Editor: Looking forward, what are the hot issues that you anticipate for the advertising industry over, say, the next year or 18 months?

Hoffman: Self-regulation in advertising is a perennial issue. It raises tough questions about advertising ethics and practices and how effectively the industry can police itself. This impacts a wide range of categories, including prescription drug



Ronald R. Urbach



Adonis E. Hoffman

advertising, marketing to children, infomercials, Internet advertising and several other important categories.

Secondly, the issue of drug safety will be on the Congressional agenda, and with that comes renewed efforts to regulate advertising of prescription medicines.

With respect to the media, a more activist FCC is looking at issues like product integration, product placement, and the prevalence of indecent or violent content in broadcasting. We also should expect more attention on the relationship between advertising and broadcast revenues.

Finally, I would expect considerable attention to the digital, interactive space, with a heavy emphasis on the relationship between targeted advertising and consumer privacy. There is a proposal at the Federal Trade Commission to establish a "Do Not Track" registry for online advertising which would resemble the "Do Not Call" effort that has been very popular. If enacted, this would limit the amount of targeted advertising that online advertisers and advertising networks can undertake.

Urbach: Let me add a couple of thoughts. First, I predict that we will see increased regulatory scrutiny of "green" marketing initiatives, starting with the FTC's "Eco in the Market" public workshop. I suspect that there is something of a Gore-effect underway where business and the environment intersect. The impact of climate change on business practices is going to be distinct from what it has been in the past, and I see a great many enterprises adapting themselves to a changing public perception and then reaching out to the public to communicate their participation in these "green" efforts. I see this as a major trend and one which, in time, will encourage the government to step in and take a much more active and positive role than it has in the past.

Secondly, digital media and the change that it brings to all of us as individuals and businesses will continue and, indeed, accelerate. That is a development that entails both government and the law playing catch-up: shooting at a target that has already passed. The issues extend to privacy, data security, product integration, out-and-out fraud, and what has been seen as a separation between advertising and content. The fundamental economic model supporting content distribution in media, and supporting media then taking that content to the marketplace, is advertising, and digital advertising – just take a look at what Google is doing – is where advertisers, consumers and, eventually, the government are going to be.

Assuming a shift from a Republican to a Democratic Administration accom-

panied by a stronger Democratic Congress, I think we will see active government involvement in consumer protection in advertising and media and privacy issues. The industry is going to have to be prepared to act in accord with this development.

Hoffman: As Ron indicates, advertising is the economic basis for the future delivery of all media, whether online or offline, and the entrance of mega-companies such as Google and Microsoft into this space – by adding advertising networks to their core business – will attract considerable attention from the policy makers and regulators.

I think we also have to prepare for criticism from many quarters that there simply is too much advertising and marketing. The ubiquity of advertising is a mixed blessing. With today's technology, advertisers can reach consumers anywhere, anytime, anyhow, but they must be very careful not to abuse that capacity. I remain troubled by the claim that advertising is at the core of some of society's most intractable problems, whether that is violence, childhood obesity or the higher cost of prescription drugs, for example. As companies seek to connect and engage consumers in a more targeted way, some will depict the industry as an irritant rather than as an economic driver.

We must always keep in mind that advertising hangs out as an attractive source of tax revenue for states facing budget pressures and shortfalls. And finally, there is the issue of the concentration of media. With the increasing acquisition of small newspapers, radio and television stations and online platforms by the big players in this sector, a great cry is being raised about the loss of a voice for localism and diversity. This discussion also has a place on the agenda – and the implications for advertising are enormous.

Editor: Privacy and the protection of personal information received a great deal of attention during the past year. Is this going to continue into 2008?

Urbach: Yes. There is a strong impulse in the U.S. in favor of personal privacy and of keeping personal information private. At the same time, we, as consumers, are spreading an enormous amount of information around in connection with our interaction with the Internet. Technology is making our lives a great deal easier, but *that* is having an impact on the whole privacy discussion. And, I think, the voluntary dispersal of personal information is probably much more extensive than the dispersal of such information through security breaches and theft. Governmental regulation and enforcement are probably going to be the ultimate consequences of this contradiction. I think it is incumbent on the advertising industry to see that the government gets it right. It is important, as this discussion proceeds, to keep the positive side of the equation in focus – the benefits that accrue to the consumer, the consumer protection policies and practices already in place, and the extensive disclosure of product information that has long been a part of this process – and it is only the

industry that is in a position to ensure that that perspective is included.

Hoffman: I agree. In Congress, there is a continued focus on spyware and ad-ware that is consumer driven. The underlying notion is that consumers have the right to know what kinds of information are being extracted from their online behavior. In an increasingly digital world, information privacy and data security are important issues that the advertising industry has to engage. While our practices are sustainable, we must keep ahead of the demand for greater accountability and security.

Editor: Mr. Hoffman, two years ago you spoke to us about multicultural advertising being the industry's future. Have we progressed over the past couple of years in this regard?

Hoffman: It is a mixed report. There has been some progress, although it's slower than many of us would like to see. And there have been some disappointments. The industry has come to recognize that diversity has a place on the corporate agenda. It has also done a better job than any other industry at providing scholarships and entry-level job opportunities for minority students. But with respect to employment at the highest levels of the industry and the fundamental inclusion and full participation of minority agencies, suppliers, contractors and outside professionals, the advertising industry can learn lessons from many of its corporate clients who have done a better job in these areas. There is still a long way to go.

Editor: Is there anything that either of you would like to add?

Urbach: Every enterprise is in the marketing, communications, and advertising business. This is how it communicates to the public the benefits and values of its products and services to the community and the market. The materials companies use to promote their products and services can have implications – sometimes negative – far beyond the products and services themselves. Think of the impact that a misleading ad can have on consumers, on competitors and, of course, on the government. It is essential for senior management, and general counsel in particular, to understand that this is truly a tail wagging the dog situation and one in which a misstep can have not only serious but even catastrophic consequences.

Hoffman: We are in an era where consumers, media and policymakers have very high expectations of advertisers and marketers – no matter where the marketing messages appear. They want companies to be more socially responsible on environmental, societal and sustainability issues that are proving to matter more and more in today's world. In addition to good corporate citizenship, marketers are also expected to reflect and be aligned with values that consumers perceive as making the world a better place to live. If companies somehow overlook this vein in society, I believe they are bypassing one of the most important developments to affect marketing in many years.

Please email the interviewees at rurbach@dglaw.com or ahoffman@aaaadc.org with questions about this interview.