

The New Rules of Responsible Marketing:

*High Expectations for Media
and Corporate Marketers*

by

Adonis E. Hoffman, Esq.

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Mr. Hoffman's professional career is characterized by senior positions in government, law and business. His government service includes roles as a key advisor to the chairman of the Federal Communications Commission; Counsel to the House of Representatives Committee on Foreign Affairs; Counsel to the chairman of the Congressional Black Caucus, and advisor to the Lieutenant Governor of California. In the private sector, Hoffman has served as: Senior Vice President and Counsel at the American Association of Advertising Agencies; Managing Director of the Capitol Exchange Corporation; attorney with the law firm of Hopkins & Sutter; Senior Associate and Director of International Law at the Carnegie Endowment for International Peace; Senior Fellow at the World Policy Institute, and Distinguished Visitor in Global Public Policy at New School University.

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Hoffman received an A.B. from Princeton University and a J.D. from Georgetown University Law Center. He is a member of the D.C. Bar, the U.S. Court of International Trade Bar and the U.S. Supreme Court Bar. He has been active in the American Bar Association, the U.S. Council for International Business, the Council on Foreign Relations and the Breton Woods Committee.

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For better or worse, the rules of marketing are changing.

I'm not talking about new techniques or creative concepts here, or even the Big Idea. Nor am I referring to the latest technologies involving product integration, search marketing, interactive platforms, social networks or anything as cutting-edge or intriguing as that.

The growing challenge for marketers is not how to reach consumers where they are—they know how to do that very well—but how socially responsible the message is once it reaches those consumers.

The new rules of marketing have more to do with responsibility than with ROI--Return on Investment. It's not the medium, it's the message.

We are witnessing the dawning of what I call a new “era of responsible marketing” that seeks to protect consumers from marketing and media that many in our society deem harmful and socially irresponsible.

If you have not noticed, America has a love-hate relationship with advertising. We love the Super Bowl commercials and most of the spots that make us laugh. For the most part, though, reliable research tells us that Americans are becoming more annoyed by both the frequency and the content of marketing and advertising.

They hate commercial interruptions of their favorite TV shows.

They hate pop-ups and banners online.

They hate in-theater promotions before the movie.

They hate SPAM.

They hate “junk mail.”

They hate tastelessly vulgar commercials. They hate the erectile dysfunction ads that have become somewhat laughable caricatures of a serious medical condition. And they are beginning to hate the ubiquity of advertising everywhere.

The New Rules of Responsible Marketing:

High Expectations for Media and Corporate Marketers

The growing public enmity against marketing has been seized upon by a growing number of activists who are seeking nothing short of a sea change in the *status quo*. Citing Janet Jackson's risqué halftime routine, ABC's prime-time, backside-baring promo for Monday Night Football, and nasty music videos, these crusaders hope to chasten advertisers into new cultural idioms.

While this may not be news to Madison Avenue, it is news on Capitol Hill and at the federal regulatory agencies where a few people in power are being pressured to save the republic from its descent into decadence.

Congress, the FTC and the FCC have made more comments on advertising and marketing matters over the last two years than in the previous four years combined.

Marketers have been under public attack before. From alcohol to tobacco and beyond, marketers have weathered the storm of legal, legislative and regulatory challenges.

The courts have consistently upheld—and appear to have expanded—First Amendment protections for commercial speech and the right to advertise lawful products. Democratic and Republican leaders, including the last two chairmen of the Federal Trade Commission, have explicitly applauded industry self-regulation as a model of corporate responsibility.

But all of that is slowly changing.

Industry self-regulation once lauded for its efficacy, has been lambasted by several members of Congress and is being reviewed by the FTC. The regulation of advertising content—once off limits under the First Amendment—is today being examined with new lenses.

Spurred by the obesity epidemic, especially among America's youth, Senators Tom Harkin (D-IA) and Sam Brownback have called on the food industry to limit junk food marketing aimed at kids.

Arguing “when private interests are working against the public interest, the government has an obligation to act.” Harkin has introduced legislation to regulate the amount of food marketing directed at children.

Today, there is a Task Force on Childhood Obesity and Marketing to Children with representatives from the FCC, the Senate, food industry, advertising, public health and children's advocacy groups studying the issue. As a member of that

The New Rules of Responsible Marketing:

High Expectations for Media and Corporate Marketers

Task Force, I can tell you that consumer advocates representing public health and anti-media perspectives have deep and not-unsustainable views about the growing pervasiveness of marketing in our society, and its impact on children.

Violent content on television and in all media is the source of ongoing study by the Federal Trade Commission, the FCC and Congress.

And the Don Imus episode, while marking a low-point in American broadcasting, signaled willingness by media and advertisers to act responsibly in remedying the ill.

Direct to consumer (DTC) advertising of prescription drugs, allowable under FDA regulations since 1997, has come under intense scrutiny, primarily because some groups have questioned their value and their content.

During the 108th and 109th Congresses, there were nearly 50 bills introduced to limit, restrict or otherwise alter marketing and/or advertising. In this Congress, direct-to-consumer advertising of prescription drugs faced its most difficult threat in many years, as lawmakers sought to impose a three-year moratorium on the advertising of newly approved prescription medications.

But there is something else going on today. It has become accepted orthodoxy to blame marketing for the substantive ills of society. American kids getting fatter—must be all those cereal commercials. Higher prescription medicines—too many expensive ads. The ensuing public policy fiction is that society's problems can be fixed quite simply by ceasing all marketing and commercials.

Cultural critics and well-organized activists have learned how easy it is to serve up a bogeyman big enough to blame for just about anything wrong in America today. With over \$141 billion spent on advertising last year, Madison Avenue conveniently fits the bill.

This is a chimera of the worst order. But the rationale runs the risk of becoming dogma for those who want nothing more than to stop all marketing for any products, anytime.

By positioning marketing as the problem, the anti-commercial crusaders are able to concoct a convenient panacea—muzzle the messengers and all will be well.

Nevermind the fact that parents themselves are fatter than ever before, so kids stand to be more obese too. Or with both parents working, fast food has become a larger and more convenient portion of the family diet. Or that budget cuts for

The New Rules of Responsible Marketing:

High Expectations for Media and Corporate Marketers

physical education programs in public schools leave children less active. Or that our kids spend more hours sitting in front of a computer screen, video game or television set. Maybe, just maybe, these things have as much—if not more—to do with rising obesity among America's children as does advertising.

Let's be real. Marketing is not always the beacon of public enlightenment that big companies earnestly contend. Most of the time, it is little more than tolerable infotainment—lingering somewhere between information and entertainment.

But neither is it the *bete noir* that critics claim either. As Dick Sittig once noted, "If advertising was that powerful, then people would believe there's talking fruit in their underwear."

The value of marketing lies in the fact that it drives commerce, employs millions of people in one form or another and pays for the newspapers, magazines and yes, television programs, we all love to rail against for having—you guessed it—too much advertising.

In fact, as Bruce Barton aptly put it: "Advertising is of the very essence of democracy. An election goes on every minute of the business day across the counters of hundreds of thousands of stores and shops where the customers state their preferences and determine which manufacturer and which product shall be the leader today, and which shall lead tomorrow."

Advertising and marketing are multi-billion dollar industries that are vital to the American economy. In 2004, advertising alone was estimated at \$141 billion. Advertising is an indispensable element of competition, and competition spurs the technological innovation that makes appliances, cars, computers, personal services, and much of what we need to live, quite affordable indeed.

Marketing touches our lives from the cradle to the grave. There is no part of our day-to-day existence that is outside the reach of advertising. From breast milk substitutes to retirement, the most banal and momentous matters of life have become the subject of advertisements in one form or another.

Since its rather pedestrian beginnings at the turn of the century, marketing has become more sophisticated, more ubiquitous, and—according to its many critics—more intrusive than ever. Its reach is global. Its impact virtually incalculable, even though billions of dollars are spent each year trying to do just that. Measurement of advertising's value and reach has become a science with its own lexicon and subculture. And the laws that have evolved to regulate, limit and

The New Rules of Responsible Marketing:

High Expectations for Media and Corporate Marketers

allow advertising are multiplying, as cities and states join the federal government's efforts to contain the advertising juggernaut.

Were it not for marketing and advertising where do you think Google, Yahoo, Microsoft and all of the other indispensable search engines would be today? And without them, where would we be, as a society and culture?

The recent explosion in the online advertising and marketing space has not happened in a vacuum. As more people in the world turn online for information, entertainment and business and personal solutions today, marketers are following. And they are following in droves with blank checks in hand. The more accurately these marketing messages can be measured, the more value is created.

O.K. so we can stipulate right now that there are categories of marketing that can—and should be—closely watched and regulated. Gambling, alcohol, adult services are among the few that come to mind.

But responsible marketing goes well beyond traditional notions of content regulation. Should values become an indispensable part of the advertising mix?

Bolstered by political rhetoric and a relatively conservative mood in Washington, the arbiters of responsible advertising claim a public mantle, if not a public interest.

Many on Capitol Hill would like to see marketing and advertising go entirely away, but would surely settle for heavier regulation at the end of the day. And at times it seems they are getting nearer to that goal every year.

More and more advertisers are choosing to aggressively self-regulate the marketing of products or categories that some critics have found to be objectionable.

Since most large companies have a working familiarity with the mandates of social responsibility in other areas, applying those principles to marketing and advertising has not been difficult.

Manufacturers of prescription medications established a new code of marketing practices and set up an Office of Accountability to review their commercial messages. They haven't quite perfected the system yet, but they are working on it, I'm sure.

The New Rules of Responsible Marketing:

High Expectations for Media and Corporate Marketers

In an unprecedented move, eleven of the nation's leading food and beverage companies launched the Children's Food and Beverage Advertising Initiative, a voluntary program pledging to: (1) Devote half their advertising to children to encourage healthier dietary choices and/or lifestyles; (2) Limit products shown in interactive games to healthier dietary choices, or incorporate healthy lifestyle messages into the games; (3) Not advertise food or beverage products in elementary schools; (4) Not place food and beverage product placement in editorial and entertainment content, and (5) Reduce the use of third-party licensed characters (cartoon and others) in advertising.

Several other industries have instituted marketing codes and established independent review panels. And the advertising industry has strengthened its unique self-regulatory regime through the Children's Advertising Review Unit (CARU).

All of these actions suggest the emphasis on responsibility is well-placed. Marketers have a vested commercial interest in portraying their products in the best light possible. They are, after all, ultimately accountable to both their customers and shareholders in a competitive marketplace, and should be able to decide for themselves.

It would be a mistake to abdicate this role to outside interest groups who want to do away with marketing altogether, or who would promote a system that only permits the marketing of products they alone deem to be good, healthful, nutritious, wholesome or necessary.

Beyond law and public policy, corporations today are affected by a broad array of social issues and interests operating in our society. A company's approach to global and societal issues—its treatment of customers, the environment, employees, stakeholders, and the nations and communities in which it operates—ultimately determines its stature as a corporate citizen, not only on Main Street but also on Wall Street and Capitol Hill.

These issues present unique opportunities for companies to meet and exceed society's evolving norms and expectations for responsible corporate behavior, especially in areas such as governance, sustainability, environmental practices, global labor relations, human rights, community involvement, philanthropy, ethics and diversity.

Virtually every Fortune 1000 corporation has a division or department that handles corporate responsibility, often reporting to the CEO. Boards, CEOs and business leaders are positioning corporate responsibility issues higher on their

The New Rules of Responsible Marketing:

High Expectations for Media and Corporate Marketers

agendas and are embracing codes of conduct, social accountability standards, and best practices in increasing rates.

In an era of noteworthy progress on social policy issues, many companies continue to invite media scrutiny and high profile legal action as a result of unsustainable corporate policies. With litigation, boycotts and shareholder reprisal looming costlier and more commonplace, corporations are recognizing the business imperative of good corporate citizenship. Those companies with strong corporate citizenship records will be rewarded in the marketplace with enhanced reputations, competitive advantages, and stronger bottom lines.

Today, the public spotlight has is shining brightly on the marketing practices of some of the world's largest and most profitable companies. The same high expectations that consumers and policymakers have in other areas of corporate responsibility are now focused on corporate marketing practices. Those that market responsibly and engage the media responsibly will have a better chance at success in today's new world order.

I believe the marketing and media sectors can do a whole lot more to stem the growing tide of public criticism and public policy regulations and to demonstrate a full commitment to responsible marketing. After all, marketing and advertising are the first engagement we have with a product or service. It is only fitting that the marketing approach should reflect an underlying commitment to corporate responsibility.

Thus, for all those companies who care to listen, I have a few recommendations. I call them:

Hoffman's Rules of Responsible Marketing

1. Focus on CSR, not just ROI

Corporate social responsibility is a compact between a company and its customers, employees, shareholders and the communities and environments in which they operate to conduct business in a way that is non-exploitative. This should be as integral to marketing as the traditional return on investment. Make CSR part of the creative mix and remember that in doing so you don't have to abandon the bottom line.

The New Rules of Responsible Marketing:

High Expectations for Media and Corporate Marketers

2. Empower Customers and Consumers

The lessons of My Space, You Tube and Face Book, and the Dove Soap beauty campaign are that people want to have control over their own images. In today's social networking era, the more empowered a company can make customers the better they feel about the products. Find a way to get them invested and involved into your marketing and remember that companies with socially responsible marketing practices index higher in revenues, customer loyalty and employee satisfaction and everything else that matters

3. Promote Good Values

Although many elements of our culture have become wickedly coarse and wayward, there is something to be said for uplifting virtue. It seems that consumers reserve a special place in their hearts and minds for companies that associate with basic, good old-fashioned values.

4. Be Careful with Protected Groups

The late vice president Hubert Humphrey once said that “the moral test of government is how [it] treats those who are in the dawn of life, the children; those who are in the twilight of life, the elderly; and those who are in the shadows of life, the sick, the needy and the handicapped.”

Whether you agree or not, marketers can take a cue from this approach, recognizing that some segments of the population are protected because our society says they should be. Thus, marketers should be careful in how they deal with children, seniors, ethnic minorities, and other protected classes of our society.

5. Build Strategic Alliances

In his waning days, the legendary Don Vito Corleone (the Godfather) advised his son Michael to “keep your friends close, but your enemies closer.” This bit of sage advice could go a long way with marketers who should seek to build strategic alliances with critics and those who do not always see the world as they do. In this respect, marketers also should develop a worldview that is increasingly broad.

The New Rules of Responsible Marketing:

High Expectations for Media and Corporate Marketers

6. Pursue Public-Private Partnerships

There are so many challenges faced by government and the public sector that private companies can help to address. Responsible companies should find a way to engage in an ongoing dialogue with public officials and find some worthwhile public service project in which to get involved. Marketers can do a lot more in the area of cause-marketing.

7. Be Diverse and Inclusive

Our world is becoming browner. The population of people of color from Asia, Africa, Latin America, the Middle East and their hyphenated American relatives is growing. At the same time, our economy is global and the world is flattening. There is great value in having marketing policies and practices that recognize and value the diversity that has become reality in today's world. It is more than good policy; it is good business.

8. Equalize Technology

As technology becomes less expensive, marketers should find ways to make it more available to wider numbers of people. Technology should not be a barrier that separates society; it should facilitate our interaction. Marketers can play a unique role in making this a more equitable society.

9. Police Yourself and Self-Regulate

The Don Imus episode proved that market regulation can work as well, if not better than governmental regulation. While his actions were not illegal, they were objectionable. Once advertisers determined they did not want to be associated with media that broadcast objectionable content, the media responded responsibly. The closer you monitor your self and your industry, the less grief you get from government. Set up codes, commissions, rules for your own conduct and report your progress.

10. Do Good and You Will Do Well

Marketers should spend the time and money to become good corporate citizens and to be seen as such. Tell your customers how responsible you are and the dividends will be in goodwill, loyalty and profitability.

The New Rules of Responsible Marketing:

High Expectations for Media and Corporate Marketers

There are probably more, but I will close here by noting the following:

"Corporate social responsibility is a hard-edged business decision. Not because it is a nice thing to do or because people are forcing us to do it... because it is good for our business."

- Niall Fitzgerald, Former CEO, Unilever

"It is not good enough to do what the law says. We need to be in the forefront of these [social responsibility] issues."

- Anders Dahlvig, CEO of IKEA, quoted in Financial Times.

"It takes 20 years to build a corporate reputation and five minutes to ruin it."

- Warren Buffet

In this "new era of responsible marketing" consumer and societal expectations are high for companies who are struggling to improve their engagement with consumers. Those corporations that devote time and effort to meeting or exceeding those expectations will be richly rewarded in the marketplace, while those who fail to grasp the new reality will not.