

ADDRESS BY MR. RICHARD BURKE,
COMMISSIONER OF THE EUROPEAN COMMUNITIES,

to

THE EUROPEAN-AMERICAN CONFERENCE
ON ADVERTISING, MARKETING AND COMMUNICATIONS

ROYAL GARDEN HOTEL, LONDON,

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"THE ROLE OF GOVERNMENT AND PUBLIC POLICY IN THE
ADVERTISING AND MARKETING PROCESS"

Advertising and marketing have an enormous impact on the way in which we spend our incomes and live our lives. The importance of these activities is amply demonstrated by the size of the budgets devoted to them by firms of all kinds, large and small, all over the world. These two activities have in fact become separate industries in their own right.

My purpose today is to outline to you the considerations which led the Commission of the European Communities to the belief that it should intervene in the advertising and marketing area, and to indicate to you what actions we have taken or propose to take in the fulfilment of our role as we see it.

Our approach is based on that contained in our 1975 Preliminary Programme for a Consumer Protection and Information Policy. Many of you will be familiar with this document, but I think it might be worthwhile to repeat the basic statements made concerning the consumer's situation in the modern economy. The following statement will be found in paragraph 6 of the Programme:-

"As market conditions have changed, the balance between suppliers and customers has tended to become weighted in favour of the supplier. The discovery of new materials, the introduction of new methods of manufacture, the development of means of communication, the expansion of markets, new methods of retailing - all these factors have had the effect of increasing the production, supply and demand of an immense variety of goods and services. This means that the consumer, in the past usually an individual purchaser in a small local market, has become

merely a unit in a mass market, the target of advertising campaigns and of pressure by strongly organized production and distribution groups. Producers and distributors often have a greater opportunity to determine market conditions than the consumer".

It is in the light of this view that we defined the basic rights of the consumer. These are:-

- a) the right to protection of health and safety
- b) the right to protection of economic interest
- c) the right of redress
- d) the right to information and education
- e) the right of representation.

I have described our view of the consumer's situation in the market.

I think that the operation of our economic system could be described in the following way. Technology, which is a truly dynamic force with an irrepressible momentum of its own, dictates what can be produced. The function of advertising and marketing is to ensure that what is produced is actually sold. They persuade the consumer that he needs what technology can produce.

This view is something of an exaggeration. I know, for example that the marketing arm frequently carries out very careful and detailed surveys to establish the real possibilities of selling a new product. Nevertheless, I think that it is fair to say that the surveys are carried out after it becomes known that the product can actually be manufactured.

Vast sources of expertise and finance are devoted to advertising and marketing. You are much more familiar than I with the level of skill which is brought to bear. The result is that the consumer is faced with very sophisticated advertising and marketing operations.

The average consumer is not in a position fully to appreciate the real meaning and value of what is being presented to him. Thus, the forces that work are unequal.

It is this imbalance which leads public authorities to intervene.

A further reason for intervention is that the consumer is faced with a growing number of products which can present unsuspected dangers to his health or to his environment.

Shortly after taking office as a Member of the Commission with particular responsibility for consumer affairs, I was struck by a statement made to me by a very important advertising executive. He said that the advertising industry does not sell only products: it sells "satisfaction". This commodity - satisfaction - is not a full stomach or shelter or adequate clothing or any of these basic needs. It is the satisfaction of being equal to the peer group, if not of being one step ahead of the herd. It is social success, intellectual dominance or sexual gratification. At least, it is the appearance of these things. In today's world, the appearance is often much more important than the reality. This is certainly the case for a large part of advertising activity.

How much of today's advertising simply tells the consumer what is available? How much of it tells him what the concrete utility of the product or service is, and how much it costs? The proportion is probably fairly high in terms of the number of advertising messages. However, the advertisements which strike the eye and enter into one's consciousness rarely display these characteristics to any significant extent. Its function is rather to create new and artificial needs with the objective of stimulating demand for new products and services. We can at least ask if all of these new products and services are really necessary.

In October/November 1975, the Commission arranged for a large scale survey to be carried out among the population aged 15 years and over in all nine countries of the Community. One of the questions put in the survey concerned the respondents' views on what advertising actually does.

I can summarize the results by giving you the proportions of respondents who agreed entirely or "on the whole" with three different statements.

In relation to the statement that advertising provides consumers with useful information, the proportion was 50% - thus, opinions on this were fairly evenly divided. In relation to the statement that advertising often makes consumers buy goods which they do not really need, the proportion was 77%. Only 20% of respondents took the opposite line - surely a striking result.

In relation to the statement that advertising often misleads consumers as to the quality of products, the proportion was 76%. The opposite view was taken by 18% of respondents.

I am sure that none of this is new to you, and I know that some of you have expressed reservations about some technical aspects of the survey in question. What is important to me is that this survey pointed out certain trends of opinion which we must take into account in formulating our policies.

A further indication of consumer attitudes to advertising was quoted by Professor Buell in a study on "The British approach to Improving Advertising Standards and Practice - a comparison with United States experience". He compared U.K. and U.S. studies on consumer attitudes carried out in the U.K. in 1972 and 1976 and in the U.S. in 1964 and 1974. These studies reveal a trend of growing scepticism towards advertising among consumers. To take only one aspect of it, 53% of respondents in the U.K. in 1972 agreed that advertising makes people buy things they do not want. The proportion in 1976 was 59%. In the U.S. in 1964, 65% of respondents considered that advertising often persuades people to buy things they shouldn't buy. This proportion had grown to 82% in 1974. We cannot ignore evidence of this kind.

If the function of advertising is to implant the idea of buying a particular product in the consumer's mind, the marketing function aims to ensure that this intention is translated into concrete form by the act of purchase. It therefore aims at ensuring that the product

is made readily available and catches the consumer's eye. Labelling and presentation are important parts of marketing strategy and often provide the greater part of the actual information given to the consumer about the product.

It is against this background that we must look at the actions which the Commission has taken or proposes to take.

Advertising

We propose to submit a draft directive on misleading and unfair advertising to the Council of Ministers before the end of this year. The function of this draft directive will be to provide, at Community level, a common definition of what constitutes misleading or unfair advertising, and to require the Member States to take the measures necessary to counteract these types of advertising and to provide adequate and effective remedies and sanctions.

I have the feeling that many of you here today will basically agree with these objectives. Some weeks ago, I had the pleasure of hearing another leading figure in the advertising field say that he believed that the advertising industry must increasingly give importance to its social responsibility, and that there is already a considerable volume of opinion within the industry which holds that the future development of the industry will lie in this direction.

For this reason, I believe that we can find a great deal of common ground and that we can work constructively together without confrontation.

Your industry already has an honourable history in the field of the application of ethical standards. The International Chamber of Commerce code dates back originally as far as 1937. In many of the Member States of the Community there are codes of advertising practice based on the ICC code. Some of these national codes go even further. I am very conscious of the fact that these codes have been devised in order to set acceptable limits to what can be done to persuade consumers to buy the products and services on offer.

Of its nature, advertising is very much in the public eye. It is therefore a legitimate matter of concern for public policy. I would go so far as to suggest that it is unfair to expect the industry alone to regulate its practices in order to conform with what might be regarded as acceptable standards. Considerations of social and economic justice and concern for ethical and moral standards dictate the need for some element of guidance by public authorities. In addition, a code of practice is as strong as the respect given to it by the people concerned. Ultimately, it is as strong as the sanctions which can be invoked against those who fail to honour it.

The situation in this respect varies from one country to another. In all of the Member States there is widespread respect for the standards drawn up: there is also a concern to avoid infringement. In the final analysis, however, public authorities have a duty to provide a firm basis for standards and sanctions. In a highly creative industry such as the advertising industry, the innovators are almost forced to operate

as close to the limit of accepted standards as they can. This inevitably means that these standards are breached from time to time. Public regulation can help to avoid this problem.

I want to make it clear that it is not our intention to substitute state control for regulation by the industry.

The need for more specific public action is, in my view, abundantly clear. In some of the Member States of the Community, self regulation by the industry is accompanied by the right of individual consumers to take action in the Courts when they believe that their interests have been damaged by misleading advertising. While the recognition of this right is valuable in itself, its application has proved to be difficult. The numbers of cases taken in the countries concerned (Belgium, France and Germany) on the basis of this right has been infinitesimal compared to the probable incidence of cases of misleading advertising. It is clear that the existence of this right is not enough in itself to put the individual consumer on the same footing as the big battalions of the industry.

A legal definition of what constituted misleading or unfair advertising would clearly improve the situation of the consumer. It would also provide a clear reference for the advertising industry. Such a reference would, I think, be helpful to practitioners. I would go even further and say that it is neither fair nor reasonable to expect the industry alone to adopt and implement rules in an area which is of such public importance.

On the marketing side, we are concerned to ensure that the information given to the consumer "on the package" is accurate and that it is useful to the consumer when he comes to use the product in question.

A good example of this is our draft directive on the labelling, presentation and advertising of foodstuffs for sale to the final consumer. Our proposal requires labelling to be such as not to mislead the consumer as to the characteristics, effects and properties of the foodstuff. It provides, among other things, for a list of the ingredients concerned, the keeping qualities of the foodstuff, and information relating to any special storage conditions or conditions of use. We will take a similar approach to the labelling, presentation and packaging of household maintenance products, some of which have to be very carefully handled in order to avoid injury or damage.

Another example of our concern in the field of marketing is a directive on cosmetics, which has already been adopted by the Council. This directive concerns the composition, labelling and packaging of these products. We intend to identify the dangerous ingredient used in cosmetics and to take the necessary action to protect the consumer. We have already gone a considerable distance in this direction, but much work remains to be done.

There is one area in which we believe that we must protect the consumer against the skill of the expert marketing operator. This is in the sector of doorstep selling, which is covered by our draft Directive on

contracts negotiated away from business premises. I know that the precise methods used vary from one Member State to another, but both the industry and consumers agree that doorstep selling techniques can be very persuasive indeed. If the consumer voluntarily exposes himself to this marketing method, then he must take the consequences. On the other hand, we in the Commission believe that where the consumer has not made a voluntary choice, we should ensure that he is given enough time to reflect properly on the offer which is made.

A final example of our action in the field of marketing concerns the unit pricing of foodstuffs. Our concern here is to ensure that the marketing message given to the consumer includes enough price information to assist him in making a rational choice between the different brands of a given product on offer. If our experience with this directive is positive, as I hope it will be, we will extend this action to cover other types of products.

Our basic concern, as you will have gathered from which I have said, is to ensure that the consumer has the kind of market information to which his rights entitle him. This is a difficult task and is made even more complex by the fact that the range of products available constantly increases and also by the fact that the consumer makes a constantly increasing proportion of his purchases in large retail centres.

Multiplicity of products gives the consumer a wider choice but makes it more difficult for him to have a close knowledge of any given product or brand. The development of bigger and bigger retail units makes it less and less likely that the person making the sale will be able to give the consumer enough accurate information about the product to enable him to choose wisely and to use properly.

We are tackling these problems by proposing appropriate legislation.

The marketing sector can make an enormous contribution of its own.

I would urge you to adopt a positive approach in defining the marketing message for a given product. Why not make it a major feature of your message to give comprehensive and accurate information to the consumer?

Personally, I would like to see keen competition between manufacturers extended to cover the amount of useful information given to the consumer.

If advertising can sell satisfaction, marketing can sell information.

It would be easy to imagine that the product accompanied by the most comprehensive information could become the leader in the field.

It has been said to me on a number of occasions that the Commission's action in the field of consumer protection tends to be negative: we tend to make life difficult for the manufacturer without noticeably improving the consumers' situation. I reject this view. In order to even out the balance between producer and consumer, we have no alternative but to get producers to change the ways in which they do certain things. Changes of this kind inevitably create difficulties. The objective we have in view is not that of making life difficult for the manufacturer, but of making him act in a way which is more consistent with his responsibilities towards the consumer.

Intelligent promotion of consumers' interests can bring benefits to everybody. It brings direct gain to the consumers. It can avoid situations where manufacturers are suddenly obliged to make fundamental changes in their products as a result of new discoveries about the possible harmful effects of these products.

Consumers and business both need the maximum degree of certainty in the economic background. Intelligent legislation can help to provide this.

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