

Corporate Free Speech: A Progressive Trap

by Allen D. Kanner

AS SOMEONE WHO HAS BEEN FIGHTING THE COMMERCIALIZATION OF childhood since the early 1990s, I'm frequently asked what I think we should do about it. If you have a few hours I'll be glad to tell you. But one suggestion I immediately make is that we implement a nationwide ban on marketing to children. This proposal, however, is unacceptable to many of my progressive colleagues and friends, who see it as a serious infringement on the corporation's right to free speech.

In 1906, the English writer Evelyn Beatrice Hall paraphrased Voltaire as having said: "I may disapprove of what you say, but I will defend to my death your right to say it." I believe it is sentiments such as this one, with which I agree, that are behind the mistaken idea that marketing is, or ought to be, granted protections similar to those given to other forms of speech. For example, in order to protect free speech the *Nation*, the *Progressive*, and *Daily Kos* have adopted policies of accepting most legal and non-libelous advertising, no matter how "loathsome" the content.

But as critical as free speech is to a democracy, and as vulnerable as it is to suppression, it is not an absolute right but rather one that needs to be evaluated in terms of the contexts in which speech occurs. As I will argue, modern marketing, especially as developed by large corporations, has created a context in which limits on commercial speech are not only justified, but essential to a free society.

In discussing limits to commercial speech, we need not restrict ourselves to legal precedent, since we are trying to determine what is fair and just rather than what is currently legal. However, it is useful to note that historically commercial speech has been distinguished from political speech and been afforded less protection.

It is also instructive to consider the variety of existing legal limits to speech. For example, the courts have restricted political speech by placing caps on individual and corporate campaign contributions (considered a form of speech) and barring non-profit organizations from endorsing any candidates or making any contributions. Laws governing defamation, libel, slander, court testimony, and advertising each prohibit lying and deception under specific circumstances. Private property rights often override free speech protections, which is why shopping malls may evict protesters. Sexual harassment is grounds for a lawsuit. Speech that is a public nuisance or disturbs the peace can be suppressed. Pornography cannot be sold to minors.

This partial list suggests some of the circumstances under which limits on speech might be justified. Speech has been restricted when the courts deemed it too harmful to society or individuals, in conflict with other rights, or as targeting individuals who are too vulnerable.

Where does corporate marketing fit into this picture? There are two properties of modern commercial speech that make it extremely harmful to both society and to individuals, and therefore a legitimate candidate for governmental restrictions.

The first is that corporate marketing has developed in the last century into a form of commercial speech that dwarfs all that has preceded it in scope, sophistication, and influence. It is now virtually impossible to participate in public life without constant exposure to commercial messages. Through a combination of advanced technology, new marketing techniques, and enormous amounts of funding, modern marketing is functioning more like propaganda

for a materialistic ideology than like simple advertising. As such, we should seriously consider whether it has evolved into a qualitatively new type of commercial speech.

As it stands, corporate marketing is generating great harm. It routinely employs a large number of subtle and damaging psychological manipulations that adversely affect people's health and emotional well-being. The enormous scope of marketing itself is problematic. For example, the hyper-materialistic message promoted by corporate advertising drives the consumer frenzy that is destroying complex life on the planet. Junk food advertising is a major contributor to the international obesity crisis.

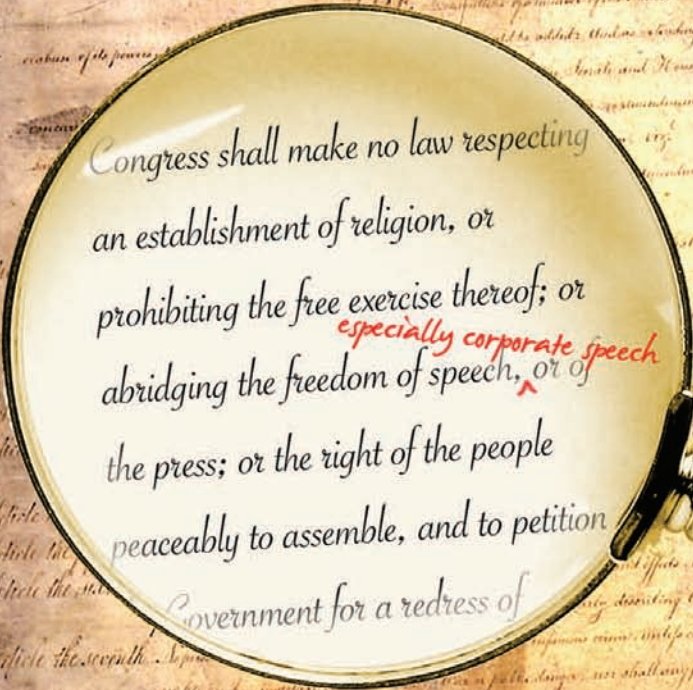
Second, an unusual feature of commercial speech is that it typically requires money to engage in it. This is a decidedly undemocratic arrangement. It has been exacerbated by the historic amounts of wealth recently accumulated by corporations, which allows them to dominate national and international marketing and therefore control the media in general. Recognizing this, media activists advocate limits on the number and types of regional news outlets a single company can own. In essence, these activists seek to restrict the speech of media corporations in order to ensure the survival of democracy.

In sum, corporate marketing is a form of speech, perhaps a new form, which is harming individuals, society, and nature on a massive scale. Its negative impact is escalating. Under these circumstances, legal restrictions on corporate advertising are not only justified but also necessary to protect democracy and preserve a free society. ■

*Allen D. Kanner, Ph.D., is a co-founder of the Campaign for a Commercial-Free Childhood (www.commercialfreechildhood.org), co-editor of *Psychology and Consumer Culture* and *Ecopsychology*, and a Berkeley child, family, and adult psychologist.*

Congress of THE United States,

begun and held at the City of New York, on
Wednesday the fourth of March, one thousand seven hundred and eighty nine.



Congress shall make no law respecting
an establishment of religion, or
prohibiting the free exercise thereof; or
abridging the freedom of speech, ^{especially corporate speech} or of
the press; or the right of the people
peaceably to assemble, and to petition
Government for a redress of