

Advertising, Women, and Censorship

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I. Introduction

Recently, a friend told me about a television commercial that so angers her that she must leave the room whenever it airs. The commercial is for young men's clothing and features female models wearing the clothes — several sizes too large — and laughing as the clothes fall off, leaving the women clad in their underwear. A male voice-over assures male viewers (and buyers) that the clothing company is giving them what they want. While waiting in line, I overhear one woman tell another that she is offended by the fact that women often appear unclothed in movies and advertisements, while men rarely do.

During a discussion about this paper, a close friend reports that she was surprised and saddened to visit her childhood home and find some New Year's resolutions she had made during her grade school years. As the years went by, the first item on each list never varied: "Lose 10 pounds . . . Lose weight . . . Lose 5 pounds . . ."

These stories and countless others form pieces of a larger mosaic — one that shows how women are harmed and degraded by advertising images and other media messages. Many women believe that at the same time women are making some progress toward equality, ad images are becoming increasingly sexist, demeaning, and violent, pressuring women to go to ever-greater extremes in the quest for beauty.¹

These trends in advertising images must be reversed if wo-

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1. In several recent polls, women reported facing an "erosion of respect." In the latter half of the 1980s, the percentage of women in their thirties who reported that their status had improved from a decade earlier fell by 10%; this is the age group most targeted by the media and advertisers. SUSAN FALUDI, *BACKLASH* xvii (1991).

Eighty-three percent of women believe there is too much pressure on them to improve their appearance. Leslie George, *Beauty Report: Your Love/Hate Relationship With Looking Good*, *GLAMOUR*, Apr. 1992, at 222, 222.

men are to achieve the autonomy, equality, and dignity they deserve. This paper examines both the content and techniques of advertising, and demonstrates how both harm women. Its task is to ask whether advertising should be regulated to ameliorate these harms.

Part II of this paper describes the harms that can be attributed to advertising. Because beauty product advertisements are so pervasive, and because studies show a link between their increase and escalating pressures on women to conform to an impossible ideal,² they will be the primary focus of this paper. I will also discuss the way women are presented in advertisements for other products.

Part III describes the history of the advertising industry in the United States, and examines the arsenal of persuasive techniques advertisers use to sell their products. Part IV argues that these persuasive techniques, coupled with the harms identified in Part II, are sufficient to overcome our traditional concerns about censorship, and justify regulating advertisers' conduct in some manner.³

II. The Harms

Ad messages contribute to the harms discussed below by encouraging women and men to view women in stereotypical and limiting ways. These harms may or may not be sufficient to justify regulating advertising based solely on its content; this point will be addressed in Part IV. First we must identify and describe the harms that advertising inflicts upon women. These include negative self-images, which encompass a preoccupation with physical perfection, a sense of lost privacy, and a stunted view of women's role in society. Other bad effects include harmful images of women held by others, which manifest themselves in behavior rang-

2. Between 1968 and 1972, the number of diet-related articles in women's magazines rose 70%. In the popular press, articles on dieting increased from 60 in the year 1979 to 66 in the month of January 1980. NAOMI WOLF, *THE BEAUTY MYTH* 67 (1991).

In 1985, a cosmetics trade association surveyed skin-care professionals and found that 97% reported that their clients were markedly more concerned about wrinkles than a few years earlier. Between 1981 and 1986, annual sales of skin cream doubled to \$1.9 billion. FALUDI, *supra* note 1, at 210.

A recent survey reported that 61% of female respondents said they were spending more money on beauty products and services now than they did five years ago. Judy Bachrach, *The Allure Beauty Survey*, *ALLURE*, Jan. 1992, at 45, 51.

3. I do not propose a specific regulatory method such as government regulation, advertising industry self-regulation, private lawsuits, or some other method, because each form raises a host of practical issues that cannot be addressed in a paper of this length.

ing from excessive scrutiny to physical harm. Each of these effects is discussed in turn below.

A. *Harmful Self-Images*

1. Preoccupation With Physical Perfection

Beauty is Perfection.⁴

The Past Forgiven. The Present Improved. The Future Perfect.⁵

The woman is perfected.

Her dead

Body wears the smile of accomplishment . . .⁶

Advertisements tell a woman that her greatest accomplishment is to be beautiful. Beauty is presented to women as the necessary prerequisite to success in any area of their lives; anything less, the advertisements say, and women risk losing out on love, success, sex, wealth, admiration, and adventure. Ads deliver this message in both blatant and subtle ways. As discussed below, advertisers create a need for their products by instilling in women a fear of aging, weight gain, and other "transgressions." More subtly, the media image of a successful, happy, and beloved woman rarely varies: she is nearly always thin, young, and beautiful. And simple beauty is not enough. She must be physically "perfect:"

The 90s notion of the perfect female form is genetically impossible for most women to attain . . .⁷

A magazine ad shows a woman outfitted in an expensive designer outfit, holding a new Virginia Slims "Superslims" cigarette. The photograph has been distorted so that she appears to be reflected in a funhouse mirror — taller and thinner than any woman could ever hope to be.⁸

4. Advertisement, Shiseido Vital-Perfection, GLAMOUR, Mar. 1992, at 70-71.

5. Advertisement, Estee Lauder cosmetics, *quoted in* WOLF, *supra* note 2, at 93.

6. Sylvia Plath, *Edge*, in *THE COLLECTED POEMS*, 272-73 (1981).

7. Lois B. Morris, *Body Reality*, ALLURE, Dec. 1991, at 26, 26. Morris discusses a recent Brandeis University study in which psychologist Joseph G. Cunningham and a colleague found that professional models stood five inches taller than a control group of college women, yet weighed 16% less than average for their height. (Some have put the figure at 23% less. See WOLF, *supra* note 2, at 184). The researchers concluded that women's self-esteem was linked to satisfaction with their bodies, whereas men's was not. The article noted that "[n]ot being pressured to live up to an impossible physical standard seems to provide much relief [to men]." Next to the article appeared a photograph of a very thin, large-breasted woman reclining against a wall. One wonders where the pressure comes from.

A model echoed the results of this study: "[T]he ideal today is a muscular body with big breasts. Nature doesn't make women like that." WOLF, *supra* note 2, at 266.

8. Advertisement, Virginia Slims, VOGUE, Oct. 1990, at 305.

Ads harm women emotionally by replacing true images of women with false, "perfected" images and by holding those images out as both the ideal and the norm. Women thus come to view models in the ads as normal and themselves as freakish.⁹ A professor of plastic surgery notes that in this generation, "[w]hat you have is a crisis of body image, how people perceive themselves. And I think you have a society . . . that takes its cues from the media The norm is perfection, and anything else is considered less than satisfactory."¹⁰ As a result, media images make women who are not beautiful (that is, not physically perfect) feel like failures despite success in other areas of their lives.

For example, women have dieted for generations, but have never felt as fat as they do today.¹¹ A 1973 *Psychology Today* survey reported that one fourth of American women surveyed were displeased with the shape or size of their breasts; by 1986, the percentage had risen to one third.¹² Women's bodies cannot have changed for the worse over the past twenty years. Instead, media images have changed so that average women see progressively unrealistic versions of themselves reflected in advertisements.¹³ This

9. A recent study by University of Massachusetts at Amherst marketing expert Marsha Richins confirms this. Richins examined women's responses to retouched print advertisements. She showed one group of women ads with models' retouched faces, while another group saw pictures of product ads without models. Afterwards, the former group reported less satisfaction with their own appearances than did the latter group, and also judged unretouched photos of students like themselves more harshly. Lois B. Morris, *Flawed Reality*, ALLURE, Feb. 1992, at 30, 30.

10. Dr. Arthur Ship, Clinical Professor of Plastic Surgery at Albert Einstein College of Medicine, quoted in Joan Kelly, *Putting On a New Face* (pt. 2), NEWS-DAY, Dec. 8, 1990, Part II, at 2, 2.

11. Fifty to sixty percent of normal-weight women describe themselves as overweight. Marianne Wait, *Body Love, Body Hate*, LADIES' HOME J., Jan. 1992, at 30, 30-31 (quoting Thomas F. Cash, professor of psychology at Old Dominion University). More specifically, 74% of women dislike their thighs, and 65% obsess about their stomachs. *Id.* at 32 (quoting a study by psychologist Stephen L. Franzoi).

Starting a generation ago, the number of anorectic women has increased dramatically in the Western world. WOLF, *supra* note 2, at 182. Nine out of ten anorexics and bulimics are female. Barbara Grizzuti-Harrison, *Are We Crazy About Food?*, MADEMOISELLE, Sept. 1991, at 168, 168. These disorders strike an estimated one million American women each year. WOLF, *supra* note 2, at 181-82 (quoting statistics from the American Anorexia and Bulimia Association). The Association reports that 150,000 American women die of anorexia each year. *Id.* at 182.

The Kinsey Institute reports that of a number of cultures studied throughout the world, American women have the most negative feelings about their bodies. FALUDI, *supra* note 1, at 202.

12. WOLF, *supra* note 2, at 248.

13. A generation ago, the average model weighed 8% less than the average American woman; she now stands 5 inches taller, weighs 16-23% less, and has breast implants. WOLF, *supra* note 2, at 184, 266; Morris, *Body Reality*, *supra* note 7, at 26. The average weight of Playboy Playmates dropped from 11% below the national average in 1970 to 17% below in 1978. WOLF, *supra* note 2, at 185. The

stepped-up self-loathing coincides with an increase in the number of articles and advertisements for cosmetic surgery and beauty products,¹⁴ coupled with ubiquitous images of women's bodies used to sell everything from beer to industrial equipment. No matter what is advertised, "[t]he media hold up idealized images that virtually no one can approximate . . ."¹⁵

This barrage of idealized images, coupled with the subtext that women are failures if they cannot live up to them, forces women to become preoccupied with their appearance to a degree that could be considered obsessive and unhealthy.¹⁶ Some women choose to risk their lives in exchange for the chance to better approximate society's ideal. Until the Food and Drug Administration ("FDA") issued a moratorium on the use of silicone breast implants for cosmetic purposes,¹⁷ more than 150,000 women received them each year; eighty percent did so for cosmetic reasons.¹⁸ The operation is risky. A majority of women with implants have suffered complications ranging from capsular contraction — a painful hardening of the implants — to life-threatening diseases of the immune system.¹⁹ The pressure to be beautiful is so strong in this

average model, dancer, or actress is thinner than 95% of the female population, yet these groups of women are practically the only ones we see in advertisements and elsewhere in the media. *Id.*

14. In 1989, magazines' ad revenues for "toiletries/cosmetics" was \$650 million; revenues for "soaps, cleansers, and polishes" was only one-tenth as much. WOLF, *supra* note 2, at 65; see also *supra* note 2. Naomi Wolf writes that the "post-1960 daughter sees more images of impossibly 'beautiful' women . . . in one day than her mother saw throughout adolescence . . ." *Id.* at 214.

15. Author Rita Freedman, *quoted in* Wait, *supra* note 11, at 32.

16. For instance, thirty-three thousand American women reported to researchers that "they would rather lose ten to fifteen pounds than achieve any other goal." WOLF, *supra* note 2, at 10.

17. On April 16, 1992, the FDA severely restricted access to silicone implants for cosmetic purposes. A limited number of women will be allowed to receive the implants as part of a study designed to answer questions about their safety. Access to silicone implants for women seeking reconstructive surgery remains unrestricted, as does access to saline implants. Marlene Cimon, *FDA to Restrict Cosmetic Silicone Breast Implants*, L.A. TIMES, Apr. 17, 1992, at A1.

18. Jennifer Drawbridge, *Dangerous Curves*, MIRABELLA, Aug. 1991, at 104, 104.

19. Up to seventy percent of women with implants have experienced capsular contraction, which causes the breasts to become unnaturally hard and possibly deformed, and requires the implants to be removed or manually crushed to break up the scar tissue. WOLF, *supra* note 2, at 242. Silicone gel implants have been linked with instances of scleroderma, an autoimmune disease that causes a gradual hardening of the skin and internal organs. *Breast Implants: Deadly News*, MS., Nov./Dec. 1990, at 25, 25. Other rare but serious side-effects include lupus and arthritis. *Id.* Implants also can interfere with mammogram readings. Robert Scheer, *A Frenzy of Lifts, Nips, and Tucks*, L.A. TIMES, Dec. 22, 1991, at A1, A42 (sidebar). Finally, breast surgery may cause a loss of sensitivity, which is particularly ironic: implants supposedly make a woman "sexier" when in fact they may destroy an erogenous zone. WOLF, *supra* note 2, at 237-38.

Foam-covered silicone implants reduce instances of capsular contraction but

culture that when the FDA announced that hair dyes might cause cancer, sales fell by only four percent. One woman reportedly said that she would rather have cancer than gray hair.²⁰

Because any physical flaw stands in the way of "perfection," ad images encourage women to obsess over their real or imagined flaws. Ads do this in three ways. First, as images of women's bodies flash across the screen, the camera scrutinizes them and encourages viewers to scrutinize both the model in the ad and themselves. Second, ads break women's bodies into discrete parts. They show perfected versions of each part, invite women viewers to compare their imperfect selves to the onscreen version, and then offer their particular product or service to "cure" the problem.²¹ Finally, after separating women's bodies into pieces, some ads (particularly cosmetic ads) separate the pieces from the woman herself. One print ad asks: "When did your skin last smile back at you?"²² Another warns a woman that her own skin is her enemy: "Your age is no secret, if your skin lets you down."²³ In this way, women become alienated from their own bodies and must work against their bodies to achieve perfection. This scrutiny and dissection causes women to see themselves as objects — a collection of flawed body parts rather than a whole person.²⁴

have caused women allergic to the foam to break out in rashes, develop the silicone-related diseases discussed above, and possibly contract cancer from carcinogens released into the bloodstream as the foam surrounding the implant disintegrates. Sandra Blakeslee, *The True Story Behind Breast Implants*, GLAMOUR, Aug. 1991, at 186, 187-88, 230.

20. LOIS W. BANNER, *AMERICAN BEAUTY* 274 (1983).

21. Of course, the images are constructed so that real women cannot possibly measure up:

In the pursuit of [the] ideal, photographers regularly draw upon an inventory of disembodied parts, in order to construct the semblance of wholeness. Advertising photographer Michael Raab explains that "it's difficult to get the foot, ankle and calf perfect on the same leg. Sometimes you have to strip images together to get all three perfect."

STUART EWEN, *ALL CONSUMING IMAGES* 87 (1988).

Dalma Heyn, an editor of two women's magazines, reports that photographs of older women are routinely airbrushed, so that "[b]y now readers have no idea what a real woman's 60-year-old face looks like in print because it's made to look 45. Worse, 60-year-old readers look in the mirror and think they look too old, because they're comparing themselves to some retouched face smiling back at them from a magazine." *Quoted in* WOLF, *supra* note 2, at 82-83.

Art director Bob Ciano claims that "no picture of a woman goes unretouched . . ." *Id.* at 82. Photographs of models' bodies are often trimmed with scissors, and computer imaging is used to alter photographic reality to suit editors' and advertisers' ideals. *Id.* at 83.

22. Advertisement, Glow 5 Beauty Mask by Anne French, *reprinted in* JUDITH WILLIAMSON, *DECODING ADVERTISEMENTS* 67 (1978).

23. Advertisement, Oil of Olay, *reprinted in id.* at 68.

24. It should not surprise us when a woman says "I love my belly button. I can't think of any other part I really like," or "I hate everything from the waist

Rosemary Fell was not exactly beautiful. No, you couldn't have called her beautiful. Pretty? Well, if you took her to pieces. . . . But why be so cruel as to take anyone to pieces?²⁵

Taking women to pieces may be cruel, but it is a good way to sell things, particularly cosmetics and plastic surgery services. The result is that women do half the work for advertisers; believing themselves flawed, they scrutinize and dissect themselves in the search for imperfections to confirm their belief. With this mindset, women find it difficult to ignore advertisers who constantly alert them to new flaws. Advertisers need only fan the flames of discontent and then step in with a magic cure to "perfect" women, piece by piece.²⁶

Plastic surgeons and cosmetic companies "depend for their considerable livelihood on selling women a feeling of terminal ugliness."²⁷ Women made to feel perpetually fat and ugly (and therefore unlovable, undesirable, and worthless) will buy more products. The indoctrination starts early, and it is cruel. Several magazines directed at teenage girls recently ran an ad for Noxzema skin cream which shows a teenage girl and boy face-to-face in a candlelit room, smiling warmly at each other. The copy reads in part: "I wish it were darker in here so he couldn't see my skin, pitch black would be nice . . ."²⁸

Ads also harm women by making them feel guilty if they are not beautiful — as if an imperfection is evidence of a character flaw.²⁹ Such ads convey the notion that because perfection may be

down," or "My flat stomach is my claim to fame," or "I'd love to have bigger breasts, for men." Wait, *supra* note 11, at 36.

25. Novelist Katherine Mansfield, *quoted in* WOLF, *supra* note 2, at 278.

26. For example, a French plastic surgeon recently proclaimed that a "youthful" navel is vertical rather than horizontal, and offered a surgical procedure to correct this new flaw. Dianne Lange, *The Perfect Belly Button*, ALLURE, Dec. 1991, at 24, 24.

27. WOLF, *supra* note 2, at 234.

Several years ago, a plastic surgery lobbying group, as part of a campaign urging fellow surgeons to "practice [breast] enhancement," put a new spin on the word "terminal" by labeling small breasts a disease: "There is a substantial and enlarging body of medical information and opinion to the effect that these *deformities* [small breasts] are really a disease" that, left uncorrected, results in a "total lack of well-being." Memorandum to the FDA, issued by the American Society of Plastic and Reconstructive Surgeons, Inc., *quoted in* Nicholas Regush, *Toxic Breasts*, MOTHER JONES, Jan./Feb. 1992, at 25, 26 (emphasis added).

Surgeons and cosmetic companies have done the same with other parts of the female anatomy. Cosmetic surgeons have held conferences to discuss "the deformities of the aging face," the profile on the announcement is invariably female. WOLF, *supra* note 2, at 228. The Elancyl cosmetics company speaks of fat as a "condition" that "disfigures." *Id.* at 226. In 1985, author Eugenia Chandris called big hips and thighs "a medical problem." *Quoted in id.*

28. Advertisement, Noxzema Skin Cream, TEEN, Feb. 1992, at 7.

29. An ad for Lancome Dual Finish Makeup likens facial imperfections to a

had for the price of a product, a woman is lazy, even morally blameworthy, if she does not work to achieve perfection. Echoes of the Puritan work ethic appear in cosmetic advertising. According to some ads, a woman's most important work is dieting and physical self-improvement. These advertisements browbeat women: "Since 1956, there's been no excuse for dry skin,"³⁰ "A better bust is up to you,"³¹ "Take control of your contours,"³² and "we don't want you to look just O.K. We want you *gorgeous*."³³ Women are made to feel guilty for being human: "Do you laugh, cry, frown, worry, speak?"³⁴ Ads present the pursuit of physical perfection as the surest way for a woman to gain control over her destiny; in fact, a recent survey of women's attitudes toward beauty revealed that many women desired beauty in order to "demonstrate mastery."³⁵ Sadly, women who best "demonstrate mastery" by achieving perfection are those who most completely attain object status. In the process, they may forfeit themselves: "I have no sexual fantasies. I am one."³⁶

Just as members of some cultures believe that their souls will be stolen if they are photographed, false images of women have usurped women's true selves. If the media presents only surgically-altered, airbrushed, computer-imaged non-women, where do real women see themselves reflected? As long as idealized non-women are valued as objects more than real women are valued as people, women will continue to be preoccupied with the quest for physical perfection in all its ugly manifestations: starvation, eating disorders, cosmetic surgery, and an overwhelming sense of self-loathing and self-blame.

scarlet letter, and implies that a woman dare not show her face in public unless her "sins" are hidden: "The look you can take anywhere. . . . Like a foundation with perfect discretion, its soft matte finish conceals flaws without revealing itself. . . . Portable perfection." Advertisement, Lancome Dual Finish Makeup, ALLURE, Sept. 1992, at outside back cover.

30. WOLF, *supra* note 2, at 96 (Revlon Cosmetics advertisement).

31. *Id.* (Clarins Bust Cream advertisement).

32. *Id.* (Clarins advertisement).

33. Advertisement, Clarion Cosmetics, GLAMOUR, Apr. 1992, at 28-29.

34. WOLF, *supra* note 2, at 96 (Clarins advertisement).

35. Bachrach, *supra* note 2, at 46. A series of ads for Oil of Olay moisturizer exemplifies this mindset; a model stares into the camera and declares, "I don't intend to grow old gracefully. . . . I intend to fight it every step of the way." Advertisement, Oil of Olay, quoted in FALUDI, *supra* note 1, at 210.

Three generations of women in one family were lauded in the *Ladies' Home Journal* for "taking control" of their appearances by undergoing cosmetic surgery. FALUDI, *supra* note 1, at 218.

36. Marilyn Monroe, quoted by Judith Grant, panel member, at Symposium, "Reconstructing Motherhood: Merging Theory and Practice," University of Southern California Law Center, Apr. 12, 1991.

2. Sense of Lost Privacy

When every woman's face and body is seen as deserving of scrutiny, dissection, comment, judgment, and repair, women are objectified and deprived of privacy because their bodies are no longer their own. Andrea Dworkin wrote about the privacy issue in relation to pornography:

The [pornographic] photograph is the ultimate tribute to male power: the male is not in the room, yet the women are there for his pleasure. . . . In viewing it, he possesses her. The power of the male is affirmed as omnipresent and controlling even when the male himself is absent and invisible. There is no privacy, no closed door, no self-determined meaning, for women . . . in the world of pornography.³⁷

The amount of privacy accorded to different people or groups reveals the amount of power they have in society. Children have less privacy than adults; women have less privacy than men. "Cross-culturally, unequal nakedness almost always expresses power relations"³⁸ Women in advertisements, movies, and art frequently are nude or partially nude; men rarely are. For example, in New York police confiscated from subway stations anti-AIDS posters which showed illiterate people how to put on a condom, yet left adjacent ads for *Penthouse* on display.³⁹ This lack of privacy harms women by fostering an atmosphere in which women are accorded little respect. "To live in a culture in which women are routinely naked where men aren't is to learn inequality in little ways all day long."⁴⁰

Women's loss of privacy is also shown by the double standard applied to advertising male and female products. Feminine hygiene and women's birth control products are advertised constantly, but the major television networks refuse to even air a condom ad.⁴¹ In a discussion with columnist Howard Rosenberg, several women commented upon this hypocrisy, and objected to the fact that women "don't have any secrets now."⁴² They added that "[t]his seems to us to be discrimination of the sexes: It's OK to expose the female but don't you dare expose the male."⁴³

The issue boils down to respect for personal integrity: men are allowed to have secrets; men are not exposed. When *Playboy*

37. ANDREA DWORKIN, *PORNOGRAPHY: MEN POSSESSING WOMEN* 47 (1979).

38. WOLF, *supra* note 2, at 139.

39. *Id.*

40. *Id.*

41. Howard Rosenberg, *TV's Feminine Ads: A Double Standard*, L.A. TIMES, Nov. 6, 1991, at F1, F11 (quoting Dana M. Sims).

42. *Id.* (quoting Dana M. Sims).

43. *Id.* at F1 (letter signed by Barbara Young and seven other women).

asked Masters and Johnson to comment upon the average penis size, they "flatly refused" on the grounds that such information would have "a negative effect on *Playboy's* readers," because "everyone would walk around with a measuring stick."⁴⁴ Meanwhile, a plastic surgeon recently devised a centimeter-by-centimeter description of the "perfect mouth,"⁴⁵ and until very recently, the Miss America pageant eagerly broadcast contestants' measurements to the entire world.⁴⁶

Advertising contributes to women's loss of privacy by presenting women's (frequently unclothed) bodies as objects that exist for the viewing pleasure of others rather than for women themselves. And women are much more likely than men to find their bodily and reproductive functions discussed in ads. The end result is that advertisements accord men, but not women, some measure of privacy and respect.

3. The Role of Women in Society

Advertisements are selling us something else besides consumer goods: in providing us with a structure in which we, and those goods, are interchangeable, they are selling us ourselves. . . . We feel a need to belong, to have a social 'place'; it can be hard to find. Instead we may be given an imaginary one.⁴⁷

In *The Feminine Mystique*, Betty Friedan wrote that advertisers in the 1950s cast the role of housewife as the exclusive acceptable one for a woman, and then glorified that role, "knowing that [the homemaker's] very lack of identity in that role will make her fall for whatever they are selling."⁴⁸ Today, women's social roles are much more varied; advertisers know it is no longer possible to urge most women to focus all their attention on the home. Not coincidentally, as women have moved out of the domestic sphere, beauty advertising has supplanted household product advertising as the main category of ads aimed at women.⁴⁹ Advertisers have succeeded in turning women's focus inward upon themselves, so that even while they juggle several roles, they

44. Quoted in WOLF, *supra* note 2, at 138.

45. Dianne Lange, *Defining Perfect Lips*, ALLURE, Feb. 1992, at 28, 28. According to Dr. Linton Whitaker, Chief of plastic surgery at the University of Pennsylvania's Center for Human Appearance, there are at least 18 ways to measure the perfect mouth, which is 6 centimeters from corner to corner, has volume, and does not turn down at the corners. *Id.*

46. The pageant stopped publicizing contestants' measurements in 1987. Jeanne Ralston, *Statistical Miss America*, ALLURE, Sept. 1992, at 88, 88.

47. WILLIAMSON, *supra* note 22, at 13.

48. BETTY FRIEDAN, *THE FEMININE MYSTIQUE* 219 (1974).

49. See *supra* note 14.

never forget to pause and check themselves in the mirror. By repeatedly telling women that beauty is a prerequisite to success in all aspects of their lives, advertisers have created a new "role" for women in society: the role of the Beauty.

In this climate it becomes difficult for women to put their desires in perspective. A woman may want her hair to be reasonably clean and attractive, but may not feel it necessary or desirable to "do whatever [she] can to make [her] hair look good."⁵⁰ However, when a woman sees this commercial and hundreds like it, exhorting her to dwell on her appearance and telling her that it is normal and desirable to do so, she may find it hard to question or resist the message. Since the media present physical attractiveness as a necessary prerequisite to a woman's happiness, it would be surprising if she did not spend an inordinate amount of time worrying about her appearance, even if she would not otherwise wish to do so. In fact, over time she may actually develop the desire to spend her time and energy in this manner; she may become her own hobby.

Advertising is designed to create these desires. Advertisers construct a false image of how an "ideal" woman looks, acts, and thinks, and foist this one-dimensional image on women again and again. Given the ubiquity of commercial messages, women have no room to develop their own social and personal identities.

Advertising harms women's view of themselves by forcing them to focus on the unattainable goal of physical perfection, by robbing them of their privacy, and by defining for them a stunted, one-dimensional role in society, where they must be beautiful or be invisible.⁵¹ But advertising also causes external harms, by warping the way that men view women and women view each other. These distorted views cause reactions ranging from ogling to competition to contempt to rape. Each is discussed below.

B. Third-Party Effects: Harmful Images of Women Held by Others

1. Preoccupation with Physical Perfection

Advertising images harm women by encouraging men to have idealized notions of how women should look. A writing professor who regularly assigns an essay on media imagery told Naomi Wolf

50. *Head & Shoulders Shampoo* (television commercial, broadcast in Los Angeles, early 1992).

51. *Glamour's* Beauty Report quoted one respondent who wrote that "[i]f you're not beautiful, you might as well be invisible." Another wrote, "[i]f I were beautiful, I could be myself." George, *supra* note 1, at 224.

that he regularly receives essays in which young women report their lovers' disappointment that they do not look like women in pornography.⁵² Another woman told newspaper reporters that she is planning to get a set of silicone breast implants despite the health risks. She said her "new fiance . . . thinks it's great. His ex-wife and ex-girlfriend had it done . . ."⁵³ If this man believes that all three of the women in his life have been too flat-chested, what needs fixing, the women or his vision of what women should look like? Thanks to unrealistic images in the media, it is not enough that women are made to feel as if their own faces and bodies are never good enough; the men who supposedly love them for who they are may feel the same way.

2. Heightened Scrutiny by Others

a. *Scrutiny by men: The double bind*

Men look at women. Women watch themselves being looked at.⁵⁴

A recent Pepsi commercial shows a model in jeans and a tight tank top strolling languidly toward a Pepsi dispenser in the middle of nowhere. The camera cuts between her and two schoolboys who marvel at how beautiful "it" is. In the final frame we learn that the boys are discussing the design of the new Pepsi can.⁵⁵

Face it, women are dolled up for us.⁵⁶

Many men, whether friends, family, lovers, or strangers, believe that it is their prerogative to stare at women, evaluate them, and comment on their appearance.⁵⁷ Cosmetic surgeons, most of them men, take this view a step farther by declaring all women's faces and bodies inherently defective and offering to "fix" them. Such scrutiny reduces women to objects; media images encourage men and women alike to view women as nothing more than the sum of their body parts.

52. WOLF, *supra* note 2, at 175.

53. Laurie Becklund & Robert Steinbrook, *Doctors Voluntarily Halt Silicone Implants*, L.A. TIMES, Jan. 8, 1992, at B1, B4.

54. JOHN BERGER, *WAYS OF SEEING* 47 (1972).

55. *Pepsi* (television commercial, broadcast in Los Angeles, early 1992).

56. Cosmetic surgeon Dr. Thomas R. Stephenson, *quoted in* Scheer, *supra* note 19, at A43.

57. Some men engage in this form of harassment to defuse the "threat" posed by strong, intelligent women. A powerful female prosecutor reported that a prospective juror admonished her to "Smile. You'll look pretty." George, *supra* note 1, at 222. Those of us who lived in San Francisco in 1984 will never forget the newspaper photographs of men loitering outside the Democratic convention and "rating" the appearances of female delegates with Olympic-style scorecards as they went inside.

This relentless scrutiny puts women in a bind. Women who try to ignore media images and not focus on their appearance must resist cultural messages that they are unlovable as they are, and also must resist rude reminders from strangers on the street that they do not measure up to perfection. On the other hand, women who heed ad messages and get "dolled up" may find themselves labeled frivolous, stupid, and vain sex objects, often by the same men who are doing the watching. This conundrum is not new. John Berger wrote the following about a fifteenth-century painting by Memling:

The mirror was often used as a symbol of the vanity of women. The moralizing, however, was mostly hypocritical. You painted a naked woman because you enjoyed looking at her, you put a mirror in her hand and you called the painting *Vanity*, thus morally condemning the woman whose nakedness you had depicted for your own pleasure.

The real function of the mirror was otherwise. It was to make the woman connive in treating herself as, first and foremost, a sight.⁵⁸

Ad images encourage men and women to treat women as a sight. Unfortunately, in valuing women primarily as objects, men and women lose sight of the woman herself:

She has to survey everything she is and everything she does because how she appears to others, and ultimately how she appears to men, is of crucial importance for what is normally thought of as the success of her life. Her own sense of being in herself is supplanted by a sense of being appreciated as herself by another.⁵⁹

b. Scrutiny by women: Competition and contempt

"Who is that lovely creature?" . . . And then you know *she* is there. She is the woman you envy. She is the woman you want to be.⁶⁰

While some faces look fine, others look flawless. Porcelain-smooth. Without shine. For hours. Is it in their genes? Gimme a break. . . . Maybe she's born with it. Maybe it's Maybelline.⁶¹

Don't hate me because I'm beautiful.⁶²

In the beauty game, some women win but most lose. The beauty game is a shell game, impossible to win for long because

58. BERGER, *supra* note 54, at 51.

59. *Id.* at 46.

60. Advertisement, Frances Denney Cosmetics, HARPER'S BAZAAR, Feb. 1938, at 109.

61. Advertisement, Maybelline Finish Matte Makeup, VOGUE, Nov. 1991, at 87.

62. WOLF, *supra* note 2, at 284 (L'Oreal Cosmetics).

the rules keep changing: a winner only wins until her features are declared "out of style" or until she is declared "too old" to play. All women play the beauty game, whether they want to or not. "Winners" are objectified by men and envied by women, and "losers" are scorned — and still judged — by everyone if they play and lose or, worse, if they refuse to play.

This game pits women against each other by forcing a "constant comparison, in which one woman's worth fluctuates through the presence of another[,]""⁶³ so that women nervously evaluate and pass judgment on each other perhaps as harshly as men do. Women learn to view other women as threats, not allies: a Wella haircolor brochure invites the target viewer to "Meet the Other Woman," referring to her as she will look after she colors her hair.⁶⁴ As always, the messages start early. An ad for Maybelline makeup warns teenage girls: "Face-to-face. That's the real 'complexion test.' And some girls pass it every time. . . . Just lucky? Try again. . . . Maybe she's born with it. Maybe it's Maybelline."⁶⁵

In a recent exposé of the advertising industry, Gloria Steinem illuminated another way in which advertisers (and women's magazines in general) encourage women to view each other with suspicion.⁶⁶ During her tenure at the helm of *Ms.* magazine, Steinem learned that cosmetics companies refuse to place ads in women's magazines unless the magazines agree to run complementary photographs and features which tout the value of cosmetics. If editors objectively evaluate or criticize cosmetics, or even downplay their importance, their magazines lose ad revenue.⁶⁷ The result is an extreme form of self-censorship which results in the "dumbing down" of editorial content; Steinem mentioned the example of a popular women's magazine running an entire article on why women part their hair where they do.⁶⁸ Of course, all articles

63. WOLF, *supra* note 2, at 284.

64. *Id.* at 287 (Wella Haircolor advertisement).

65. Advertisement, Maybelline Shine Free Makeup, *TEEN*, Feb. 1992, at 1.

66. Gloria Steinem, *Sex, Lies, and Advertising*, *Ms.*, July/Aug. 1990, at 18.

67. For example, in 1980, when *Ms.* still accepted advertising, it produced an award-winning exclusive report on Soviet feminists. Revlon cosmetics was not amused, however; the company refused to advertise in *Ms.* because the Soviet women on the cover were not wearing makeup. *Id.* at 22-23. Linda Wells, editor-in-chief of *Allure* magazine, reported that in its first issue, *Allure* ran a feature called "Road Test," which compared several eye-makeup removers. The article concluded that Lancôme's product caused a "stinging reaction." "Wildly disappointed," Lancôme pulled its ads from the second issue. Later, Lancôme returned to the fold and *Allure* stopped doing its "Road Tests." Gaile Robinson, *Cashing In on Beauty's 'Allure'*, *L.A. TIMES*, May 29, 1992, at E6.

68. Steinem, *supra* note 66, at 28.

are accompanied by the same airbrushed and retouched photos that appear in ads.

This self-censorship makes women contemptuous of each other by leading them to believe that other women, rather than advertisers, demand to see such weightless features. In an Epilogue to her article, Steinem reports that many women responded to it by expressing relief that advertisers rather than women were the driving force behind many of the trivial beauty and fashion features.⁶⁹ Respondents also were angry at the self-censorship which results in such a distorted picture of what real women are interested in.⁷⁰ One woman summed it up as follows: "The worst thing advertisers have done to us is make us contemptuous of other women."⁷¹

3. Violence

Talk of pornography ought to begin at the modern root: advertising⁷²

An ad for Camel cigarettes advised men seeking to impress women at the beach to "[r]un into the water, grab someone and drag her back to the shore as if you've saved her from drowning. The more she kicks and screams, the better."⁷³

In a recent two-page ad for Guess jeans, the first page shows a model in cowgirl attire thumbing a ride. On the second page, she is standing on the car hood barefoot and shirtless, doing a striptease for a cowboy sitting in the driver's seat.⁷⁴

Pornography is the theory, rape is the practice.⁷⁵

Many theorists have linked the use of pornography to sexual violence.⁷⁶ When ads promote an eroticized view of violence against women, it is logical to predict that such violence will esca-

69. *Id.* at 17 (Epilogue in photo. reprint 1990)(1990).

70. *Id.*

71. *Id.*

72. NORMAN MAILER, ADVERTISEMENTS FOR MYSELF: 'A NOTE OF COMPARATIVE PORNOGRAPHY' quoted in TREVOR MILLUM, IMAGES OF WOMAN 22 (1975).

73. In the wake of the furor that accompanied this ad, R.J. Reynolds fired its ad agency, McCann-Erickson. CAROL MOOG, PH.D., "ARE THEY SELLING HER LIPS?": ADVERTISING AND IDENTITY 50 (1990).

74. Advertisement, Guess jeans, L.A. TIMES MAG., Jan. 26, 1992, at front-1.

75. University of Southern California Professor Amy Richlin, class lecture on pornography and rape, University of Southern California Law Center (Oct. 16, 1991).

76. For example, *Ms.* magazine commissioned a study of 6,100 male and female undergraduates in the United States. Among other findings, the survey showed that one college man in twelve had raped or attempted to rape a woman since age fourteen; the only consistent difference between those who assaulted and those who did not is that the former group read pornography "very frequently." WOLF, *supra* note 2, at 165. See also DWORKIN, *supra* note 37.

late. People imitate what others do and adopt others' actions as their own. Psychologist Albert Bandura conducted studies in which he found that children imitated the behavior of people they saw on videotape just as if they were "real."⁷⁷ Men and women who see repeated images of sexual violence in ads may learn to be interested in such violence when they otherwise would not be. If men and women see constant images of sex as rape, they will come to the conclusion that sex is rape.

As with other harmful ad messages, these start early and are delivered often. An ad for Guess jeans featured a teenage girl and boy straddling his motorcycle. He sits behind her and traps her arms behind her, so that she is forced to arch backward and lie motionless while he kisses her neck.⁷⁸ Repeat this message a hundred or a thousand times, and we are well on our way to a society in which "many young people believe this is simply the way sex is. This means that many of the rapists of the future will believe they are behaving within socially accepted norms."⁷⁹ In one study of Toronto teenagers, eighty percent of teenage girls reported that they had already been involved in violent relationships.⁸⁰ Welcome to the future.

Some women have also argued that nonviolent portrayals have lead to their mistreatment. For example, female employees of Stroh's brewery have recently sued the company, claiming that its sexist advertisements foster sexual harassment in their workplace. A recent Stroh's ad campaign features the blond "Swedish Bikini Team" parachuting into a camp where men are drinking Old Milwaukee beer.⁸¹ The women employees claim that these and similar ads have created an atmosphere that encourages male

77. MOOG, *supra* note 73, at 48.

78. Advertisement, Guess jeans, *reprinted in id.* at 156. A recent ad for Jordache jeans treats us to what appears to be an argument between a teenage prostitute and pimp: a young woman in a tight minidress lolls her head back, eyes blank, while a young man in a baggy black suit threatens her with narrowed, hate-filled eyes and his index finger thrust in her face. Advertisement, Jordache jeans, GLAMOUR, Feb. 1992, at 23.

79. Susan G. Cole, *quoted in* WOLF, *supra* note 2, at 167. There is evidence that a majority of young American men already believe this. A survey of 114 undergraduate men yielded these replies:

"It would be exciting to use force to subdue a woman." (61.7%)

"I get excited when a woman struggles over sex." (63.5%)

"I enjoy the conquest part of sex." (86.1%)

"I like to dominate a woman." (91.3%)

"Some women look like they're just asking to be raped." (83.5%)

Id. at 165.

80. *Id.* at 167.

81. Colleen Fitzpatrick, *Stroh's Women Unamused by "Swedish Bikini Team" Ads*, GANNETT NEWS SERVICE, Nov. 30, 1991, available on LEXIS, Nexis library.

coworkers to touch them, defame them in sexually explicit graffiti, and display pornography in work areas.⁸²

Attorneys for Stroh's argue that the ads are unconnected to the instances of sexual harassment, but the women's attorney, Lori Peterson, disagrees:

What amazes me is that a lone voice in the workplace spewing out sexism is considered illegal under the law, but if the company multiplies that by \$19 million in advertising, that's considered a legal right. We're not saying the ads themselves are the only cause of this behavior in the workplace. We're saying all they have to do is be part of the package.⁸³

Jean Keopple, one of the plaintiffs, adds:

[y]ou walk into the lobby to punch in, and you see pictures of Stroh's ads with women that are half-naked When [male coworkers are] getting the feedback from the top (of the company) down that women are bimbos and that's OK, that's why I'm getting treated the way I'm getting treated.⁸⁴

When men harass women in the workplace, "their behavior only actualizes the fantasies in mass advertising that feature women as sex objects."⁸⁵ Thus, false advertising portrayals can harm women's sense of their own self-esteem and may lead to physical attacks.

I have argued that advertising (among other cultural factors) harms women by denying them privacy, limiting the scope of acceptable roles (a beautiful woman can be anything, a real woman is nothing), and subjecting them to constant scrutiny. Advertising encourages women and men to compare real women against an airbrushed version of "perfection." Finally, violent images encourage sexist attitudes and physical attacks. These harms arise from the substance of ad messages — their words and images tell us these things about women. But advertisers also employ a host of psychological techniques which reinforce these attitudes on a more subtle level and make their ads, and their messages, more effective. These techniques are discussed in detail below.

III. The Development of Psychological Advertising Techniques

Currently, the law permits the government to regulate factu-

82. *Id.*

83. *Id.*

84. Martha T. Moore, *Taste Test: Debate Brews over Selling Beer With Sex*, USA TODAY, Nov. 15, 1991, at 1B (money section).

85. Ronald K.L. Collins, *Bikini Team: Sexism for the Many*, L.A. TIMES, Nov. 20, 1991, at B7.

ally false, deceptive, and misleading advertisements.⁸⁶ This Part assumes this type of regulation is beneficial and necessary to protect consumers. It also argues that the psychological advertising techniques described below may harm consumers just as much as deceptive or misleading ads.⁸⁷

As discussed in this Part, today's advertisers are less interested in making factual claims for their products than presenting positive images which consumers will come to associate with the advertised product. There are several reasons for this. First, the Federal Trade Commission ("FTC") has traditionally focused its attention on propositional or informational advertising, for which it analyzes the truth or falsity of a given factual claim.⁸⁸ Given the FTC's emphasis, it is safer for advertisers to avoid making claims which can be verified or disproven by the FTC. Second, there often is not much to say about a product. For example, brands of toothpaste may be nearly identical, and the only way for a manufacturer to carve a niche in the market is through associating its brand of toothpaste with a uniquely desirable image. Third, there may be no positive facts to impart about certain products. In the case of products like cigarettes, for which all factual information would repel the customer, image is the only weapon available to sell the product.⁸⁹ Most importantly, as will be shown below, "image" advertising is almost certainly more effective than fact-based advertising. Advertising techniques and the historical shift from fact-based to image advertising are discussed in detail below.

86. *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council*, 425 U.S. 748, 771-72 & n.24 (1976).

87. However, this section makes several assumptions at the outset. While the criticisms of advertising techniques presented in this section have the support of many commentators, they remain controversial among advertisers and scholars alike. For example, one of advertisers' counter-arguments is that up to 80% of new products fail to achieve their profit objectives; most of those are eventually withdrawn from the market. WILLIAM LEISS ET AL., *SOCIAL COMMUNICATION IN ADVERTISING* 241-42 (1986). Therefore, consumers may be manipulated less often than the arguments in this section would suggest. Perhaps the roughly 20% of successful products fulfill valid consumer needs, or are noticeably better than existing products on the market. If this is true, consumers may be able to protect themselves from manipulative ad messages, so that no regulation is necessary.

Notwithstanding possible counterarguments, the purpose of this Part is not to exhaust all debate about the harmfulness of advertising techniques. Rather, it argues that assuming these criticisms are true, they adequately respond to censorship and paternalism concerns and thereby justify some form of advertising regulation.

88. Richard Craswell, *The Identification of Unfair Acts and Practices by the Federal Trade Commission*, 1981 WIS. L. REV. 107, 147; see also O. Lee Reed, Jr. & John L. Coalson, Jr., *Eighteenth-Century Legal Doctrine Meets Twentieth-Century Marketing Techniques: F.T.C. Regulation of Emotionally Conditioning Advertising*, 11 GA. L. REV. 733, 752 (1977).

89. Richard Moon, *Lifestyle Advertising and Classical Freedom of Expression Doctrine*, 36 MCGILL L.J. 76, 109 (1991).

A. *The Shift from Informational to Emotionally-Conditioned Advertising*

Before the turn of the century and the advent of modern mass production, goods were so scarce that little advertising was needed.⁹⁰ Most goods were produced and sold locally, in face-to-face meetings between buyer and seller.⁹¹ Advertisements that did exist were generally "informational;" they featured more text, fewer pictures, and were written in a more direct, factual tone than many contemporary ads (even when their claims were somewhat sensational).⁹²

Once mass production resulted in a surplus of goods, manufacturers had to work harder to sell their products. Modern transportation systems forced producers to compete in a national market with producers of virtually identical goods.⁹³ The growth of the media, including newspapers, magazines, billboards, and later radio and television, provided advertisers with more ways to reach their target audiences, and allowed them to design more compelling advertisements.⁹⁴ The net effect of these changes in the early twentieth century was that "[i]t became necessary to persuade as well as to inform consumers, to teach them new tastes as well as to increase their capacity for the old ones."⁹⁵

Abraham Maslow's "hierarchy of needs" theory may explain the shift from informational to emotionally-conditioned advertising.⁹⁶ According to Maslow, people seek to satisfy "primary" needs for food, clothing, shelter and safety before seeking to satisfy "secondary" needs such as love, status, and social- and self-esteem.⁹⁷ When consumers' primary needs were met as a result of mass production and distribution, they began to seek greater fulfillment of their secondary needs. Advertising changed to address

90. Reed & Coalson, *supra* note 88, at 738.

91. *Id.* at 738-39.

92. For example, an advertisement that appears to date from the late nineteenth century offered a home exercise machine that simulated horseback riding. The ad for "Vigor's Horse-Action Saddles" promised readers that the saddle had been "personally ordered by H.R.H. The Princess of Wales," and that its advantages included the following: "It invigorates the system by bringing all the VITAL ORGANS into INSPIRING ACTION." "It acts directly upon the CIRCULATION, and prevents STAGNATION OF THE LIVER." "It is a complete cure for OBESITY, HYSTERIA, and GOUT." The ad featured a drawing of a woman riding side-saddle on the machine. *Reprinted in* LEISS ET AL., *supra* note 87, at 283.

93. Reed & Coalson, *supra* note 88, at 739.

94. *Id.* at 740.

95. *Id.* at 739. See also LEISS ET AL., *supra* note 87, at 21, 110.

96. Reed & Coalson, *supra* note 88, at 740 & n.27.

97. *Id.* at 740.

those needs.⁹⁸

B. *The Use of Motivational and Psychological Research*

A 1901 magazine article predicted that "[t]he time is not far away when the advertising writer will find the inestimable value of a knowledge of psychology."⁹⁹ Within the decade, Walter Dill Scott, Director of the Psychological Laboratory at Northwestern University, "counseled advertisers to try to associate the product with the individual's basic motivations, which he said included the 'desire for health and good looks,' the 'maternal instinct,' and the 'desire to be appreciated by others.'"¹⁰⁰

The 1920s saw the expanded use of psychology in advertising, and the beginnings of "conditioned response" theory which would later be developed and refined by B.F. Skinner and other behaviorists.¹⁰¹ During this decade, the advertising firm of J. Walter Thompson hired a leading behavioral scientist "to study the consumer and what responses he could be conditioned to give to the right sales stimuli."¹⁰²

Advertisements during this period reflected researchers' growing understanding that consumer behavior can be motivated by irrational impulses. Researchers arrived at this conclusion after learning that women bought eighty-five percent of all household goods.¹⁰³ Because advertisers believed that "women were subject to irrational impulses and did not want too much reasoning in ads, copy styles were altered accordingly."¹⁰⁴ This assumption, though sexist, was nevertheless in keeping with contemporaneous trends in psychology. All consumers — women and men — were regarded by psychologists as "animals impelled by drives and instincts, motivated largely by petty emotions, sexuality, anxiety, and a desire for upward mobility."¹⁰⁵

98. *Id.* at 740-41 & n.27.

99. PUBLICITY, Mar. 1901, *quoted in* WALTER DILL SCOTT, THE PSYCHOLOGY OF ADVERTISING 3 (1921).

100. Reed & Coalson, *supra* note 88, at 741-42.

101. *Id.* at 742 & n.32.

102. *Id.* at 742.

103. MICHAEL SCHUDSON, ADVERTISING, THE UNEASY PERSUASION 173 (1984).

104. LEISS ET AL., *supra* note 87, at 112.

105. *Id.* Several advertisers took consumers' alleged desire for upward mobility to heart. An ad for Cutex nail polish asked, "What color nails at the Ritz? . . . One of the hoity-toityest places to go 'fashion-snooping' is The Ritz. And the first thing you notice when you take your eyes off the most terrapin-y menu in town is the array of tinted finger nails! . . . If *you* aren't a serious nail tint fan already, better get going. It will make you feel gay and important. . . ." Advertisement, Cutex nail polish, COSMOPOLITAN, Mar. 1933, at 131.

An ad for Phillips' Milk of Magnesia in the same magazine distinguished the

The scientific tools and theories described above effected a fundamental transformation in the purpose of advertising. Henceforth, the advertising industry's approach would be to make the consumer, not the product, the "key ingredient in the message system."¹⁰⁶ In other words, its new task was not to educate consumers about product attributes but to change their attitudes towards the products advertised. This transformation paralleled, reflected, and perhaps even helped to create the shift from a production-driven society to a consumption-driven one, where people judged themselves and others by what they consumed rather than what they produced.¹⁰⁷

After the conclusion of World War II, thousands of social scientists and psychologists who had worked to increase public support for the war effort turned their attention to stimulating consumer purchases on the home front.¹⁰⁸ This proved to be an easy task. During the war, consumers suffered shortages of basic needs and made do with old appliances, clothing, and cars while American industry worked overtime to supply war tools.¹⁰⁹ After-

rich from the rabble as follows: "Phillips' anti-acid action protects men and women who live well. They don't suffer after every little indulgence. They escape the penalties so many pay. . . ." Advertisement, Phillips' Milk of Magnesia, *id.* at 139.

A Chrysler ad featured the photograph of a woman with this copy:

I've simply got to be smart . . . and approved. . . . You'll notice I drive a Chrysler Royal. It's a social asset. . . . I get a tremendous kick out of seeing doormen spring into energetic solicitude when I drive up. Wake those boys up and you're *good!* . . . Call me a show-off if you must, but who doesn't like smart clothes and an impressive car. And I've found that one small woman in a big Chrysler is always noticed and approved. That's meat and drink to any woman, isn't it?

Advertisement, Chrysler, HARPER'S BAZAAR, Feb. 1938, at 24a.

106. LEISS ET AL., *supra* note 87, at 54.

107. *Cf. id.* at 55 (discussing the shift from a market-industrial system to a market-oriented society).

108. Reed & Coalson, *supra* note 88, at 742 & n.37.

109. During the war, companies were torn between their desire to make money and their desire to appear patriotic by urging women to make do with their sheets and appliances as long as possible. They wanted to keep their names before the public, but, because of wartime production requirements and shortages, they had no products to sell. Women's magazine advertisements featured an odd combination of patriotic blandishments urging frugality coupled with tantalizing promises of a consumer buying frenzy as soon as V-Day arrived. An ad for Westinghouse appliances promised

The Art of Better Living . . . Let's hope it's not too far away . . . that bright new day when you'll again know the lift of living electrically. . . . At the moment, we're head over heels building essential war material. And we'll stick to that job until it is done. But when the go ahead signal flashes, you can count on Westinghouse to turn out all the fine new appliances you need to banish that "never done" feeling about housework.

Advertisement, Westinghouse, MCCALL'S, Nov. 1944, at 63.

Advertisers also wasted no time linking beauty to patriotism. An ad for Pond's

wards, consumers needed and wanted things; industry stood ready and able to provide them with the help of new technologies developed during the war. To ensure a healthy demand for the new household products, manufacturers hired the same social scientists who had urged women into the workplace during the war. But now the message was different; they exhorted women to cede the workplace to their husbands and sons, using a combination of guilt-inducing rhetoric and the promise of shiny new household objects women could buy with the last of their earnings.¹¹⁰

In *The Feminine Mystique*, Betty Friedan exposed the methods used by advertising industry motivational researchers during the postwar 1950s. She spoke with a "depth researcher," who had conducted thousands of interviews with American housewives since 1945 to determine their needs, wants, and fears; he relayed this information to advertisers and counseled them about their products and advertising campaigns.¹¹¹ He allowed Friedan to examine these reports, ask questions, and "use anything that was not confidential to a specific company."¹¹²

The researcher told Friedan advertisers found it difficult to give women a feeling of achievement through housework; nevertheless, because most of his clients were producing products for the home, they sought to keep women's creative energies directed there rather than towards the outside world.¹¹³ The researcher continued:

In a free enterprise economy, . . . we have to develop the need for new products. *And to do that we have to liberate wo-*

cold cream profiled socialite Mary Alice Maxwell, who was engaged to a West Point Cadet and sold war bonds:

Mary Alice has been an active worker in every one of Uncle Sam's War Bond Drives. Her charming smile and the soft-smooth look of her Pond's complexion prove a magnet to sales! Selling bonds is a war service many girls and women are proudly giving. Perhaps you can help this way, too. . . . She's Engaged! She's Lovely! She uses Pond's!

Advertisement, Pond's Cold Cream, *id.* at 3.

110. Manufacturers and the federal government played their part, too. Manufacturers fired women in droves once the men returned home, and the federal government ceased its daycare programs. A 1944 survey found that 61-85% of women "certainly did not want to go back to housework after the war;" however, 3 million American women quit or were fired from their jobs. WOLF, *supra* note 2, at 63-64.

111. FRIEDAN, *supra* note 48, at 198-99.

112. *Id.* at 199.

113. Friedan asked the researcher why if it was so difficult to give women a feeling of creativeness and achievement in housework, he didn't encourage them "to buy things for all they were worth, so they would have time to get out of the home and pursue truly creative goals in the outside world." *Id.* at 217. The researcher replied that they had helped women rediscover the home as an expression of creativeness. Besides, most of the manufacturers produced things which have to do with homemaking. *Id.*

men to desire these new products. We help them rediscover that homemaking is more creative than to compete with men. This can be manipulated. *We sell them what they ought to want,* speed up the unconscious, move it along. The big problem is to liberate the woman not to be afraid of what is going to happen to her, if she doesn't have to spend so much time cooking, cleaning.¹¹⁴

Friedan asked the researcher why a pie-mix manufacturer, for example, did not tell women that if they bought its brand of instant pie mix, women could use the time saved to be an astronomer. The researcher replied that:

[i]t wouldn't be too difficult A few images — the astronomer gets her man, the astronomer as the heroine, make it glamorous for a woman to be an astronomer . . . but no The client would be too frightened. He wants to sell pie mix. The woman has to want to stay in the kitchen. The manufacturer wants to intrigue her back into the kitchen — and we show him how to do it the right way.¹¹⁵

The researcher's comments reveal the supreme confidence motivational researchers and advertisers felt in their ability to sell products. Then and now, advertisers sought to increase sales by determining and then satisfying consumers' unmet psychological needs. They also created new consumer needs by making consumers dissatisfied with their current status. The techniques advertisers use to accomplish these tasks are discussed in greater detail below.

C. *Emotionally Conditioned Advertising: Satisfying Consumers' Unmet Psychological Needs*

It is impossible to look at modern advertising without realizing that the material object being sold is never enough; this indeed is the crucial cultural quality of its modern forms. . . . [I]t is clear that we have a cultural pattern in which the objects are not enough but must be validated, if only in fantasy, by association with social and personal meanings which in a different cultural pattern might be more directly available.¹¹⁶

Clearly, people want things that make their lives the way they wish they were.¹¹⁷

Products have two types of characteristics, physical and imputed.¹¹⁸ For example, the physical characteristics of a brand of shampoo are its scent, texture, and lather. Its imputed characteris-

114. *Id.* at 217-18 (emphasis added).

115. *Id.* at 218.

116. Raymond Williams, *The Magic System*, 4 NEW LEFT REV. 27, 27 (1960).

117. J. Peterman, The J. Peterman Company "Owner's Manual No. 14" catalog, Christmas 1991, at 1.

118. LEISS ET AL., *supra* note 87, at 59.

tics are determined by the way it is marketed — for a certain age group, for a female or male audience, with a “sporty,” “macho,” “sexy,” or “refined” image, and so forth.¹¹⁹ Endless combinations are possible. A shampoo can be marketed with different imputed characteristics to appeal to different market niches.¹²⁰

In the late 1960s, advertising agency psychologists conducted “psychographic” surveys of consumers in an effort to discover “‘the personality traits that they possess,’ ‘the opinions and values that they hold,’ ‘the unfulfilled psychological needs that they crave,’ and ‘the frame-of-mind during exposure to ad messages that they feel.’”¹²¹ Market researchers used the results of these tests to sort consumers into psychological categories with such labels as “Emotional Egoist,” “Dependent Dilettante,” “Rambunctious Rebel,”¹²² and “Contented Cow.”¹²³ Armed with this information, manufacturers could market a shampoo with the same physical characteristics under several different brand names, each with its own set of imputed characteristics designed to fulfill the unmet psychological needs of a targeted psychographic group.¹²⁴

American housewives were the subject of many such studies.¹²⁵ The researcher quoted above told Betty Friedan that “[p]roperly manipulated, . . . American housewives can be given the sense of identity, purpose, creativity, the self-realization, even the sexual joy they lack — by the buying of things.”¹²⁶ In particular, products had to be sold as a means to fulfill women’s desire to do creative work — “the major unfulfilled need of the modern

119. *Id.*

120. *Id.*

121. Reed & Coalson, *supra* note 88, at 743-44.

122. *Id.* at 744.

123. *Id.*

124. Reed & Coalson, *supra* note 88, at 744; LEISS ET AL., *supra* note 87, at 59.

125. During a conversation with the market researcher, Betty Friedan saw a national sample of 4,500 wives, whom the study divided into three categories: “The True Housewife Type,” who distrusts the help household appliances can provide because they may make her job obsolete, “The Career Woman,” who is “too critical,” and “The Balanced Homemaker.” The Balanced Homemaker is “from the market standpoint, the ideal type” because she has or has had some outside interests before turning to full-time homemaking, and because she “readily accepts” the help of mechanical appliances yet does not expect them to do the entire job for her. The study concluded:

Since the Balanced Homemaker represented the market with the greatest future potential, it would be to the advantage of the appliance manufacturer to make more and more women aware of the desirability of belonging to this group. . . . *The art of good homemaking should be the goal of every normal woman.*

FRIEDAN, *supra* note 48, at 199-201 (emphasis added).

126. *Id.* at 199.

housewife."¹²⁷ For example, the researcher wrote in one report that "[e]very effort must be made to sell X Mix, as a base upon which the woman's creative effort is used."¹²⁸

During the 1950s, manufacturers had a harder time sustaining the illusion that women could satisfy their psychological needs exclusively through their home and family. A 1957 survey seized upon women's growing dissatisfaction with their limited role and used it as a way to sell more products:

The family is not always the psychological pot of gold at the end of the rainbow of promise of modern life as it has sometimes been represented. In fact, psychological demands are being made upon the family today which it cannot fulfill. . . . Fortunately for the producers and advertisers of America (*and also for the family and the psychological well-being of our citizens*) much of this gap may be filled, and is being filled, by the acquisition of consumer goods.

Hundreds of products fulfill a whole set of psychological functions that producers and advertisers should know of and use in the development of more effective sales approaches. *Just as producing once served as an outlet for social tension, now consumption serves the same purpose.*¹²⁹

And, "[d]eeply set in human nature is the need to have a meaningful place in a group that strives for meaningful social goals. . . . The question is: Can your product fill this gap?"¹³⁰ Thus, rather than attempt to reconceptualize and broaden women's narrow role, researchers and advertisers capitalized on women's growing discontent to serve the advertisers' ends.

Although advertisers still market household products as a way to meet consumers' deeper unfulfilled needs,¹³¹ today's adver-

127. *Id.* at 202.

128. *Id.* Some advertisers embraced this advice wholeheartedly. An ad for Campbell's soups enthused: "Of course you'll most often serve these soups as *soup*! Appetite-tempting, flavor-pleasing. Perhaps with some clever little garnish. But don't stop there! You're a woman — and imaginative! Cream soups invite you to *compose* with them. . . ." Advertisement, Campbell's Soup, LADIES' HOME J., May 1953, at 71.

An ad by the Pineapple Growers Association peddled pineapple as follows:

What *fun* it is to fix a flavor surprise with a can of Pineapple! Broiled or baked or juice by the glass . . . with salads or desserts or meat . . . canned Pineapple brings happy eating. . . . You'll find it a good idea to keep a 'PINEAPPLE SHELF' in your kitchen . . . and stock it two or three cans deep with *all 5 forms* of canned Pineapple . . .

Advertisement, Pineapple Growers Association, *id.* at 103.

129. FRIEDAN, *supra* note 48, at 215 (emphasis added).

130. *Id.* at 216.

131. A none-too-subtle example is a recent advertisement for a Sunbeam electric blanket that promises: "Finally, something that responds to your needs in bed." Advertisement, Sunbeam Warming Blanket, GOOD HOUSEKEEPING, Dec. 1991, at 116.

tisers are more likely to promise women that they can satisfy unmet psychological needs by buying a particular cosmetic product or service. Naomi Wolf describes these psychological needs as the desire to be safe from and invulnerable to stress, assault, and aggression,¹³² the desire for equality¹³³ (I include the related desires for autonomy and independence¹³⁴ and control over one's reproductive choices),¹³⁵ the desire for nurture and support¹³⁶ (I include the desire for some time to oneself),¹³⁷ the desire for forbidden food:

132. WOLF, *supra* note 2, at 114-16. Wolf provides these examples: Charles of the Ritz: "A protective barrier against external aggressors;" Clientele: "Assaulted by age and ultra-violet exposure. . . . A protective barrier against the chemical and physical assaults of the environment . . . Discover your best . . . defense;" L'Oreal: "Under attack every day of its life . . . an essential barrier . . . helps it to defend itself." *Id.* at 114-15. Additional examples include Pantene shampoo: ". . . [E]ven before you expose your hair to the outside world, make sure you're covered. . . . [Y]our hair has the coverage it needs to survive . . . beautifully." "Think of it as insurance for your hair;" Advertisement, Pantene, WORKING WOMAN, Jan. 1991, at 89. Origins hand cream: "When hands are 'gloved' they're spared . . . constant environmental assaults . . . give dry, rough skin the upper hand against abuse." Advertisement, Origins, ALLURE, Jan. 1992, at 15.

133. WOLF, *supra* note 2, at 116. For example, Vaseline Intensive Care lotion promises: "Finally . . . equal treatment . . . the treatment they deserve." *Id.* An ad for Maidenform lingerie features the torsos of several women in costumes from centuries past, replete with corsets, stays, and bustles, and asks: "Isn't it nice that women are not pushed around so much anymore?" Advertisement, Maidenform, SELF, Sept. 1992, at 79. An ad for Toyota trucks promises "Equal work, equal play. Today, women aren't only working hard, they're playing hard. Consequently, they're discovering the liberating versatility . . . of Toyota pickups. . . . [T]here'll be no stopping you in a Toyota pickup. Because when you want to spread your wings, there's just no equal." Advertisement, Toyota, GLAMOUR, Mar. 1992, at 9.

134. Examples include an ad for the American Express Card that features a woman eyeing a sculpture in an art gallery: "Buy what you want to buy. And no bankcard is going to stop you with a limit set long ago. You know what you can afford. You just want to be trusted. You're a responsible person. Most of the time." Advertisement, American Express, L.A. TIMES MAG., Dec. 8, 1991, at 27. Lady Stetson perfume offers "A declaration of independence." Advertisement, Lady Stetson, GOOD HOUSEKEEPING, Dec. 1991, at 62.

135. In light of the fact that many Americans favor freedom of choice, a right being eroded on a daily basis, it cannot be a coincidence that advertisers have begun to proclaim that their product or service offers consumers a "choice." A television commercial for Equal sweetener features actress Cher earnestly telling us: "When I sit down to make a choice, I choose Equal." *Equal* (television commercial, broadcast in Los Angeles, early 1992). A billboard for an upscale Los Angeles shopping mall promises shoppers "Choice." Billboard, Century City Shopping Mall, West Los Angeles, late 1991 or early 1992.

136. WOLF, *supra* note 2, at 118-19. Product names include "Empathy" shampoo, Clairol's "Loving Care" haircolor, "Kind" cleanser, "Intensive Care" by Johnson & Johnson, and "Caress" soap. *Id.* at 119. Cover Girl Moisturewear Make-up provides skin "[w]ith the nourishing moisture skin needs to thrive. To look and feel soft, silkened, beautiful." Advertisement, Cover Girl Moisturewear Makeup, WORKING WOMAN, Jan. 1991, at 5.

137. Examples include Eve Lights cigarettes: "It's not just a cigarette. It's a few minutes of your own;" Advertisement, Eve Lights, LADIES' HOME J., Jan. 1992, at 13. Lipton Tea: "In your hands it can change the tempo, turn the tide or shift the

"[t]he hungry woman allows herself only on the outside what she truly desires for the inside,"¹³⁸ and finally, I add the desire for a clean environment.¹³⁹ Advertisers promise that cosmetics will meet women's needs because they know that frequently these needs are not met in women's daily lives. Thus, ad copy is actually "not about the product, but is an impressively accurate portrait of the hidden demons of our time."¹⁴⁰

By appealing to women's unmet needs and frustration over their status in society, and by reassuring women that autonomy, safety, and nurturing can be had for the price of a product, advertisers deflate, ignore, trivialize, and mock women's real concerns.¹⁴¹ Advertisers have appropriated the language of feminism to suit their own ends; "[t]he passive consumer is reissued as an ersatz feminist, exercising her 'right' to buy products, making her own 'choices' at the checkout counter."¹⁴²

Advertisers also recognize that the less necessary or useful the product, the more necessary it is to "create desire" for the product by pairing it with the satisfaction or appeasement of certain emotions.¹⁴³ Fear and guilt are favorites; advertisements create fear- or guilt-inducing situations, and promise that the purchase of their products will provide relief.¹⁴⁴ But advertisers

scene. A welcome break from the action . . . [A]lways been the balm for life's little ups and downs." Advertisement, Lipton Tea, *Id.* at 127.

138. WOLF, *supra* note 2, at 118. Product names include "Milk 'n Honey, . . . Wheat Germ 'n Honey, Max Factor 2000 Calorie Mascara, Skin Food, . . . Mousse, Caviare." *Id.*

139. Bonne Bell Ten-O-Six astringent: "Teens have taken the fight against dirt and pollution into their own hands. It's a dirty world out there. And if you want to keep your face clean and clear and healthy looking, you have to battle the elements yourself. Ten-O-Six is the ultimate pollution-fighter." Advertisement, Bonne Bell Ten-O-Six, SEVENTEEN, Feb. 1992, at 24-25.

140. WOLF, *supra* note 2, at 117.

141. The Virginia Slims ads are notorious examples of this phenomenon. The ads dismiss concerns about women's rights by equating true independence with the "right" to smoke. So-called "radical feminism" is also neutralized and rendered less threatening by dressing the model in a cute outfit and reassuring her that she has "come a long way, Baby." See Moon, *supra* note 89, at 110-11 n.107. Tobacco companies have long tried to link women's independence with the "right" to smoke. In 1929, Lucky Strikes were touted as "torches of liberty for women." SCHUDSON, *supra* note 103, at 196-97.

More recently, a Michelob beer ad promises that "You *can* have it all" — but "all" only means a less-filling beer. FALUDI, *supra* note 1, at 71.

142. FALUDI, *supra* note 1, at 71.

143. Reed & Coalson, *supra* note 88, at 750 n.68.

144. An early example is a pair of ads for "Family Health, the Safety Soap" in the May 6 and July 27, 1939 issues of the *Picture Post*: "a mere scratch . . . a tiny trace of dirt . . . a festering wound . . . THE DREAD OF AMPUTATION . . . why risk it?" And, "a mere midge bite . . . a trace of unseen dirt . . . burning pain . . . blood poisoning . . . and then the SURGEON'S KNIFE!" Quoted in MILLUM, *supra* note 72, at 14.

must be careful. Betty Friedan wrote about a study which discussed marketing plans for instant cake mix. An ad which promised that X Mix would allow the housewife to

"make that cake the easiest, laziest way there is" evoked a "negative response" in American housewives — it hit too close to their "underlying guilt." ("Since they never feel that they are really exerting sufficient effort, it is certainly wrong to tell them that baking with X Mix is the lazy way.")¹⁴⁵

The report counseled that there were other ways to evoke guilt feelings to sell X Mix:

It might be possible to suggest through advertising that not to take advantage of all 12 uses of X Mix is to limit your efforts to give pleasure to your family. A transfer of guilt might be achieved. Rather than feeling guilty about using X Mix for dessert food, the woman would be made to feel guilty if she doesn't take advantage of this opportunity to give her family 12 different and delicious treats. "Don't waste your skill; don't limit yourself."¹⁴⁶

Today, advertisers continue to use fear to motivate consumers to buy products and services.¹⁴⁷ For women, advertisements attempt to create new fears or appeal to existing ones such as the fear of aging,¹⁴⁸ the fear of violence,¹⁴⁹ the fear of poverty and eco-

145. FRIEDAN, *supra* note 48, at 203.

146. *Id.* For examples, see *supra* note 128.

147. Rather predictably, a new genre of ads attempts to create guilt by blaming women's success (and by extension, feminism) for flaws in their appearance: "Is success taking its toll on your face?" (Orlane cosmetics), and "The busy, bustling life of modern women means that unfortunately they do not take care of their legs." (G.M. Collin). *Quoted in* WOLF, *supra* note 2, at 116.

148. Ultima II cosmetics: "Premature Aging: Don't Let It Happen to You . . . it's every skin-conscious woman's worst nightmare come true." *Quoted in* FALUDI, *supra* note 1, at 209. And Clairol Loving Care Haircolor: "Never go gray! Never lose your looks to gray. . . . Never have less than soft and shining color — because even one gray hair is too many." Advertisement, Clairol Loving Care Haircolor, GOOD HOUSEKEEPING, Dec. 1991, at inside front cover.

Advertising copywriter Shirley Polykoff revealed in her autobiography how she coupled women's fear of aging with their guilt over not doing enough to satisfy their husbands. In an ad for Clairol Loving Care Haircolor, she featured a smiling, middle-aged man with the caption, "Makes your husband feel younger too, just to look at you!" Polykoff wrote that it was "important to 'reawaken . . . dissatisfactions' women feel about their gray hair." Rather than simply appealing to a woman's vanity, Polykoff wrote that "You can see how this could practically turn the act of hair coloring into a selfless little something one did for one's loved ones." *Quoted in* SCHUDSON, *supra* note 103, at 140.

149. Shell Motorist Club: "Ask any woman who drives alone. She drives with a tiny nagging fear after dark. *In case of a breakdown, how soon will help arrive?* Shell Motorist Club puts you in control." Advertisement, Shell Motorist Club, WORKING WOMAN, Jan. 1991, at 37. Smith & Wesson Handguns: "Things that go bump in the night aren't always your imagination." And another: "Are you letting yourself in for an unpleasant surprise?" *Quoted in* Debra Dobray & Arthur J. Waldrop, *Regulating Handgun Advertising Directed at Women*, 12 WHITTIER L. REV. 113, 114 n.8 (1991).

nomic uncertainty,¹⁵⁰ and of course the fear of remaining single.¹⁵¹

D. *Emotion for Sale*

Advertising doesn't always mirror how people are acting, but how they're dreaming. . . . In a sense, what we're doing is wrapping up your emotions and selling them back to you.¹⁵²

Closely related to the discussion above is the idea that the thing purchased substitutes for feelings and emotions lacking, or perceived as lacking, in consumers' lives today. One can come "alive with pleasure" by smoking Newport cigarettes.¹⁵³ One can buy Camay soap, which offers "more than 3 new fragrances: three new feelings ("softly romantic," "fresh, clean," or "exciting, sexy")."¹⁵⁴ Sometimes no specific feeling is named; it is enough that the product offers a "feeling" or an "emotion" along with its more concrete characteristics.¹⁵⁵ According to some advertisements, an object also may transmit its owner's feelings and emotions to the outside world.¹⁵⁶

150. Neutrogena Moisture: "Giving your skin a softer, healthier look and feel — and you, a smoother future to hold on to." Advertisement, Neutrogena Moisture, VOGUE, Nov. 1991, at 109.

151. A truly baffling television commercial for Sheba cat food seems intent upon making single women look pathetic. The ad features an apparently single and successful woman getting dressed up to have a formal dinner date at home with her cat. The song accompanying the ad suggests that the cat deserves Sheba because it is the only being that cares about this woman:

"Just when I need someone to love me, Just when I think the world's too cold . . . There you are, right there beside me, There you are in my heart, standing by me. Once again, there you are."

Sheba Cat Food (television commercial, broadcast on KTTV, Channel 11, Los Angeles, Oct. 24, 1992).

152. Advertising executive Jerry Goodis, quoted in LEISS ET AL., *supra* note 87, at 152.

153. Advertisement, Newport Cigarettes, GLAMOUR, Jan. 1992, at 79.

154. Advertisement, Camay, PARENTS MAG., Dec. 1991, at 4.

155. For example, Princess Marcella Borghese cosmetics offers "Emotional Colour." Advertisement, Princess Marcella Borghese, GLAMOUR, Dec. 1991, at 55. Gold is advertised as follows: "How do you symbolize a feeling? . . . Gold has the power to touch your deepest emotions. Nothing but gold is as special as you are. . . . Nothing makes you feel as good as gold." Advertisement, Ben Bridge Jewelers, VOGUE, Nov. 1991, at 89-91. Ford Escort: "Have you wanted a small car that could be driven with feeling . . . ?" Advertisement, Ford Escort, GLAMOUR, Dec. 1991, at inside front cover. Patek Philippe watches:

A watch by Patek Philippe goes beyond measuring hours. The sheer quality you sense when you first place it on your wrist will be a memorable experience. The elegance and beauty of its design are sure to enhance any occasion. Even the simple joy of owning one can add something to your day.

Advertisement, Patek Philippe, VOGUE, Nov. 1991, at 49.

156. Gold: "There's a piece of gold jewelry for your every mood. Feeling bold? Slip into a textured bangle. Feeling demure? Dangle your heart on a chain." Advertisement, Ben Bridge Jewelers, *supra* note 155, at 91.

Emotion is not all that is for sale. Some ads promise transformation, essentially selling the consumer a vision of herself, only better.¹⁵⁷ Others claim that purchasing a product will imbue the consumer with self-knowledge.¹⁵⁸ Friedan reported that market researchers told a sterling silver manufacturer: "Reassure her that only with sterling can she be fully secure in her new role . . . it symbolizes her success as a modern woman. Above all, dramatize the fun and pride that derive from the job of cleaning silver."¹⁵⁹ Silver can also satisfy the homemaker's need for identity: "Suggest that it becomes truly a part of *you*, reflecting *you*. Do not be afraid to suggest mystically that sterling will adapt itself to any house and any person."¹⁶⁰

Thus, advertising promises that consumption will give to consumers the emotion, meaning, social- and self-identity that may be lacking in their lives. Effective advertisements are those that clearly answer the question: "Who is the person I become in the process of consumption?"¹⁶¹

These ads show how advertisers create demand for their products by associating an item with a desirable image. However, these images may not be entirely truthful.

E. "Truth" in Advertising

Due to the flood of advertising images and the expense of buying advertising space or time, advertisers must make their points quickly. To do so, the miniature world they portray must be readily familiar to the consumer, so that she will instantly recognize the image being sold along with the advertiser's product. For example, a recent television commercial shows a warm holiday scene in which a homemaker is surrounded by her loving and approving family, which is showering her with affection and grati-

157. Clairol Nice 'n Easy haircolor promises a natural-looking result: "You, only better." Advertisement, Clairol Nice 'n Easy, VOGUE, Oct. 1990, at 163.

An early ad for Cannon towels promised an amazing transformation for the price of a towel: "BEFORE: It's a dim, dull day outdoors. You feel a bit flat and hopeless. . . . Then, . . . a quick trip downtown, an armful of gorgeous new Cannon towels AFTER: You'll take even more baths, be healthier, happier and still more beautiful when you have such charming helpers. Cannon towels . . . assist no little in keeping you in top-flight condition. Physically! Spiritually! . . . And, they do these good things for almost infinitesimal wages!" Advertisement, Cannon towels, HARPER'S BAZAAR, Feb. 1938, at inside front cover.

158. Patek Philippe watches: "[A] Patek Philippe doesn't just tell you the time. It tells you something about yourself." Advertisement, Patek Philippe, *supra* note 155, at 49.

159. FRIEDAN, *supra* note 48, at 211.

160. *Id.*

161. LEISS ET AL., *supra* note 87, at 234.

tude because she has baked cookies with real butter.¹⁶² Within the brief timespan of this commercial, the consumer associates butter with the satisfaction of her basic desire for love and approval.

Something else is happening in this scene. The ad's "world view" is instantly familiar to us; it has to be or we would not make the desired associations between the product and its promised fulfillment of our needs. In effect, the ad creates a "'truncated' view of reality in which we lump things into broad general categories because we have no specific details about them."¹⁶³ We do the same in our everyday lives as a way of digesting and understanding the vast amounts of information with which we are bombarded.¹⁶⁴ On the one hand, we must collapse and categorize information if we are even to begin to understand the world; on the other hand, if we categorize information about people and things too readily, we may never move beyond seeing the world in stereotypical ways.

The same problem occurs in advertisements. The shorthand version of reality presented in the butter ad is only one possible version of true reality, or only one part of the real story. In real life, the homemaker's family may be showering her with praise because she has just published a novel, or because they love her regardless of whether she bakes real-butter cookies. In real life, the homemaker's family might grab the plate of cookies without a word of gratitude and head off to watch a football game, leaving her alone in the kitchen with her dirty pots and pans. Thus, ads do not simply reflect reality. They select, edit, and elide pieces of reality from everyday life: "much is included, but also much is omitted. By choosing only some things and by reintegrating them into the meaning system of advertising, ads *create new meanings*."¹⁶⁵ In so doing, ads present their version of reality as the only one. In the world of the butter ad, every family will love the mother who bakes real-butter cookies, and every mother will know that baking real-butter cookies is the only way to win her family's love. Consequently, a woman will want to gain her family's affection in this way. The novel can wait. Thus, "advertising first raids the ceremonial practices in our daily existence for its material, and then returns them to us in exaggerated forms, accentuating many of their least attractive features."¹⁶⁶

Advertisers present their version of reality as the absolute

162. *Butter* (television commercial, broadcast in Los Angeles, late 1991).

163. LEISS ET AL., *supra* note 87, at 166.

164. Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning With Unconscious Racism*, 39 STAN. L. REV. 317, 337 (1987).

165. LEISS ET AL., *supra* note 87, at 169.

166. *Id.*

and only truth. In the universe of some advertisements, for example, it is unquestionably normal for women to be concerned about "minute imperfections" in their eyelashes,¹⁶⁷ to fret about "not being fresh,"¹⁶⁸ to want to choose from among eight nail-improvement products for "just the problems [they] have,"¹⁶⁹ and to want to "do whatever [they] can to make [their] hair look good"¹⁷⁰ — all in pursuit of "perfection." These ads assume the truth in what they say — they assume, for instance, that women worry about minute imperfections in their eyelashes without proposing that women should do so. If an advertiser were to offer such a proposition ("You should be terribly worried about the minute imperfections in your eyelashes!") women would reject it as ridiculous. It is much easier to silence dissension by assuming the truth than by stating the truth.¹⁷¹

This Part has examined the ways advertisers persuade consumers to heed ad messages. These techniques, which include stereotyping, playing upon feelings of guilt or inadequacy, and avoiding the use of factual propositions, exacerbate the substantive harms discussed in Part II precisely because the techniques are often subtle even if the message is not. By assuming that all women will do anything to look perfect without explicitly stating that women must do so, ads subvert attempts to argue with their messages and reinforce the notion that a woman who refuses to relentlessly pursue perfection is a freak and a failure.

167. Advertisement, Lancome Definicils, VOGUE, Nov. 1991, at 71.

168. Massengill "feminine wash:" "Mom, do you ever get that not-so-fresh feeling?" Massengill (television commercial, broadcast in Los Angeles, in 1991). Carefree Panty Shields: "Feel fresh every day / Think Pink / Carefree. A fresh feeling is a fabulous feeling! Carefree makes it easy to feel so fresh and clean anytime, anywhere. Just Think Pink! . . . [G]et that great, fresh feeling." Advertisement, Carefree Panty Shields, WORKING WOMAN, Jan. 1991, at 90.

Ads like these lend credence to a comment from a Canadian advertising executive:

By and large ninety percent of TV ads are badly done. Words are put in people's mouths that people don't say. They praise the product. There's a lack of proportion and people's human integrity is attacked. I'm sickened by most of the ads I see and am ashamed to be in the business.

Quoted in LEISS ET AL., *supra* note 87, at 133.

169. Cover Girl Salon Solutions Customized Nail Care: "For hands that have nothing to hide." Advertisement, Cover Girl, VOGUE, Nov. 1991, at 50.

170. *Head & Shoulders shampoo*, *supra* note 50.

171. Judith Williamson observed that "[t]here is a big difference between saying something is true (which admits the potential of the opposite), and saying that the truth of something *need not be questioned* — which admits nothing, and claims nothing either." WILLIAMSON, *supra* note 22, at 41.

IV. Arguments for Regulation

In Parts II and III, I argued that the substance of ad messages harms women and that advertising methods harm all consumers. In this Part, I argue that advertising should be regulated to ameliorate these harms. Before discussing the arguments for regulation, however, it is necessary to address censorship and paternalism concerns.

Content regulation raises the concern that people may make value judgments about the benefits and harms of advertising — as did Part II — depending upon how they view the product and the message. It is difficult to draw a line which separates “good” products from “bad” products and “good” messages from “bad” messages because each person draws the line in a different place. One way to avoid that problem is to regulate advertising methods and thereby bypass these line-drawing problems. This approach may provide more persuasive justification for regulating advertising.

Any discussion about the merits of advertising regulation must address the issues of censorship and paternalism. When someone objects to the content of speech, whether in music, pornography, or advertising, she or he can be accused of censorship.¹⁷² Free speech absolutists who argue that free speech rights deserve more protection than other constitutional rights offer two rationales for opposing content regulations. First, they do not want government or someone else to decide for them which speech is harmful; Justice Harlan’s statement that “one man’s vulgarity is another’s lyric”¹⁷³ is often cited for this principle. They worry, with some justification, that a protectionist stance could be used against them. For example, they argue less powerful groups who are the targets of hate speech should advocate an absolute free speech policy precisely because without it, their speech will be the

172. Currently, those who claim to have been harmed by sexist or racist hate speech may find themselves dismissively labeled “Politically Correct.” Poet Lorna Dee Cervantes offers a retort in the context of racism:

everywhere the crosses are burning,
sharp-shooting goose-steppers around every corner,
there are snipers in the schools . . .
(I know you don’t believe this.
You think this is nothing
but faddish exaggeration. But they
are not shooting at you.)

Lorna Dee Cervantes, *Poem for the Young White Man Who Asked Me How I, An Intelligent Well-Read Person Could Believe in the War Between the Races*, in MARTA SANCHEZ, *CONTEMPORARY CHICANA POETRY* 90 (1985).

173. *Cohen v. California*, 403 U.S. 15, 25 (1971).

first to be quelled.¹⁷⁴

The second rationale is that all ideas, even harmful or "wrong" ones, belong in the "marketplace of ideas," where, after vigorous and rational debate, the truth will emerge and wrong or bad ideas will be put down. The problem of paternalism is linked to this rationale. If a woman does not like a product, or objects to the way women are portrayed in an ad, can't she simply reject that product or image? The best way for her to exercise her free choice may be to have all the information available in the "marketplace" so she can extract the good products and portrayals from the bad. To argue otherwise is to suggest that women are irrational creatures who cannot be trusted to know what is best for them, and that someone else should do the thinking for them.¹⁷⁵ Any proposal to regulate advertising must cross this theoretical hurdle.

The following sections offer four arguments for regulation which respond to these anti-censorship and anti-paternalism arguments. The first two arguments pertain to the psychological advertising techniques discussed above. I argue that advertising should be regulated because ads use irrational methods of persuasion and because ad messages are overpromoted; thus, the advertisers' marketplace is antithetical to a true "marketplace of ideas." The third argument discusses advertising's third-party effects, and argues that it is unfair to allow men to see and believe whatever they want about women if these beliefs threaten women's safety and autonomy. The fourth argument urges that consumers should not be required to exert their utmost effort to resist harmful messages before subjecting the ads to regulation.

174. In *Beauharnais v. Illinois*, 343 U.S. 250 (1952), the Court affirmed *Beauharnais's* conviction under an Illinois statute that criminalized the dissemination of racist literature. In a strongly worded dissent, Justice Black wrote: "If there be minority groups who hail this holding as their victory, they might consider the possible relevancy of this ancient remark: 'Another such victory and I am undone.'" *Id.* at 275 (Black, J., dissenting).

A timely example is the uneasy alliance among some feminists and some conservative religious groups who seek to ban pornography for vastly different reasons. If religious fundamentalists were to ascend to power, pornography would no doubt be banned, but at a very high cost to women's rights of free speech and self-determination. For a chilling vision of such a future, see MARGARET ATWOOD, *THE HANDMAID'S TALE* (1985).

175. A current example of the paternalism debate is the furor surrounding the FDA's decision to restrict the use of silicone breast implants. Surgeons argued that removing the implants from the market would deprive women of their "free choice" to have the surgery done. Given the tremendous social pressure on women to have large breasts (see *supra* note 27, in which cosmetic surgeons call small breasts "diseased" and "deformed"), one wonders how "free" the surgeons want such a choice to be.

A. *Argument #1: Ads Circumvent Rational Thought Processes*

Propositional advertisements invite reflection and debate; their express claims encourage the audience to consider and question their assertions. Today's advertisers, however, make no such assertions. Instead, they create an image for their products by associating them with words or pictures which often bear no intrinsic relationship to the products.¹⁷⁶ A symbol is linked to the product by its juxtaposition with the product in the advertisement; it imbues the product with whatever meaning the culture has attached to the symbol.¹⁷⁷ For example, the cowboy in the Marlboro cigarette ads symbolizes American cultural values of "masculinity, strength, freedom, [and] adventure."¹⁷⁸ The cigarettes featured in the ad come to be associated with the values inherent in the symbol. When the consumer buys a pack of Marlboros, he or she acquires the values as well.¹⁷⁹ In order for the transfer of values to take place, the symbol must already be significant to the audience; consumers must know what the Marlboro Man "stands for."¹⁸⁰

This type of advertising, variously called "image," "lifestyle,"¹⁸¹ or "emotionally conditioned"¹⁸² advertising, may actually be more effective *because* it makes no express claims which might engage the attention of the audience: "[T]he commercial disdains exposition, for that takes time and invites argument. It is a very bad commercial indeed that engages the viewer in wondering about the validity of the point being made."¹⁸³ Instead, image advertising discourages conscious reflection. The advertiser "tries to get the viewer to act for reasons of which she/he is not fully conscious"¹⁸⁴ Over time, repeated associations of a product and an image will alter the consumer's perception of the product "below the threshold of conscious or critical attention."¹⁸⁵ Consumers might flock to buy an advertised brand of toothpaste because its ads implicitly promise popularity and sex appeal, not because it is cheaper or better than other brands. This effect circumvents consumers' rational thought processes.

The way consumers are exposed to advertising also bypasses

176. LEISS ET AL., *supra* note 87, at 60.

177. *Id.* at 155.

178. Moon, *supra* note 89, at 110.

179. *Id.* at 110-11.

180. LEISS ET AL., *supra* note 87, at 155.

181. *See, e.g.*, Moon, *supra* note 89.

182. *See, e.g.*, Reed & Coalson, *supra* note 88.

183. NEIL POSTMAN, *AMUSING OURSELVES TO DEATH* 131 (1986).

184. Moon, *supra* note 89, at 123.

185. Reed & Coalson, *supra* note 88, at 747.

their conscious thought processes. People often use the television and radio as "surrounds" while they eat, drive, do housework, or read.¹⁸⁶ They often absently flip channels or magazine pages while engaged in other tasks as well. In these situations, consumers do not give the messages any conscious or critical attention.¹⁸⁷ Research on the best method to change attitudes has shown that:

the most favorable condition for affecting someone's attitude involves a source the listener depends on or believes in, and yet one he does not actively or critically attend. . . . A commercial . . . is harder to reject since there is no explicit message bombarding the listener. Also, the receiver or listener is more likely to retain the effect of the commercial since he does not have to remember anything.¹⁸⁸

In addition, electronic media advertising becomes "more effective in affecting an audience's purchasing behavior the less importance the audience attaches to it."¹⁸⁹ Thus, image advertising, which is less likely to engage critical thought processes than propositional advertising, may actually be more effective in leading consumers to the point of purchase.

1. Evaluating the Irrationality Argument

Advertising techniques that discourage rational choice raise the concern that ads will cause harmful personal and societal effects apart from concerns about the products being sold. One such concern is anti-rational advertising's potential to erode individual autonomy. Such advertising may limit consumers' autonomy by thwarting their ability to act according to their true needs and desires. Consumers exposed for years to the same few portrayals of themselves and others may begin to adopt advertising images as true or ideal, without questioning their desirability or truthfulness. Individuals or groups, because they are lazy or because they are overcome by relentless promotion of the same few images, may fail to make the effort to determine a "true" vision of themselves, instead preferring to accept the images offered up to them.

According to John Milton and other proponents of classical freedom of expression doctrine, humans are rational creatures able to arrive at the absolute truth through reasoned analysis and debate.¹⁹⁰ Classical theorists claim, however, that the use of lan-

186. *Id.* at 748.

187. *Id.*

188. TONY SCHWARTZ, *THE RESPONSIVE CHORD* 76-77 (1973).

189. Reed & Coalson, *supra* note 88, at 750 & n.68.

190. Moon, *supra* note 89, at 82. John Milton wrote that "God has trusted man 'with the gift of reason to be his own chooser.'" John Milton, *Areopagitica* 19 (New York, A.M.S. Press, 1971), *quoted in id.* at 83.

guage to deceive or manipulate is "an abuse of the process of communication, as a distortion of the exercise of natural reason."¹⁹¹ While humans may not be purely rational creatures, our ability to communicate, reflect, debate, persuade, and be persuaded is crucial to the development of our autonomy; it gives us control over our own selves, our view of the world, and our place in it.¹⁹² Advertising interferes with our control over our individual reasoning processes and may limit our autonomy by discouraging awareness and understanding of ourselves and our place in society.

One commentator, David Strauss, posits a case in which "A lies to B in order to get B to do what A wants her to do."¹⁹³ For example, A might say or imply to B that A's brand of shampoo is markedly better than other brands, and that B will become a different, more desirable person if she buys A's brand. Strauss argues that such deception is "morally wrong . . . in part because it is disrespectful to treat B in this way."¹⁹⁴ Rather than treating B as a person, A has treated B as an instrument of A's will by exerting control over her. A threatens B's autonomy by exerting "deliberate efforts to make [B] do not what [B] wants but what [A] — the liar or coercer — wants."¹⁹⁵

Advertising methods are analogous to lying in some ways; advertisers can manipulate consumers by lying to them, withholding opposing arguments, and distorting the truth. However, it is not clear that advertisers' use of emotional appeals harms consumers to the same extent that lying does. Perhaps the harm is more serious if A manipulates B for A's benefit rather than B's. In the case of advertising, we know that advertiser A will always be self-interested. But sometimes A may want to benefit consumer B as well. If A uses emotional appeals to induce B to buy A's new toothpaste, is B harmed if the toothpaste turns out to be better or cheaper than its competitors? In this example, both A and B benefit. If we change the example to cigarettes, our answer is likely to change. Likewise, if A constantly promotes images of women who will go to any lengths to look beautiful, and thereby manipulates B into buying mascara that will correct "minute imperfections" in her eyelashes¹⁹⁶ (with the corollary that A has perhaps manipulated B

191. *Id.* at 87.

192. *Id.* at 93.

193. David A. Strauss, *Persuasion, Autonomy, and Freedom of Expression*, 91 COLUM. L. REV. 334, 354 (1991).

194. *Id.*

195. *Id.*

196. See *supra* note 167.

into even caring about alleged "minute imperfections"), it is harder to see how B benefits.

This analysis shows that it is difficult to separate the substance of advertisements from the advertising techniques used to present the substance. To the extent that such techniques manipulate consumers into desiring a "good" product or service, it is harder to label those techniques "bad," or to equate them with Strauss' example of outright lying. The reverse holds true for products we deem "bad." Regulation is justified if ads lie or manipulate consumers to the point that the ads diminish individuals' ability to pursue their own ends or decide what those ends might be. Regulation is anti-paternalistic if it works to increase consumers' autonomy and self-determination.

However, criticism of the irrationality argument for regulation does not end here. First, it may be impossible to distinguish between "rational" and "irrational" methods of persuasion. Advertising by nature is not a true dialogue between equals because there is no give and take between speakers and recipients. Therefore, the "rational" method of persuasion envisioned by adherents of classical freedom of expression doctrine is unworkable in the advertising context.

Moreover, consumers may not want a purely rational method of persuasion; they may prefer to be persuaded by advertising despite its irrationality. Staffan Linder, a Swedish economist, argues that when time is scarce, it is rational for consumers to want to be persuaded because it would be irrational for them to spend all their leisure time comparison-shopping.¹⁹⁷ When information is incomplete, consumers are in a position to be persuaded by irrational means. They may want to be persuaded quickly so that they can justify their purchase and then have some time left over to enjoy it.¹⁹⁸

At other times a rational person may want to purchase an item on impulse or on the basis of irrational desires. Indeed, sometimes a product can only be sold by appealing to a customer's emotions; appeals to reason do not enter the picture. For example, a reader is unlikely to purchase a novel on the basis of its cost per page or other "rational" factors; a reader buys a novel — frequently on impulse — on the basis of some intangible appeal which cannot be analyzed. In cases like this, weighing pros and cons may be impossible, or may be "intrinsically undesirable be-

197. LEISS ET AL., *supra* note 87, at 40.

198. *Id.* at 41. Perhaps for this reason, 88% of consumers polled in a 1980 study believed that "advertising is essential." SCHUDSON, *supra* note 103, at 110.

cause it detracts from the quality of the experience."¹⁹⁹

In short, a criticism of manipulative or irrational methods of persuasion surmounts certain problems of speech regulation but not others. It is less vulnerable to charges of censorship than regulating the substance of ad messages because it does not criticize (nor seek to eliminate) particular messages, but to regulate certain objectionable methods.

B. Argument #2: Ads Overpromote the Same Few Images to the Exclusion of All Others

We are bombarded with 400 to 3000 advertising messages every day.²⁰⁰ Ads comprise sixty percent of most magazine content.²⁰¹ The sheer volume of advertisements makes it likely that many ad messages and images get through to readers, especially since ads are designed to work on a subconscious level and are absorbed at that level. The cumulative effect of these messages is powerful and convincing in ways that isolated messages are not.²⁰² This cumulative effect amounts to "overpromotion," which can take the form of a one-sided portrayal of either a product or an image.

A product may be considered overpromoted when it is advertised so frequently and aggressively that the ads overcome consumers' awareness of negative aspects of the product.²⁰³ The tobacco industry, which spends \$2.5 billion each year to promote its products,²⁰⁴ is an obvious example. The tobacco industry's aggressive advertising campaign nullifies the effectiveness of the mandatory warnings on cigarette packages and in print ads. While

199. Strauss, *supra* note 193, at 367 n.78.

200. MOOG, *supra* note 73, at 16.

201. However, some magazines recently have been forced to increase their editorial content to compensate for dwindling sales of ad space in these recessionary times. Linda Grant, *Hard Times*, L.A. TIMES MAG., Nov. 3, 1991, at 16, 16.

202. [E]xcessive exposure [to television commercials] increases both the opportunity for and the probability of television advertising affecting the average viewer. When a particular happening is viewed as a single "discrete event" the influence on the viewer is negligible. It is only when many of these "subtle discrete events" are viewed that there is a cumulative effect on the viewer.

David M. Axelrad, Note, *Ring Around the Collar - Chain Around Her Neck: A Proposal to Monitor Sex Role Stereotyping in Television Advertising*, 28 HASTINGS L.J. 149, 177-78 (1976) (quoting Arthur J. Silverstein & Rebecca Silverstein, *The Portrayal of Women in Television Advertising*, 27 FED. COM. B.J. 71, 73 (1974)).

203. See Craswell, *supra* note 88, at 147-48 (discussing the concern of the FTC and the Senate Commerce Committee about the tobacco industry's massive advertising campaign, which emphasizes the pleasurable aspects of smoking while failing to acknowledge the serious health risks).

204. Melvin Konner, M.D., *Health vs. Profits: It's Time Tobacco Firms Developed a Conscience*, L.A. TIMES, Mar. 5, 1990, at B2.

anti-smoking messages have begun to appear on billboards,²⁰⁵ they cannot compensate for the flood of positive images put forth by the tobacco industry. Some commentators argue that tobacco companies should be held liable under products liability theory²⁰⁶ because their aggressive marketing practices have rendered their warnings ineffective.²⁰⁷

Like a product, an image may be overpromoted, so that it overcomes consumers' efforts to question or resist it. The ideal female body is currently thin but big-breasted. Ubiquitous images of well-endowed women in advertising, movies, television, and fashion may create a desire for breast implants where none would otherwise exist. Advertising images can also overpromote a few roles or stereotypes to the exclusion of others. This may be necessary; advertisers have only a few seconds to convey their messages and their images must be easily recognizable. However, repeated images of the bumbling husband,²⁰⁸ the lazy, underachieving fat child,²⁰⁹ the harried and guilty career woman, the obsessive housewife, and the beer-commercial bimbo give the impression that every man is incompetent in the domestic sphere, all fat people deserve our laughter and ridicule, all career women feel miserable conflict over their roles, all housewives wax poetic over household cleaning products, and all women want to be sex objects. An isolated image is not the problem; harm arises when the same few images repeatedly tell consumers that this is how people really are, or how they should be.

205. In 1991, a billboard appeared in Los Angeles featuring a half-human, half-skull with tendrils of smoke snaking out its hollow eyes, accompanied by the phrase "I am dying for a cigarette."

206. This theory has been applied to the prescription drug industry. See, e.g., *Salmon v. Parke Davis & Co.*, 520 F.2d 1359 (4th Cir. 1975) (observing that over-promotion of Chloromycetin may have eroded the effectiveness of otherwise adequate warnings about the drug's side effects).

207. Peter F. Riley, Note, *The Product Liability of the Tobacco Industry: Has Cipollone v. Liggett Group Finally Pierced the Cigarette Manufacturers' Aura of Invincibility?*, 30 B.C.L. REV. 1103 (1989).

208. An ad for Ikea furniture stores had this headline: "Designing an affordable sofa is so easy, a child could do it. (If you don't believe us, hand this ad to your husband.)" The ad featured 3 different sofa models, along with 11 "paper doll" cut-outs of sofa fabric patterns, which a child (or husband) could slip over the models. The ad copy assured readers that this sofa selection method is "darn near idiot proof." Advertisement, Ikea, L.A. TIMES MAG., Sept. 27, 1992, at 24-25.

209. The few overweight children cast in commercials are generally presented as stupid, lazy, and buffoonish. This image coincides with the media stereotype of overweight adults who cannot control themselves around food, and can only find satisfaction at the table. Commodore-Amiga ran two ads in which a fat child never knew the answers in class and a heavy young man flunked out of college because their parents didn't buy them computers. Can it be coincidental that both boys were overweight? MOOG, *supra* note 73, at 204.

In 1969, Trevor Millum conducted a study of advertisements in several British women's magazines. Rather than selecting particular ads, he studied every ad in the magazines and concluded that:

[t]he reification of the female, loss of individual independence, introversion, the retreat into the womb of the home, woman as the natural half of humanity, guardian of the past and the future, the emphasis on sexual attraction, competitiveness . . . all these occur again and again, the same roles are proffered again and again, consistently and cumulatively. . . . The alternative . . . would show woman as man's equal and woman as an independent spirit, and this is the missing image.²¹⁰

There has been some improvement in the variety of ad images during the last two decades. Today, ads occasionally feature financially independent women and caring men. However, most images still cling to the stereotypes — the visual shorthand — discussed above.

1. Evaluating the Overpromotion Argument

As a threshold matter, it may be impossible to distinguish between a "promoted" and an "overpromoted" idea or image because one person's "promotion" is another's "overpromotion." Thus, as with the irrationality argument, criticism that an ad image or product is "overpromoted" necessarily encompasses concerns about the substance of the ad or product. In deciding which ads to regulate, the decisionmaker's belief that some groups need protection from overpromoted ideas may influence their selection of overpromoted images. By the same token, censorship issues arise: assuming it is a good idea to regulate overpromoted ideas and images, who is to decide which "overpromoted" messages should be curtailed, and how?

One response to these concerns inverts the usual censorship arguments. As discussed above, images of women are heavily edited, censored, and overpromoted so that we see women in the same few roles time and time again. And when we do, we see not actual women but false and idealized versions of how real women look, act, and think. These are censored images. Naomi Wolf contends that airbrushing women's faces has "the same political echo that would resound if all positive images of blacks were routinely lightened."²¹¹ Yet the vast majority of women's images in ads and elsewhere have been surgically altered, airbrushed, computer-imaged, and trimmed with scissors to conform to a wholly false ideal.

210. MILLUM, *supra* note 72, at 179.

211. WOLF, *supra* note 2, at 83.

Advertising self-censorship keeps women and men in the dark about how real women look, act, and think, and gives rise to the harms discussed in Part II.

[O]utright coercion affects what people do, but restrictions on information affect what people are.²¹²

Although the previous quote is a part of David Strauss' discussion of the government's efforts to manipulate and limit the flow of information, a parallel argument may be made against advertisers: outright coercion affects what people do, but false, partial, one-sided, and "overpromoted" portrayals of products and people affect what people are. This characterization of advertising's harms defuses censorship concerns. If harmful advertising messages are themselves a form of "thought control," attempts to regulate these messages cannot also be "thought control." Rather, they are an effort to balance the information available in the marketplace of ideas.

C. *Argument #3: Ads Produce Harmful Third-Party Effects*

This argument addresses the question of why third parties (here, men) should not be allowed to see and believe whatever they want about women. My response draws upon arguments from the anti-pornography debate. As discussed above, ads featuring women as sex objects or victims of violence may encourage men to engage in abusive behavior ranging from staring and whistling to rape. Even if ads do not incite men to overtly mistreat women, constant repetition of the same false images will encourage men to view women as intellectually inferior objects rather than complete human beings. Given that men have most of the social and economic power in this society, many are in a position to harm women economically, emotionally, and physically. Like pornography, ads function as tools of indoctrination: designed by men, they reinforce the status quo by telling men that it is acceptable to exploit and demean women, just as ads do.²¹³

212. Strauss, *supra* note 193, at 360.

213. The advertising thus acts as a social regulator, to preserve the *status quo*. It is a part of the socialization of women, educating them to their roles. Stated at its most extreme, this process does serve a political purpose in maintaining the male domination of all the major sectors of society and an economic one in maintaining a corps of reliable consumers and an unpaid work force in the home (as well as a low paid one elsewhere). It need *not* be a conscious conspiracy to be powerful and effective. The level of consciousness of the exploitation of women should nevertheless not be underestimated.

MILLUM, *supra* note 72, at 179.

This argument responds to paternalism concerns as follows: even if women are able to "change the channel" or otherwise resist harmful ad messages, their resistance will not stop men from believing and perhaps acting upon such messages. In free speech discussions, one often encounters the phrase "your right to swing your fist stops at my nose." This phrase also applies to the debate about whether to regulate advertising. Men's right to see or believe what they want should stop at the point where it impinges upon women's autonomy, dignity, and safety. Women are not dignified by ads which show them being strongarmed by their lovers, stripping for a stranger, or being ogled by leering men in beer commercials. Moreover, as in the Stroh's brewery case, such portrayals arguably lead to physical and emotional violence which limit women's autonomy to move freely in the world. Men should not reap all the benefits of free speech while women suffer all the harms.

The Supreme Court of Canada has recently responded to these arguments by issuing a unanimous decision articulating a harms-based definition of obscenity.²¹⁴ In so doing, the Court became the first in the world to rule that "a threat to women's equality is an *acceptable ground* for some limits on freedom of speech."²¹⁵ Although the Court relied on the many studies which have documented the link between pornography and harm to women, Justice John Sopinka wrote that it was not necessary to prove a direct causal relationship; a "reasoned apprehension" that pornography's "gross misrepresentations" may lead to "abject and servile victimization" is sufficient.²¹⁶

Canada has no equivalent to the First Amendment, and thus lacks America's firmly entrenched absolutist view of free speech. In the United States, the First Amendment is often a source of

214. *Regina v. Butler* [1992] 1 S.C.R. 452 (Can.). See also Michele Landsberg, *Canada: Antipornography Breakthrough in the Law*, MS., May/June 1992, at 14, 14-15 (assessing the meaning and impact of the case).

215. Landsberg, *supra* note 214, at 14. The Court wrote that "[e]xplicit sex which is degrading or dehumanizing may be [unduly exploitative] if the risk of harm is substantial." *Regina v. Butler*, 1 S.C.R. at 485. Practically, this means that violence, bondage, and child pornography will not be protected, but explicit adult erotica will be. Landsberg, *supra* note 214, at 14.

216. Landsberg, *supra* note 214, at 14. Fortunately, attorneys for successful intervenors Women's Legal Education and Action Fund ("LEAF") realized that "men [including Justices] can't put themselves in our shoes. Pornography makes women's subordination look sexy and appealing; it doesn't threaten men's jobs, safety, rights, or credibility." They therefore persuaded the Court by including tapes of "horrifically violent and degrading gay movies" as part of their evidence. "We made the point that the abused men in these films were being treated like women — and the judges got it." *Id.* (quoting University of Calgary Law Professor Kathleen E. Mahoney, who represented LEAF in court).

some ambivalence: "[i]n a sense, it is 'ours' and reflects what we claim to want; but in another sense, it is 'beyond' our control and even 'imposed' on us."²¹⁷ However, the Canadian decision, which establishes "a better balance between freedom of speech guarantees and women's entitlement to equal benefit of the law,"²¹⁸ is heartening for those who believe that free speech must be balanced against the harms such speech engenders.

D. Argument #4: Some Ad Messages Are Too Difficult to Resist

Assuming that consumers, especially women, are harmed by manipulative advertising techniques, the next logical step is that consumers should be protected from those techniques. This section responds to concerns about regulating speech by questioning whether some groups need more protection than others, discussing situations in which it is easy — and not so easy — for consumers to reject ad messages, and asking how much effort consumers should have to put into rejecting ad messages before regulation should occur.

1. Some Consumers Are More Vulnerable to Manipulation Than Others

Some consumers are more vulnerable to manipulation than others. Children are cited most often as needing extra protection from advertising's persuasive effects because their capacity to reason is not fully developed,²¹⁹ and because they may not be as negatively influenced by price as adults.²²⁰ Critics have applied the same arguments to teenagers, and have noted their heightened susceptibility to peer pressure.²²¹ Other vulnerable groups include the elderly,²²² the handicapped,²²³ the poor,²²⁴ highly mobile people,²²⁵ highly immobile people,²²⁶ and poorer inhabitants of Third World countries.²²⁷

One example of brand targeting aimed at a vulnerable group

217. LEE C. BOLLINGER, *THE TOLERANT SOCIETY* 136 (1986).

218. Landsberg, *supra* note 214, at 14.

219. Moon, *supra* note 89, at 118. See also Leigh R. Isaacs, Comment, *Psychological Advertising: A New Area of FTC Regulation*, 1972 WIS. L. REV. 1097, 1104-05.

220. SCHUDSON, *supra* note 103, at 121.

221. See *infra* note 232 and accompanying text.

222. Isaacs, *supra* note 219, at 1105.

223. *Id.*

224. SCHUDSON, *supra* note 103, at 117.

225. *Id.*

226. *Id.*

227. *Id.*

is tobacco advertising directed toward young women. In February 1990, an anti-smoking organization called the Women vs. Smoking Network obtained the marketing plans for "Dakota," a new cigarette proposed by the R.J. Reynolds tobacco company.²²⁸ According to the plans, Dakota's ads target "virile females," defined by marketing experts as poorly educated white women in their teens and early twenties who watch "Roseanne" on television and attend tractor-pulls with their boyfriends.²²⁹

Anti-smoking groups are particularly outraged that Reynolds is targeting Dakota to the only demographic group in which smoking may be increasing: young, poorly educated women.²³⁰ They believe the company is purposefully targeting a vulnerable group. Indeed, a spokesperson for the American Lung Association calls its anti-smoking outreach efforts aimed at adolescent girls and young women its "least successful area."²³¹ Part of the reason may be that teenagers

have a floating, unformed sense of their own selves. They may try on several selves for size and they are notoriously open to suggestions from peers, teachers or other adult role models, and the media. . . . They devour advertising and, while not devoured by it, may be more than usually susceptible to it while their identities are in flux.²³²

As with the ads examined above, tobacco ads frequently pair their product with unrelated words and symbols,²³³ and carry messages of "autonomy and independence and thinness. Look at how all the brands are named: slim, thin, light, long."²³⁴ Tobacco companies create image advertising that plays on women's fear of

228. Shari Roan, *Under Fire: Women and Smoking*, L.A. TIMES, Apr. 17, 1990, at E1, E2.

229. *Id.*

230. Studies show that although smoking rates have dropped from 40% in 1965 to 29% in 1987, most of the drop is attributable to adult white males. *Id.* at E1. Some studies suggest women are smoking more heavily than ever. *Id.* For example, a 1989 report by the U.S. Surgeon General found that the rate at which persons in their early twenties took up smoking had dropped for men but increased for women. *Id.* at E2.

231. *Id.* at E1 (quoting Ronald Arias, Los Angeles chapter of the American Lung Association).

232. SCHUDSON, *supra* note 103, at 118-19. Betty Friedan read marketing studies conducted during the 1950s which claimed that teenage brides were a gold mine for advertisers; young wives "were more 'insecure,' less independent, easier to sell. These young people could be told that, by buying the right things, they could achieve middle-class status, without work or study." FRIEDAN, *supra* note 48, at 219.

233. See *supra* text accompanying notes 178-80 (discussing the "Marlboro Man").

234. Anti-smoking activist Michele Bloch of the Women vs. Smoking Network, quoted in Roan, *supra* note 228. Bloch adds that "[t]een-age girls are particularly weight-conscious. Many girls use smoking as a weight-control mechanism. It's

being imperfect, and target the ads to particularly vulnerable groups. The subtextual messages are hard to resist, as will be shown below.

2. Some Ad Messages Are More Easily Rejected Than Others

Consumers are able to resist certain ad messages more easily than others. For example, it is easy to scoff at advertisers' sometimes blatant attempts to imbue inanimate objects with sex appeal. Car manufacturers often boast that their car is "sexy;" it is probably not difficult for most consumers to reject these characterizations.²³⁵ It is also easy for consumers to reject commercials in which they see horribly false and offensive characterizations of themselves, hear actors speaking ridiculous dialogue, or where manufacturers have tried too hard to create a need for their products where none exists.²³⁶

Similarly, ad language is sometimes easy for consumers to decode; one market research firm found in 1981 that most consumers think the product description "new and improved" "means only that the manufacturers 'have found a way to increase the price.'" ²³⁷ Consumers can partially "correct for the distortion in [their] own thinking" ²³⁸ by considering the message's source: an advertiser's rave review of its product will mean less to consumers than a friend's hearty recommendation.

probably one of the biggest things that attracts young girls and keeps them smoking as they grow into adulthood." *Id.*

The tobacco industry has capitalized on women's obsession with weight for years. In the 1920s and 1930s, Lucky Strike ads urged women to "[r]each for a Lucky instead of a sweet." Bruce Horowitz, *Selling a Health Hazard*, L.A. TIMES, July 24, 1988 (Business, Part IV), at 1, 5.

235. In a letter to the editor of the Los Angeles Times, Jayna Swartzman wrote:

I am 7 years old. I watch the news and listen to the radio a lot. And all I hear (about) is sex. Here is what I'm trying to say. Just a couple day[s] ago I heard an advertisement on the radio saying it's a sexy car. And I said to my mom how can a car be sexy? I mean some day a kid is going to start French-kissing a car. . . . I think advertising should stop making everything so sexy.

Jayna Swartzman, L.A. TIMES, Dec. 16, 1991, at B4.

Swartzman would undoubtedly be amused by a magazine for Kohler bathroom fixtures which promises "Every Turn-On Imaginable." Advertisement, Kohler, LOS ANGELES MAG., Jan. 1992, at 11.

236. Many women are offended by commercials for feminine hygiene products which imply that they are in constant peril unless protected by "panty insurance." A group of women told columnist Howard Rosenberg that concerns about "panty insurance" were in fact not foremost in their minds. ABC correspondent Judy Miller noted that this is "another case of 'advertisers creating a problem so they can fix it.'" *Quoted in Rosenberg, supra* note 41, at F11. *See also supra* note 168.

237. SCHUDSON, *supra* note 103, at 110-11.

238. Strauss, *supra* note 193, at 363.

Many times, however, ad messages are not so easy to resist. First, the product may be necessary (almost everyone buys shampoo, for example) and consumers may be attuned to messages about a new and potentially superior product. Second, the product may be advertised in a neutral and inoffensive manner, so that consumers do not feel insulted by the presentation. The Head and Shoulders commercial²³⁹ provides a good example. The spokeswoman appears pleasant, sincere, and inoffensive as she recites the benefits of this particular brand. So far, so good: we need the product (in some form), and we are being told why Head and Shoulders is superior in a straightforward, conversational tone. If, after watching the ad, a woman decides not to buy Head and Shoulders because she favors another brand, there is no harm done.

But there is more. At the beginning of the commercial, the spokeswoman chirps, "If you're like me, you'd do whatever you can to make your hair look good." Even if a woman hearing the commercial rejects the product, the subtext gets through on a subconscious level. Because the spokeswoman's opening statement is not as patently offensive as many others, it does not stand out; most women hearing the commercial are unlikely to consciously consider and then reject the spokeswoman's statement. Rather, the statement is part of the cultural "background noise" that serves to make women feel inadequate whenever they do not "do whatever [they] can" to look good. Because this message and thousands like it work on a subconscious level, and because they have been ingrained in women's subconscious since childhood, women may not be able to reject the underlying message even if they are able to resist buying the product. To consciously reject the idea that it is normal for women to want to "do whatever [they] can" to look good, a woman must overcome the messages that tell her she is worthless, lazy, undesirable, and unlovable in doing so. These messages are much harder to resist, and as such may be more harmful than blatant appeals to purchase the product.

3. Self-Defense: How Much Effort Should Consumers Have to Make to Resist Ad Messages?

If I were to overcome the conventions, I should need the courage of a hero, and I am not a hero.²⁴⁰

How much effort should consumers be required to put into resisting ad messages before regulation is called for? We have

239. *Head & Shoulders Shampoo*, *supra* note 50.

240. VIRGINIA WOOLF, *THE PARGITERS*, *quoted in* FALUDI, *supra* note 1, at 59.

seen that consumers may come to believe that there is something wrong with them if they reject ad messages. In fact, they may be unable to reject ad messages and may come to view the universe defined in advertisements as their own. This is not surprising since advertising techniques are designed to overcome resistance. The messages transmitted by ads are such a part of the general culture that "they are not experienced as explicit lessons. Instead, they seem part of the individual's rational ordering of her perceptions of the world."²⁴¹

While it is not the task of this paper to propose a bright-line answer to the question of when regulation should occur, the arguments for regulation can be illustrated by drawing an analogy to the resistance requirement recognized in rape law. While watching an ad is not tantamount to being raped, certain portions of the debate over rape law are relevant. Both involve threats to personal autonomy and integrity. Even the language used to describe rape and advertising is similar: advertising critics speak of the power of ads to "seduce,"²⁴² and courts sometimes label defendants' coercive conduct in rape cases "seduction" when they intend to acquit.²⁴³ The overpromotion arguments discussed earlier suggested that consumers can be "overcome" by the cumulative effects of advertising; two of the Michigan rape statute's five definitions of force or coercion require that the victim be "overcome" through the effects of force or surprise.²⁴⁴

Rape has been defined "so as to require proof of actual physical resistance by the victim, as well as substantial force by the man."²⁴⁵ Physical resistance is considered evidence of the victim's lack of consent and the defendant's use of force; without it, convictions are difficult to obtain.²⁴⁶ The resistance requirement allows

241. Lawrence, *supra* note 164, at 323.

242. See generally WILSON BRYAN KEY, *SUBLIMINAL SEDUCTION: AD MEDIA'S MANIPULATION OF A NOT SO INNOCENT AMERICA* (1973). Advertising executives themselves press the analogy to startling extremes: "You need to push a little harder . . . to jolt, shock, break through. Now that the competition is fiercer, . . . business wants even more desperately to seduce. . . . It wants to demolish resistance." Quoted in WOLF, *supra* note 2, at 79.

243. See, e.g., *Commonwealth v. Mlinarich*, 498 A.2d 395 (Pa. Super. Ct. 1984). Mlinarich had threatened a 14-year-old girl living in his and his wife's custody with return to a detention home if she refused to have sex with him. The court called this seduction, not rape, and wrote that it believed that the legislature "did not intend to equate seduction, whether benign or sinister, with rape and make it a felony of the first degree." *Id.* at 402.

244. MICH. COMP. LAWS ANN. §§ 750.520b(f)(i) & (f)(v) (West 1991).

245. SUSAN ESTRICH, *REAL RAPE* 5 (1987).

246. See *Brown v. State*, 106 N.W. 536 (Wis. 1906), in which the Wisconsin Supreme Court defined the resistance requirement as follows: "Not only must there be entire absence of mental consent or assent, but there must be the most

courts to scrutinize and judge the victim's behavior rather than the perpetrator's.²⁴⁷ It also holds her accountable for circumstances beyond her control, while simultaneously failing to acknowledge the significance of those outside circumstances.²⁴⁸ Writing about rape law's resistance requirement, Susan Estrich observed that "[t]o expect a woman to resist an attacker who is likely to be larger and stronger than she is to expect her to do what she has probably been brought up and conditioned . . . not to do."²⁴⁹

With respect to advertising, it may be too much to expect consumers to be able to overcome the cumulative effects of a lifetime of ad messages, especially when the messages are reinforced everywhere in the culture. Just as a battered woman may come to believe that she somehow deserved to be battered, women may grow to believe that it is their fault if they do not look and act like the airbrushed, surgically-perfected women in the ads.

vehement exercise of every physical means or faculty within the woman's power to resist the penetration of her person, and this must be shown to persist until the offense is consummated." *Id.* at 538.

247. *ESTRICH, supra* note 245, at 96. In *Brown v. State*, 106 N.W. at 538-39, the Wisconsin Supreme Court reversed Brown's rape conviction not because it concluded that the force Brown used was insufficient, nor because he lacked the *mens rea* to commit rape, but because it found that the 16-year-old victim had not resisted sufficiently to prove her nonconsent.

248. *See, e.g., State v. Alston*, 312 S.E.2d 470 (N.C. 1984). The North Carolina Supreme Court reversed Alston's rape conviction because the victim did not put up a physical fight (although she did say no) only because she appears to have suffered from what is now known as battered woman's syndrome. Alston and Brown (the victim) had been involved in what the court termed a "consensual" relationship for six months in which he struck her when she refused to do what he wanted. *Id.* at 471. At one point, after she told him the relationship was over, he threatened to "fix" her face to show he "was not playing," and demanded to have intercourse with her, saying he had a "right" to. *Id.* at 472. They went to the house of one of his friends, he asked her if she was "ready," she told him she did not want to have sex, and he undressed her, pushed her legs apart, and penetrated her while she cried. *Id.* at 472-73. Based on the defendant's past conduct, the victim quite sensibly feared further violence unless she acceded to his demands, and the court acknowledged that her "general fear" of the defendant may have been justified. *Id.* at 476. Nevertheless, the court held that there was no rape because there was no force at the time of intercourse; Alston's use of force and threats shortly before the act "may have induced fear" but were deemed "unrelated to the act of sexual intercourse." *Id.* at 476.

State v. Etheridge, 352 S.E.2d 673 (N.C. 1987), limits *Alston* to its "facts" (as defined by the court), which concern "sexual activity between two adults with a history of consensual intercourse." *Id.* at 681. The *Etheridge* court goes on to say that in cases of sexual abuse by a parent, "explicit threats and displays of force are not necessary to effect the abuser's purpose." *Id.* What both the *Alston* and *Etheridge* courts failed to grasp is that the battering relationship between Alston and Brown was not at all "consensual;" the threat of his violence clouded their entire relationship, so that his "words carried a great deal more menace than [was] apparent on the surface." *Etheridge*, 352 S.E.2d at 681.

249. *ESTRICH, supra* note 245, at 22.

Given the advertising techniques discussed above, resistance may be impossible on some level. As in rape law, where the law (theoretically) steps in to protect victims who have shown "enough" resistance, consumers should not have to fight to resist ad messages before regulation steps in to protect them. Susan Estrich argues that with rape law, "[t]he issue is not chastity or unchastity, but freedom and respect. What the law owes us is a celebration of our autonomy"²⁵⁰ Perhaps advertisers owe us no less.

V. Conclusion

I have argued that the harms resulting from the substance and methods of advertising overcome concerns about censorship and paternalism. Therefore, advertising techniques must be regulated. As mentioned above, a full discussion of a specific regulatory scheme is the topic of another paper; this paper provides the foundation upon which to construct such a scheme. Whether the scheme takes the form of advertising industry self-regulation, legislation, or agency regulation, it should address the following concerns:

Does the ad in question make violence towards women look sexy? Advertisers or regulators must ask themselves if they would enjoy being in the model's place in the ad, or whether they would feel physically or mentally threatened.

Does the ad show unrealistic images of women? In particular, are pieces of women's bodies spliced together, cut with scissors, or manipulated by computers? This dehumanizes the models and creates false images which harm all viewers, female and male.

For beauty products: does the ad realistically describe the benefits of the product? Or does it state or imply that a woman must be physically perfect, and cannot achieve perfection without the product?

Are there a variety of women in an advertiser's ads? Different ages, sizes, races, levels of attractiveness?

In 1975, the National Advertising Review Board ("NARB"), which functions as the industry's regulatory body, issued a report entitled *Advertising and Women*, which proposed voluntary guidelines for advertisers.²⁵¹ These guidelines also should inform discussions about a specific regulatory scheme:

Do my ads feature women who appear to be basically unpleas-

250. *Id.* at 102.

251. ALICE E. COURTNEY & THOMAS W. WHIPPLE, SEX STEREOTYPING IN ADVERTISING 166 (1983).

ant? . . . Women being condescending to other women? Women being envious or arousing envy? Women playing the "one-upmanship game . . . ?

Is there double entendre in my ads? Particularly about sex or women's bodies?

Do my ads try to arouse or play upon stereotyped insecurities? Are women shown as fearful of not being attractive to men or to other women, fearful of not being able to keep their husbands or lovers . . . ?

Does my copy promise unrealistic psychological rewards for using the product? For example, does an ad for perfume claim it can lead to instant romance?

Does my ad blatantly or subtly suggest that the product possesses supernatural powers? If believed literally, is the advertiser unfairly taking advantage of ignorance? Even if understood as hyperbole, does it insult the intelligence of women?

Will I be happy if my own female children grow up to act and react the way the women in my ads act and react?²⁵²

Of course, regulating sexist ads will not magically cure all of society's ills. To the extent that ads merely reflect our sexist culture, the problems will not go away until fundamental attitudes change. However, we cannot avoid taking action simply because the problem appears insurmountable. To the extent ads create and reinforce harmful attitudes about women, regulation will be a valuable first step in combating a deeply entrenched social problem that curtails the power, dignity, and autonomy of half its members.

Members of a society weaned on advertisements which portray women in a variety of roles, show them as complete human beings rather than a collection of airbrushed, surgically-perfected body parts, and respect their integrity, intelligence, and privacy, might begin to change their conceptions of how they see themselves and other human beings. To argue that advertisers must make these changes is not to advocate censorship; advertisers could make these changes and still sell their products.²⁵³ To argue that ad messages should portray women and men in a more truthful, less harmful way is not to succumb to "political correctness;" it is to demand that the mirror held out to us by advertising in which we see ourselves reflected must reflect a less distorted, more human image.

252. *Id.* at 168-69 (selected guidelines).

253. Budweiser brand manager August Busch IV reports that a Bud ad featuring a 68-year-old woman playing electric guitar earned "the highest rating on any ad we've ever done. . . . There are no bikini-clad babes in that one." *Quoted in* Moore, *supra* note 84, at 1B.

