

# An Historical Analysis of the US Advertising Industry's Self-Regulation of Comparative Advertising

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## Introduction

Prior to the mid-1960s, when many advertisers in the US began naming competitors, industry lore suggests the use of comparative advertising was infrequent, but not completely absent from mainstream advertising. It was sufficiently prolific to attract the attention of early industry reformers and self-regulation advocates. Historian Daniel Pope (1983) reports that as the progressive "truth in advertising" movement was launched at the 1911 convention of the Associated Advertising Clubs of America (AACA), one of the most acclaimed speeches was delivered by Joseph Appel, advertising manager for John Wanamaker's department stores and president of the AACA's retail advertisers' division. His "Ten Commandments of Advertising" included these admonitions: "Thou shalt not covet, nor imitate, nor run down thy neighbor's business; thou shalt not covet, nor imitate, nor run down thy neighbor's name, nor fame, nor his wares, nor his trade-mark, nor anything that is thy neighbor's" (as cited in Pope, 1983, 204).

The early self-regulation movement also influenced, and was influenced by, government regulation. The most far-reaching example occurred in 1911, when influential trade journal *Printers' Ink* called on corporate attorney Harry D. Nims to draft a model statute banning dishonest advertising. By the time agency practitioner Frank Presbrey published his history of advertising in 1929, the *Printers' Ink* statute had been incorporated without alteration into the laws of 23 states. Pope (1983, 197) argues early advertisers actually favored national regulatory policies. As he notes, "Businessmen realized that legislation and administrative regulation were often tolerable and sometimes desirable, and they increasingly sought to shape government intervention to fit their needs" (197).

During the Depression, the books *Your Money's Worth* and *100,000,000 Guinea Pigs*, the magazine *Ballyhoo*, and the nonprofit Consumers Research organization (McGovern, 2006) reflected a growing public discontent with advertising. Advertisers also faced new regulatory pressures, such as the Copeland Bill, which threatened to move advertising regulation from the Federal Trade Commission (FTC) to the Food and Drug Administration. As historian Stephen Fox (1984, 126) notes, "To stave off federal intrusion the business fell back on its old dream of self-regulation."

As public discontent peaked again in the 1960s, problems with the industry's self-regulation process, described as a "system of codes and volunteerism" (Arndorfer *et al.*, 2005), became apparent. With the launch of an FTC campaign targeting deceptive TV advertising, including threats to employ the penalty of corrective advertising in place of cease-and-desist orders (Rossman, 1971), the industry responded again with promises of self-regulation. The major associations—the Association of National Advertisers (ANA), the American Association of Advertising Agencies (AAAA), and the American Advertising Federation (AAF)—joined with the Council of Better Business Bureaus (CBBB) to establish the National Advertising Division (NAD) and National Advertising Review Board (NARB) self-regulatory system.

Although the literature on advertising self-regulation in the US is extensive, there is little prior to the 1980s. Moreover, there is no research at all on either the practical or regulatory problems that comparative advertising uniquely created for those involved in the industry's self-regulation, such as the AAAA, ANA, and the CBBB's NAD and NARB. This historical study addresses these gaps in the literature by identifying the major episodes, individuals, and principles involved in the industry's efforts to respond to the widespread adoption of comparative advertising during the 20<sup>th</sup> century.

### Method and Topical Focus

Sources for the earliest period were located by scanning one randomly selected issue from each of the 60 volumes published between 1900 and 1913 of the industry's most influential trade journal, *Printers' Ink*. No business periodical index exists for this period. Three indexes were then used to identify sources for latter periods: the *Industrial Arts Index* (1913-1957), the *Business Periodicals Index* (1958-1973), and the *ABI/Inform Complete* search engine. Many sources, in turn, pointed to other historically significant sources.

Advertising histories (Fox, 1984; McGovern, 2006; Pope, 1983; Presbrey, 1929) and the literature on media advertising self-regulation were used during the study's immersion stage, which consisted of reviewing the sources for topic familiarization and theme development (Smith, 1989). Tentative themes of analysis were (1) advertiser beliefs regarding comparative advertising and who should be responsible for its regulation and (2) what specifically should be regulated and why. These thematic categories were then applied deductively in a search for confirming or disconfirming data.

### Findings and Conclusions

The study's findings regarding who should be responsible for the regulation of comparative advertising show that interest in working with government regulators declined during and after the 1930s. Perhaps, as long-time *Printers' Ink* editor C.B. Larrabee (1934, 8) noted at the time, advertisers were tired of the "mass of detail that has been dumped upon them by the NRA." They may also have been motivated by the threat of the Copeland Bill, which passed the US Senate in May 1935. Ironically, as the findings also reveal, despite the industry's desire to regulate itself, comparative advertising would set the stage for a battle with federal regulators—a battle the industry would lose.

The specific features of comparative advertising that advertisers thought should be regulated reveal some new and interesting insights into the history of advertising self-regulation. Once advertisers appeared to accept the inevitability of comparative advertising during the 1930s—and some began to openly endorse it as an expression of competition in the marketplace—their concern quickly turned to the problem that occupied their attention until their successors lost their battle with the FTC in the 1970s—the disparagement of competitors. This preoccupation with disparagement as a principal problem with comparative advertising is consistent with the findings of other histories of advertising regulation (e.g., Beard and Nye, Forthcoming). An explanation for it can be found in professional thought regarding some of the recognized risks linked to aggressively combative and "knocking" advertising as a competitive tool that date to the beginning of the 20<sup>th</sup> century.

Beard (2010), for instance, found that advertisers who engaged in comparative advertising "wars" often regretted it, mainly because hostilities tended to escalate, causing damage to both sides and, in some cases, to entire product markets and industries. Empirical research also confirms the longstanding and widely held professional belief that negative comparative advertising by market leaders regularly produces backlash (James and Hensel, 1991). A study by Sorescu and Gelb (2000) likewise supports the professional belief that consumers often respond negatively to especially aggressive comparative advertising. They found that a high-negativity comparative ad, compared to a low-negativity ad and a positive one, scored significantly lower on believability, fairness of content, approval of content, informativeness, and overall evaluation. They also found that attacks on a competitor's image were rated far worse than attacks on a competitive product's features.

Professional concerns about the appropriation of a competitor's trademark or brand name can also be traced to a problem that emerged early in the 20<sup>th</sup> century. Dubbed "The Substitution Menace" by *Printers' Ink*, advertisers often found that after building primary demand with national advertising, often-inferior brands would be substituted for theirs—sometimes inadvertently, but often purposely—by retailers and jobbers. The desire to avoid this type of problematic competitive rivalry in advertising is also likely explained by the historical and contemporary beliefs that among the biggest problems with comparative advertising are that it provides free exposure for competitors and often leads to brand confusion (Barry and Tremblay, 1975).

The study's findings also reveal what is arguably the single most contentious episode in the history of advertising self-regulation—a dispute over the industry's right to self-regulate truthful disparagement of competitors and its failure to secure that right from the FTC. Inspired by the deregulation ideology gaining momentum in the 1970s, the FTC ultimately crushed industry resistance to the agency's campaign of litigation in support of comparative advertising, including disparagement. The causes and consequences of this episode are especially important to understand given the fact that it was the FTC of the 1920s to 1940s that encouraged the emerging trade associations to include

disparagement in their codes of industry conduct and that the FTC itself was discouraging disparagement as late as the 1950s.

As Rotfeld and Royne (2007) propose, laws and government regulations exert the greatest and most direct influence on all the other elements and entities responsible for the relationships among advertising, society, and public policy. This study's findings show that in the 1970s, comparative advertising became a vehicle for an FTC campaign against those responsible for advertising self-regulation, inspired by the prevailing political ideology of the time, deregulation. Thus, the findings of this study highlight the importance of taking into account not just laws and regulations, but the political ideology influencing them and the potential for both short- and long-term consequences for industry regulation and self-regulation. This finding seems especially important and relevant, at the beginning of the second decade of the 21<sup>st</sup> century, as a new drive toward Progressive-driven regulation in many service industries—including banking, mortgage lending, credit card services, energy, and healthcare—gains momentum and the debate over the causes of the financial crisis of 2007 continues.

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