

# **SELLING WORDS**

Free Speech in a Commercial Culture



**R. GEORGE  
WRIGHT**

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Commercial Culture

R. George Wright



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R. George Wright

**MID-SIZE PLANET  
FOR SALE.**

*Close to all amenities, good view of Venus.  
A real fixer-upper.*



From *Adbusters* magazine, Vancouver, Canada

*For Jim, Nancy, and Andrew George*



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. . . the Babbitt whose god was modern  
appliances was not pleased.

## i n t r o d u c t i o n

It was observed some years ago that the bright lights of Times Square must be a magnificent spectacle to those unable to read. Indeed, our commercial culture seems a marvel to us, to the extent we lose sight of the possibilities of human development, well-being, and genuine freedom.

Our survey begins with a brief excursion through the perpetually cash-strapped Arrid-Mentos Junior High School. Arrid-Mentos, formerly named for President Franklin Delano Roosevelt, is located on a small section of Minerva Street now officially redesignated as Ford Bronco Drive. As you now may suspect, the school has entered into a

series of Faustian bargains in return for modest, but desperately needed, cash payments.

To this end, the school's morning homeroom announcements over the PA system are sponsored, appropriately, by Vivarin. And in an attempt to reduce the number of untoward incidents in the hallways, Blockbuster Video has installed several continuously running TV monitors at selected points. Most of the wall space is occupied by lower-tech, lower-budget ads, currently in various stages of defacement. Hallway audio speakers provide a democratically negotiated mix of rock, country, and urban contemporary music, interspersed with commercials for products of special interest. For example, the French classes are sponsored by Yves St. Laurent, with a variety of products advertised so as to avoid monotony and maintain interest. Today's American history lesson consists of a classroom video plus a not unmanageably difficult, self-scoring quiz sponsored by Hershey. Not surprisingly, the video features the intriguing history of chocolate manufacturing in the United States.

The students have their lunch in the food kiosk area, next to the ATM machines and the newly expanded vending machine area. The accoutrements—from trays to cups to napkins—are emblazoned with the familiar Pepsi logo and instructions on how to win desirable prizes. But given the quality of even the name-brand food kiosk items, the students joke that Tagamet would be a more appropriate sponsor. On their way back to class, the students check out the Certs Interactive Social Calendar. When afternoon classes are over, the students return briefly to their homeroom for a series of PA announcements, highlighted by the Masterlock detention list. Many of the students will be returning that evening for the basketball game in the Old Spice-New Balance Gym against traditional rival Charles Revlon Junior High.

The school's symbiotic relationship with various commercial sponsors has been, not surprisingly, controversial. At first, many peo-

ple objected to the ads for tobacco and distilled liquor, but in light of these companies' generous financial terms, they found it hard to argue against the Galweed Tribute to American Women and the Kentucky Guzzler First Amendment Display. After a while, both those particular displays lost their novelty, so when Kentucky Guzzler switched to a display emphasizing the responsible use of its products by persons of legal age only, the students' reaction was, at best, ambivalent. Eventually the "Kentucky Guzzler: For Adults Only" campaign was regarded as tiresome and stale. A sense of freshness thus pervades the latest series of Kentucky Guzzler ads, focused on fun, humor, sociability, social competence, success, and excitement, with only a few references to underage drinking and safe driving.

The effects of our commercial culture are important. But commercial advertising and commercial speech do not strike like natural disasters, leveling an established cultural landscape in a moment's fury. Instead, our commercial culture affects us gradually and incrementally, often in unnoticed ways. No manifestation of our commercial culture ever seems unprecedented, a departure from all that has gone before.

This book explores how the familiarity, pervasiveness, and incremental development of our commercial culture help insulate it from reasonable legal regulation. Let us return briefly to the example of distilled liquor advertisements, on television and elsewhere. Some people find such commercials objectionable, dangerous, offensive, or, to some degree, immoral. But do such commercials lead to the sorts of harms to which a free and democratic government may properly object? What concrete harms can we definitively attribute to liquor commercials, as opposed to some other source? Has our social science really advanced to the point of being able to answer such complex causal questions with clarity and certainty?

In all likelihood, the effects of liquor commercials, if any, are diffuse, delayed, subtle, and easily confounded with those of dozens of other possible causes of the same alleged effects. Does it make a difference, for example, whether the liquor commercials are run at 7:00 P.M. or 9:00 P.M.? The time may make a difference in the balance of political forces on this issue, but do such commercials make a noticeable difference in the cultural effects? What if the ads were shown only at 9:00 P.M. for as long as it took most of us to become desensitized to their presence and then were shown also at 7:00 P.M.? Or at 2:00 P.M., during a professional football game? Could we show that any harm resulted from the ad's gradual expansion across channels or airtimes?

What if the evidence as to whether liquor ads even increased overall alcohol consumption were unclear? The producers would, no doubt, argue that liquor commercials only redistributed market shares among brands or increased their sales only at the expense of beer and wine. Perhaps, then, given the drop in consumption over the last decade, any rise in liquor consumption is only a natural swing of the pendulum. Perhaps the controversy itself over showing liquor ads on television has increased sales.

In addition, if we have legally tolerated some of these commercials, can we realistically object later if the number of liquor commercials aired gradually increases? Surely such trends reflect market forces. Where can we find a demonstrable and significant difference in the harm that an increase in such ads causes?

We can hardly ignore, furthermore, the question of the commercials' content. Suppose that many of the early liquor commercials emphasize responsible drinking. What demonstrable harm would there be in then switching, after a discreet interval, to the ads' emphasis on fun, humor, sociability, or personal gratification?

Beer and wine commercials are not governed by the same regulations. Can we prove that the differences between distilled liquor and

beer and wine translate into significantly different levels of social harm? How can we take account, for example, of the fact that beer and wine commercials do not raise cultural eyebrows, merely because they are familiar and established in our culture? Given all these problems, attempting to regulate such commercials legally is likely to look arbitrary, puritanical, speculative, repressive, heavy-handed, or unprincipled.

Let us consider another cultural step. Even though we know that novelty is collectively prized, any predictions of future cultural developments will likely seem far-fetched and implausible. Part of the problem is—to exaggerate only slightly—that our commercial culture is divided between those events to which we have become inured and those predicted future developments to which we react with incredulity.

The point is that wherever the battle lines are drawn in individual cases of commercial speech, it already is too late. The basic problem is not the harms that may be associated with any particular product or category of commercial speech—and this book's central concern is not with allegedly harmful products. The basic problem also is not that liquor distillers, along with beer and wine and tobacco sellers, contribute enormous sums of money to both major political parties. Rather, the basic problem is the pervasiveness of the culture of commercial speech in general. That is, we should be more troubled by the dominance of the commercial culture than by any particular allegedly harmful instance of commercial speech.

If we must focus on particulars, however, we should recognize that the most serious harm caused by liquor advertisements in public schools is not, say, that some pattern of car wrecks can definitively be traced to those ads, to the exclusion of other causal influences. Instead, the most serious harm is that the school is teaching a generation of students that there is almost no place where commercial

advertising, commercial relationships, and commercial values do not belong. This school is, in effect, ratifying the pervasiveness of our commercial culture.

The pervasiveness, and even the predominance, of our commercial culture is really not a matter of how much time, effort, or attention we devote to commercial matters. In an earlier day, we may have devoted more energy to acquiring and spending and yet have lived in a less pervasively commercial culture. We should therefore not assume that today, most people, whatever their station, are consciously preoccupied most of the time with purely commercial affairs. We may have our collective cultural obsessions, but pure commerce itself is hardly chief among them.

The pervasiveness of our commercial culture is, more important, a matter of the ways in which commercialism and commercial values affect how we experience the otherwise noncommercial elements of our lives. That is, personal relationships that might otherwise have been based primarily on friendship, love, respect, legitimate authority, or considerations of dignity have gradually been tainted and transformed, however subtly, by elements drawn from the commercial sphere.

It is impossible to say precisely how our commercial culture does and does not affect us. By now, it is difficult to imagine a preexisting, noncommercial self to be subsequently affected by the commercial culture. One possible misconception, however, can be set aside. There is no reason to assume that the primary effects of a commercial culture must involve our consciously focusing on money or productivity or even on acquiring commodities. We might instead find that our commercial culture has revised most of our valuations of novelty and permanence, glamour and reliability, depth and superficial excitement, fashion and dignity, self-indulgence and sacrifice, mind and body, short and long term, pleasure and well-being, style



and substance, the coarse and the refined, the nature of maturity, or the proper scope of empathy and compassion. These sorts of effects might prove more important to our culture than any historical change in the degree to which we consciously focus on commercial consumption itself.

Excessive commercialization does have a variety of real consequences and is not automatically recognized or self-correcting. Some of the most thoughtful persons, including judicial authority figures, wind up hampering democratic efforts to reduce, reasonably and fairly, the excesses of commercialization. For them, the spread of commercialization by any means not involving fraud or deception seems to be a natural reflection of freedom and the pursuit of well-being. This book is intended as a response to this influential, but ultimately unsatisfactory, line of thinking.

Chapter One presents the book's major constitutional arguments and examines issues of freedom and well-being in the context of commercial free speech case law. It shows that commercial getting and spending is, except in the case of the poor, at best weakly correlated with happiness or well-being. In addition, current free speech law tends to overprotect non-misleading commercial speech from the standpoint of all the basic reasons for protecting free speech in the first place, including considerations of personal self-realization and personal autonomy. Free speech law in part reflects the current absence of any consistent, serious, appropriately scaled institutional counterspeech challenging the culture of commercial speech.

Chapter Two applies some of these constitutional arguments to a discussion of the logic of tobacco-advertising regulation and the socioeconomic-class dynamics of tobacco consumption. We also examine the difference between expressive and pragmatic justifications