ANA

Association of National Advertisers, Inc.

ANA Compendium of Legislative, Regulatory and Legal Issues

2002

Advertising Tax Deductibility

State Advertising Tax Deductibility

Privacy Issues

Children's Online Privacy

"Do-Not-Call" Proposals

Unsolicited Commercial Faxes

Media Ownership Rules

Protection of Digital Broadcast Television

Advertising and Marketing in Schools

Media Content and Child Protection

Prescription Drug Advertising

FDA First Amendment Request

Political Advertising in Wireless Media

Alcohol Beverage Advertising

Food Advertising

Dietary Supplement Advertising

Media Self-Regulation of Advertising

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Introduction

2002 was an extremely eventful year for the Association of National Advertisers. Despite the increased concentration on terrorism and homeland security after September 11, 2001, and, as the year progressed, debate over war with Iraq, there was a renewed and vigorous focus on a wide range of advertising issues. Many issues relating to advertising were back on the front burner in the Congress, the Federal government, the judiciary, and the states.

Some of ANA's major initiatives included:

1. Fighting successfully various proposals to restrict truthful, non-deceptive direct to consumer prescription drug advertising. We held numerous meetings on the Hill with various key members of Congress, submitted detailed testimony in the Congress, and helped coordinate industry efforts to raise awareness of the benefits of DTC advertising.

2. Responding, in conjunction with the Freedom to Advertise Coalition (FAC), to a request by the Food and Drug Administration for comments regarding how the First Amendment's protections for commercial speech apply to the agency's regulations, policies and practices. ANA also filed its own individual comments in this proceeding.

3. Opposing overly restrictive privacy legislation in Minnesota and California. We also responded to privacy initiatives at the federal level by submitting testimony in hearings on Senate Commerce Committee Chairman Fritz Hollings' (D-SC) privacy bill and on House Commerce, Trade and Consumer Protection Subcommittee Chairman Cliff Stearns' (R-FL) privacy legislation. Through our work with the Privacy Leadership Initiative, we aided the completion of several major analytical studies that demonstrated the impact of proposed privacy initiatives on business activity. We also coordinated and took part in meetings on the privacy issue with various representatives of the Federal government, members of Congress and the White House.

4. Submitting comments in opposition to the FTC's "do-not-call" proposal, stating our concerns with several of the proposal's details, and urging the Commission to work with the business community to seek a private sector solution to consumer concerns about telemarketing. We are now developing a response to the Federal Communications Commission's proposals in the "do-not-call" area.

5. Filing testimony with the Maryland General Assembly regarding a bill that would limit marketing in schools. This legislation was defeated. We also worked closely with our food company members, the Grocery Manufacturers of America and the International Food Information Council on responding proactively to increased concerns about obesity in the U.S., which has generated calls for restrictions on food advertising.

6. Providing analysis to members of the Appropriations Committee of the California State Senate opposing a bill mandating that dietary supplement advertising carry a statement referring consumers to product label warnings. Our comments argued that the proposal failed to meet First Amendment requirements for advertising regulations. The bill did not pass.

7. Stating, in conjunction with the FAC, our opposition to proposed restrictions on tobacco advertising released by the Justice Department. We also filed detailed comments with the Senate HELP Committee regarding Senator Edward Kennedy's (D-MA) proposed bill that would promulgate unprecedented restrictions on tobacco advertising first proposed by the FDA in 1996.

8. Developing and filing a detailed "friend-of-the-court" brief for the Sixth Circuit Court of Appeals in *Eller Media Company v. Cleveland*, arguing that the sweeping alcohol billboard ban proposed by the Cleveland City Council contains an unconstitutional censorship scheme.

9. Defeating significant ad tax initiatives in Nebraska, Florida, and Tennessee.

We anticipate that activity surrounding these issues, and numerous others in the advertising arena, will remain high in 2003. For up-to-the-minute updates on key issues and information regarding our activities in the months ahead, the Government Relations section of our website at http://www.ana.net contains the only comprehensive legislative regulatory and legal advertising tracking system for the advertising community. Additionally, copies of the testimonies and letters submitted by ANA on many of the issues mentioned above can be viewed at our website, by going to the "What's New" section of the Government Relations page.

If you have questions about any of these issues, please contact ANA's Washington, D.C. office at 202-296-1883.

The Outlook for the 108th Congress

The election of November 2002 saw the Republicans gain control of the entire Congress for the first time since 1952. After the 2000 election, the Republicans had a small majority in the House of Representatives, but only held control of the Senate due to Vice President Dick Cheney's tie breaking vote. The party lost Senate control in May 2001 when Senator James Jeffords of Vermont defected from the GOP to become an independent, caucusing with the Democrats. In this election, the Republicans bucked the historical trend of the party in the White House losing Congressional seats in mid-term elections. Instead, the Republicans gained six seats in the House and two seats in the Senate.

Despite the Republican sweep, the electorate remains closely divided. In fact, a swing of only about 100,000 votes in four states – South Dakota, New Hampshire, Missouri, and Minnesota - would have given control of the Senate to the Democrats. However, the shift in party control will bring about important changes that will have a substantial impact on advertising issues in the 108th Congress.

The House has been under Republican control since 1994. The election results will bring about little change in the membership of that body, as only a few incumbents were defeated. The most important changes will occur in the Senate, where the Republicans will now control scheduling and the setting of the legislative agenda. Once legislation gets to the floor, however, the Democrats will still wield power, as the threat of a filibuster means that it often takes 60 votes to pass or block most controversial legislation.

One major development after the election was the ascension of Senator Bill Frist (R-TN) to Senate Majority Leader in the 108th Congress, to replace Senator Trent Lott (R-MS). Senator Frist, a surgeon by profession, is looked upon in the Senate as an authority on health issues. This will undoubtedly affect the prescription drug debate. In the past, he has introduced legislation on physical fitness and nutrition, in relation to the obesity issue, and legislation that would grant authority over tobacco products to the FDA. He has been involved in medical privacy issues, which could lead to a debate on privacy more generally. He may also be lobbied to become more involved in alcohol beverage advertising, as the American Medical Association (AMA) has called for a ban on television advertising for these products before 10PM.

As far as the advertising community is concerned, the shifts in chairmanship on the following Senate committees will have the largest impact:

- Senator John McCain (R-AZ) will take over as chairman of the influential Commerce, Science and Transportation Committee, replacing the new Senior Senator from South Carolina (after 37 years in the Senate), Fritz Hollings (D).

- Iowa Republican Senator Charles Grassley will assume the helm of the Finance Committee, relegating Senator Max Baucus (D-MT) to ranking member.

- A notable change will occur at the Health, Education, Labor and Pensions (HELP) Committee as well. Senator Ted Kennedy (D-MA) will relinquish his chairmanship of this important committee to Senator Judd Gregg, Republican of New Hampshire.

There also will be some turnover on these key committees. A number of seats have opened up

due to retirements, especially on the Finance Committee. The change in control may also result in the Democrats losing seats on some committees.

In the past year, the advertising community faced difficult battles in each of these committees. Among the areas of controversy included Senator Hollings' bill to regulate online and offline privacy, Senator Debbie Stabenow's (D-MI) proposal to restrict prescription drug advertising, and Senator Kennedy's bill to impose sweeping FDA regulation of tobacco advertising. While these issues will be back in the new Congress, the debate will take place under Republican leadership and committee control.

A large number of issues still remain unresolved from the previous Congress. Numerous advertising issues could arise, such as proposals to limit prescription drug advertising, as part of the debate over prescription drug benefits under Medicare; online and offline privacy; obesity concerns; entertainment content; and jurisdiction over tobacco products and advertising. In addition, the worsening fiscal situation could lead to a renewed debate over ad taxes.

The new Congress will present new challenges and opportunities for the advertising community. We will continue our efforts to reach out to members of Congress, both the holdovers and the more than 50 new members, to explain the positive role that advertising plays in our economy.

Advertising Tax Deductibility

Background

In the last decade and a half, there have been an increasing number of serious tax proposals to limit or eliminate advertising tax deductions introduced in Congress. Recently, most of these proposals have dealt with prescription drug advertising. However, in previous Congresses proposals have been introduced that affected tobacco and alcohol beverage advertising as well. Fortunately, none of these proposals has passed. ANA, working with the Advertising Tax Coalition (ATC), successfully has fought all proposals to limit or prohibit the ability of companies to write off advertising expenses as part of the cost of doing business.

Status

2002 saw the proliferation of proposals introduced in Congress dealing with limiting or prohibiting the deduction for prescription drug advertising. Senator Debbie Stabenow (D-MI), the Coordinator of the Senate Democratic Prescription Drug Task Force, introduced and pushed S. 2486, the Fair Advertising and Increased Research (FAIR) Act. This legislation would have limited the tax deduction for prescription drug advertising, marketing and promotion to the amount spent in the previous year on research and development. Any aggregate expenditure on advertising, marketing and promotion above that amount would not be allowed to be deducted. Senator Stabenow threatened to bring up her proposal as an amendment to the Medicare prescription drug benefit proposal. A companion bill was introduced by Congressman Frank Pallone (D-NJ). ANA and other industry groups met with Senator Stabenow to attempt to dissuade her from introducing her amendment.

Congressman Patrick Kennedy (D-RI) went further than Senator Stabenow and introduced H.R. 5350, the Prescription Affordability and Medicine Safety Act of 2002. His bill would have limited the tax deduction for advertising to fifty percent of the amount spent on research and development. Even more restrictive was a proposal by Congressmen Jerrold Nadler (D-NY) and Joseph Crowley (D-NY), the Say No to Drug Ads Act (H.R. 5105), which would have disallowed the advertising deduction entirely.

Also in the House, Rep. "Pete" Stark (D-CA), the ranking Democrat on the Health Subcommittee of the Ways and Means Committee, championed a proposal with a slightly different twist. His proposal, the Fair Balance Prescription Drug Advertisement Act of 2001, would have denied the advertising expense deduction for DTC ads that do not provide certain information or "present information in a balanced manner." Congressman Stark's proposal appeared directed to dramatically increase disclosures in direct to consumer prescription drug advertising, thereby making this advertising uneconomic or impossible to run on the broadcast and cable media.

Next Steps

This threat to advertising will undoubtedly persist, especially if the nation's fiscal situation deteriorates further, and Congress attempts to find new sources of revenue. We will continue to keep up our guard. It will also remain an issue on the prescription drug front, as Congress debates prescription drug costs and a Medicare drug benefit plan. This issue is virtually certain to be high on the agenda early in the 108th Congress. ANA will continue to work with the ATC to oppose any attempts to tax advertising. We will also continue to meet with members of Congress and their staffs, and will monitor events at the tax-writing committees in both Houses.

State Advertising Tax Deductibility

Background

There is a long history of advertising tax proposals at the state level. In the past, for example, Arizona, Florida and Iowa each passed advertising tax laws. All of these states, however, later repealed these tax provisions because of the seriously harmful effects they were having on their state's economy. Despite these negative experiences, advertising tax battles continue to arise in the states each year. ANA is a founding member of the State Advertising Coalition (SAC), which opposes advertising taxes at the state and local level. Since 1987, we have worked with member companies and allied trade groups to turn back more than 100 advertising tax proposals in 40 states.

Status

Many states faced budget shortfalls in 2002, owing to the continuing economic downturn and the economic aftermath of September 11th. A number of states proposed advertising taxes as one of the solutions to their fiscal problems.

In Florida, John McKay, the President of the state Senate, introduced a bill in January which would have removed the sales tax exemption for almost all products and services, including advertising time and space. McKay presented his proposal as an amendment to Florida's Constitution, which would have required 60% approval by both houses of the Florida Legislature, and approval in a statewide referendum. His proposal was similar to the sweeping service tax legislation which included a tax on advertising that was passed by the Florida Legislature in 1987. The legislation was repealed six months later, after an aggressive campaign by ANA and other industry groups. McKay later announced that he would continue the current exemption for many services, including advertising. The bill, without the advertising tax proposal, passed the Senate in February, but was defeated in the House of Representatives. McKay continued to push for sales tax reform until the legislature adjourned in March, and the final compromise included a proposed constitutional amendment creating a panel empowered to review all sales tax exemptions, including the exemption for advertising. In September, the Florida Supreme Court ordered the proposed tax review panel removed from the November ballot. It upheld a lower court ruling which held that the amendment went against the basic principles of democratic government by concentrating power in the hands of a few elected representatives.

The Nebraska Legislature continued to be a battleground for the advertising tax issue. Senator Kermit Brashear again introduced legislation to extend the sales tax to a number of services, including advertising agency services. This legislation was similar to that introduced in previous years. The Revenue Committee rejected his proposal, but he later attempted to bring a scaled back version of the bill up as an amendment to a larger tax bill. This effort fortunately was defeated.

Tennessee also continued to grapple with serious budget problems. One of the options the state legislature considered to fix the budget mess was a proposal by Senator Jerry Cooper and Representative Randy Rinks. Their proposal would have raised the sales tax rate from 6% to 7% for three months, and then lowered it to 4.25% on July 1. This lower rate would have applied

to previously untaxed goods and services, including advertising. This proposal was defeated.

ANA's Position

An advertising tax would have a substantially negative impact on a state's economy. By adding to the overall cost of advertising, companies would spend less, thus creating less consumer demand. Companies, faced with this added cost, would be less inclined to do business in a state with an advertising tax. It would also create a huge burden on a state government, as an advertising tax would be very complex and expensive to administer. Finally, these taxes typically hit the consumer twice. They increase the costs of goods and services, and then increase the overall sales tax paid by the public when those commodities are bought by the public.

Next Steps

A recent state budget update from the National Conference of State Legislatures (NCSL) indicates that two-thirds of the states currently report declining revenues that will result in a collective $17.5 billion budget gap to fill before the end of the current fiscal year, which is June 30 for most states. In addition, a number of states are already projecting major budget problems for fiscal year 2004; the projected shortfall for California alone is more than $20 billion. When state governments face budget shortfalls such as these, they often look for revenue across the alphabet of business categories. Unfortunately, advertising is often near the top of the list. ANA is adamantly opposed to attempts to tax advertising. We will continue to monitor tax issues in the states and aggressively oppose the imposition of increased taxes on the effort to sell through advertising.

Privacy Issues

Background

ANA has taken a lead on privacy issues over the past several years. We have worked with the federal government and the private sector to aid in the development of new and innovative ways to protect consumer privacy.

Status

Privacy issues remained in the forefront in 2002. This increased activity was evident at the Federal level, in both Houses of the Congress, at the Federal Trade Commission, and in the states as well.

Congressional Activity

A number of privacy bills were introduced in the second session of the 107th Congress, and many bills from the first session continued to attract attention. The Senate began the year with hearings taking place in the Judiciary Subcommittee on Technology, Terrorism and Government Information regarding Senator Dianne Feinstein's (D-CA) bill, the Privacy Act of 2001. While Feinstein's bill was a comprehensive bill which covered topics such as commercial privacy, health and financial privacy and identity theft, Title I of the bill would have regulated the collection and use of personally identifiable information for marketing purposes, both online and offline. Marketers would have been required to provide consumers with notice and the ability to "opt-out" of the sharing of non-sensitive information, while "opt-in" consent would have been required from the consumer for health and financial data.

In April, Senator Fritz Hollings (D-SC), the Chairman of the Senate Commerce Committee introduced S.2201, the Online Personal Privacy Act. It would have required Internet service providers and commercial websites to obtain opt-in written or electronic consent to collect or disclose sensitive personally identifiable information, such as health or financial information. For other personally identifiable information, opt-out consent was required, meaning the provider would have to give "robust notice" to the user and provide the user an opportunity to decline to consent to the use of their personally identifiable information. Users would have to be notified of changes in policy for collection, use or disclosure of personally identifiable information, and would have to be notified in case of a breach in security regarding personally identifiable information. Furthermore, it required website operators to provide users reasonable access to all personally identifiable information collected about them at their website. The bill also contained a "safe harbor" provision that allowed for websites to be considered in compliance with the act if they participate in FTC-approved self-regulatory programs. A private right of action was reserved for users whose sensitive personally identifiable information was disclosed in violation of the act, and the bill contained a broad pre-emption of state privacy laws. In addition, the bill required the FTC to report to the House and Senate Commerce Committees within six months of enactment on recommendations and proposed regulations regarding offline privacy, at a level of protection similar to that given to online data. It required the FTC to promulgate final regulations regarding offline privacy within 18 months of enactment.

ANA wrote to the members of the Commerce Committee stating our strong opposition to the Hollings bill. Specifically, our comments noted that the access and security provisions and the private right of action provisions would open up commercial websites to tremendous potential liability and class action lawsuits. We also believed that the bill would conflict with numerous privacy laws already on the books, and would have imposed massive new costs and major new burdens on every business that operates online. The opt-in approach raised serious First Amendment concerns, and the barrage of notice disclosures would be counterproductive for consumers and businesses. Nevertheless, the bill passed out of committee in May, on a vote of 15 to 8. No further action, however, was taken on this legislation before the adjournment of the 107th Congress.

On the House side, Rep. Cliff Stearns (R-FL), Chairman of the Energy and Commerce Committee's Commerce, Trade and Consumer Protection Subcommittee, introduced his own privacy legislation in May. Hearings were held on the bill, the Consumer Privacy Protection Act (H.R. 4678), by the Subcommittee in September. His bill applied to both online and offline privacy, and required that companies provide clear and concise notice to consumers both upon first instance of collection of personally identifiable information and when an organization makes a material change to its privacy policy. Under the bill, consumers would have had the opportunity to opt-out and thereby preclude the sale and disclosure of personally identifiable information to third party organizations. Companies would have to prepare and implement information security policies to prevent the unauthorized disclosure or release of personally identifiable information. This policy would also have had to detail how corrective action was to be taken. Unlike the Hollings bill, no private right of action was provided, but similar to the Hollings legislation, it did preempt all state laws and regulations. ANA filed a statement concerning the various aspects of this legislation. Both the Hollings' and Stearns' bills demonstrate the growing concern in the Congress in regard to offline privacy in addition to online privacy issues.

Senator Conrad Burns' (R-MT) unsolicited e-mail bill, the CAN SPAM Act (S.630), was linked in committee to the Hollings privacy legislation. This bill would have made it unlawful for senders to disguise and transmit unsolicited commercial e-mails by intentionally using a false or misleading header. Messages would also have to include a header identifying it as an advertisement or solicitation, and an opportunity for the receiver to opt-out from receiving the message. Rep. Heather Wilson (R-NM) also introduced unsolicited commercial e-mail legislation in the House of Representatives.

FTC Activity

The FTC built on the privacy initiative announced by Chairman Timothy Muris in October 2001. In his remarks given at the Networked Economy Summit in June, Chairman Muris said that protecting consumers' privacy was a top priority of the FTC, and he detailed the actions the Commission has taken since he announced the privacy initiative. For example, he noted that the FTC reached settlements with major advertisers for the unauthorized disclosure of sensitive personal information collected on their websites. The Commission also has threatened law enforcement action against e-mail spammers who do not remove e-mail addresses from their databases once a consumer has requested it. Most importantly, the Chairman noted that the FTC was expending fifty percent more resources to focus specifically on privacy violations. Finally, in a departure from the previous FTC Chairman's position, Muris stated that the FTC did not believe that additional Federal privacy legislation was warranted at this time.

The FTC also held a public workshop in May to explore issues on consumer information security, which explored security issues related to consumers' home computers, businesses that maintain personal information on consumers, and emerging business models, technologies and best practices to protect the security of consumer information.

Information about the FTC's privacy initiatives can be found on the Web at http://www.ftc.gov/privacy/index.html

State Activity

Legislators in several states decided to take the privacy issue on themselves. In Minnesota, the most expansive privacy legislation thus far enacted into law, either at the federal or state level, was signed by Governor Jesse Ventura (I) in May. The Minnesota bill broadly defines personally identifiable information, including just about every type of information about a consumer. It requires that consumers receive access to all information about them held by a company upon their written or electronic request. It also places limits on unsolicited commercial e-mail.

ANA filed comments with the Minnesota House of Representatives and Senate in opposition to the bill, as we believe the legislation is too broad in scope, would adversely affect businesses, both large and small, and raises serious constitutional problems under the commerce clause. It would require national and international website operators to comply with a state-specific privacy regime, limiting the abilities of marketers to do business in Minnesota. It also, rather perversely, would give hackers substantial new rights. Unless a hacker received notice of a company's privacy policy and consented to disclosure, the website operator would be unable to disclose any personally identifiable information about their activities on their website to law enforcement. We noted this is a major structural hole in the legislation. We also sent a letter to Governor Ventura urging him to veto the bill. The bill does not take effect until March 1, 2003, which gives industry the ability to work with the legislature to address its concerns with the bill.

In North Dakota, a law passed in 2001 that allowed financial companies to share personally identifiable information with third parties unless the consumer opted-out was overturned by voters in a referendum. Instead, companies must now obtain opt-in consent to share information about consumers with other companies.

Privacy legislation was also passed in both Houses of the California legislature. In the State Assembly, Assemblyman Joe Simitian (D) introduced a bill, AB 2297, the Online Privacy and Disclosure Act of 2002. It would require all commercial websites to post a privacy policy detailing its information collection practices, and would require websites to notify users in the event of a security breach that results in a disclosure of personal information in a manner not covered by the privacy policy. On the other side of the California Capitol Building, Senator Debra Bowen introduced a sweeping bill (SB 1765) to regulate both online and offline privacy. Companies would be required to obtain opt-in consent from consumers to collect, use, and share with third parties personal information from warranty cards, product registration cards, or consumer surveys.

ANA filed comments with both the California Senate and Assembly in opposition to these bills. A substantially revised version of Bowen's bill was signed by Governor Gray Davis (D) in August. Simitian's bill, however, was vetoed by the Governor in September. In his veto message, the Governor stated he felt the bill was "too vague and does not clearly define what entities are covered."

ANA's Position

ANA does not feel that broad new regulations are needed to protect privacy. It is in the best interest of marketers to protect consumer privacy; otherwise, consumers will cease doing business with them. Therefore, we support private sector self-regulatory initiatives, such as the P3P program and the numerous seal programs, such as TRUSTe, BBB Online and CPA Web Trust. These programs give consumers themselves the control to protect their privacy online, and allow them to set their own level of privacy protection.

In fact, a report by the Progress and Freedom Foundation (PFF), issued in March, shows that industry is making great strides in improving privacy protections online. The survey found that, compared to the previous year's findings, more sites are posting complete privacy policies, consumers have greater say over whether their personal information is shared with third parties, and more sites offer opt-in as a method of consent. FTC Chairman Muris and Commissioners Thomas Leary and Orson Swindle attended the briefing announcing the report's findings. The PFF's report can be viewed at http://www.pff.org.

We are also worried that a patchwork of differing state regulations is being created with the passage of the Minnesota, North Dakota and California privacy laws. It could lead to an environment where businesses will be required to conform to a number of contradictory state laws if they want to conduct business across the country. Even sensible restrictions in various states can be very disruptive, particularly if they are inconsistent. Also, as the Internet is geographically ubiquitous, the state with the most restrictive online regulations will be able to impose their policies on the rest of the country.

Conversely, the Privacy Leadership Initiative (PLI) conducted a study that used as a case study a retail credit card company to show that opt-in requirements mandated uniformly throughout the country could adversely affect businesses, which in turn would have a negative impact on consumers. Mandated opt-in requirements often would severely limit marketing opportunities, both for existing customers and potential new customers. This would limit the products available to consumers, leading to higher prices and different marketing practices. ANA, as a member of PLI, has supported the development of a series of studies in various industry categories and ANA will continue this effort in the future. This study, and others, can be found at http://www.understandingprivacy.org.

It is our opinion that consumers are best protected through a combination of existing privacy laws and regulations, privacy enhancing technology, effective self-regulation and the FTC's current ability to stop false, deceptive or unfair acts and practices.

Next Steps

There will continue to be activity on this issue in Congress, at the FTC and at the State level. Focus on this issue is not likely to be disrupted by the change in control of the Congress, as the Republican chairmen of both the Senate and House Commerce Committees support broad legislation in this area. We will continue to work with our member companies, industry groups, and the Online Privacy Alliance (OPA, http://www.privacyalliance.org), of which we are a founding member, to create and strengthen self-regulatory solutions to consumer privacy concerns.

Children's Online Privacy

Background

ANA and other industry groups worked with Congress in developing legislation to protect the privacy of children in cyberspace. This effort culminated in Congress' passage of the Children's Online Privacy Protection Act (COPPA) in 1998. We also worked with the FTC in the development of the rule to implement the Act, which the Commission adopted in 1999 and took effect in April 2000. The COPPA rule requires websites that are directed at children 13 and under to post a complete privacy policy. The rule also limits the collection, use or disclosure of personally identifiable information from children without the prior consent of their parent or guardian.

Status

The FTC celebrated the second anniversary of the COPPA rule in April by announcing its sixth enforcement case under the rule, as well as new initiatives to increase compliance with the rule. Significantly, the FTC extended the "sliding scale" mechanism for obtaining parental consent, for three more years. This mechanism allows a website collecting personal information for its internal use only, and not sharing the information with third parties, to obtain parental consent through the use of an e-mail message from the parent, in conjunction with additional safeguards that provide assurance that the person providing consent is the parent. It requires websites to use more reliable methods to obtain consent if it intends to disclose the personal information to others. While it is not the ten-year extension ANA and other industry groups urged in our comments in late 2001, it is a year longer than the two-year extension originally proposed by the FTC.

The Commission also released a survey regarding compliance with the COPPA rule. The report, entitled *Protecting Children's Privacy Under the Children's Online Privacy Protection Act: A Survey on Compliance*, examined 144 websites directed at children a year after the rule took effect. The more encouraging aspects of the survey included a finding that 90% of websites provided a privacy policy that disclosed how personally identifiable information was collected, used and whether it was shared with third parties. It also showed that websites are collecting more limited information. The survey discovered that full compliance with the rule has yet to be reached, however. It cited statistics that show a number of websites have not complied with many provisions of the rule, such as notifying parents of their right to review, have deleted, and refuse the further collection and use of their child's personally identifiable information.

As a result of the study, the FTC sent letters to more than fifty websites, warning them that they must improve their privacy practices in order to comply with COPPA. It also announced a program entitled "You, Your Privacy Policy and COPPA" to help educate web site operators on the requirements of the rule and assist them in drafting a privacy policy. More information on the FTC's activities in this area can be found on the Web at http://www.ftc.gov/kidzprivacy.

ANA's Position

ANA feels that protecting the privacy of children in the online environment is vitally important. All websites directed at children under 13 must comply with the COPPA rule.

Next Steps

ANA will work with the FTC and industry groups to ensure that full compliance with the COPPA rule is attained. We will also encourage the development of new technologies to enhance the safety of children on the Internet. We continue to work with the Children's Advertising Review Unit (CARU) of the Council of Better Business Bureaus to assure that advertising in any medium, whether online or off, is truthful, non-deceptive and takes into account the special cognitive capabilities of children. Information about CARU can be found at http://www.caru.org.

"Do-Not-Call" Proposals

Background

Telemarketing is one of the many ways advertisers reach out to consumers. The Federal Trade Commission has the authority to devise and enforce regulations that prohibit abusive, deceptive and unwanted telemarketing calls. It does this through the Telemarketing Sales Rule (TSR). Under the current TSR, a telemarketer cannot call a consumer once they have asked not to be called by that particular company. If the company calls again, it is in violation of the TSR. It also defines what times telemarketers can call consumers, and prohibits telemarketers from misrepresenting either themselves or information about products and services.

Status

In January, the FTC issued a Notice of Proposed Rulemaking that would greatly expand the TSR. It announced its proposal to modify the TSR to include a national "do-not-call" registry. Many states already have their own "do-not-call" programs, but this proposal would permit consumers to contact one centralized, federal registry to block most types of telemarketing calls.

Per the FTC's request, ANA filed comments with the Commission, stating our concern over several of the proposal's provisions. As a government-controlled registry, with very restrictive rules, the proposal raises First Amendment concerns. It would make it substantially more difficult and expensive for companies to communicate with both current and potential customers. Also, since consumers would continue to receive telemarketing calls from a significant number of companies and organizations outside the FTC's jurisdiction, the registry is likely to be confusing and frustrating for consumers. We instead urged the Commission to work with the business community to seek a private sector solution.

The FTC issued its Notice of Final Rulemaking in December, detailing a number of changes to the TSR, including a "do-not-call" list. Consumers would be able to call a toll free number or log on to a special section of the FTC's website to register for the list. Registration would be free, as telemarketers would be required to pay an annual user fee to access the list. Telemarketers would also be required to access the list quarterly; otherwise, they would face penalties of up to $11,000.00 per violation. The revised rule makes exceptions for established business relationships. Not-for-profit organizations, such as charities, and other organizations not under the FTC's jurisdiction are exempt from the rule changes.

The revisions to the TSR also include a requirement that telemarketers transmit caller ID information, new restrictions on abandoned calls, which result in the consumer hearing "dead air", a crack down on unauthorized billing by telemarketers, and the extension of the TSR to for-profit telemarketers who solicit for charities.

At the press conference announcing the changes, Chairman Timothy Muris said that he hoped that Congress would approve the "do-not-call" program and provide the funding to start it by February 2003. Using that as the start date, the FTC is optimistic the program will be up and running by the end of calendar year 2003.

Information about the FTC's proposal can be found at www.ftc.gov/donotcall.

In September, the Federal Communications Commission jumped into the fray when it

announced that it was considering its own “do-not-call” proposal. The FCC considered a list when first implementing the Telephone Consumer Protection Act in 1991, but later dropped these plans. The FCC’s Notice of Proposed Rulemaking and press release can be viewed at http://www.fcc.gov.

Next Steps

ANA noted its opposition to a government-sponsored “do-not-call” list in the comments we filed with the FTC. In the coming year, we will reach out to our members to find out how we should respond to these new developments. We expect the Direct Marketing Association (DMA) and other industry groups to file suit challenging the final rule, and we will continue to monitor the developments at the FTC. We will also participate in the recently re-initiated review at the FCC.

Unsolicited Commercial Faxes

Background

In addition to setting rules that govern telephone marketing calls and prerecorded messages, the Telephone Consumer Protection Act sets rules regulating unsolicited commercial faxes. The FCC and FTC both have jurisdiction over parts of the Act.

Status

A decision by a District Court judge in Missouri in March overturned a portion of the Telephone Consumer Protection Act in regard to this issue. The court rejected the state's argument that unsolicited fax advertisements pose a serious problem, and found that the blanket ban on unsolicited faxes violated the First Amendment. It decided that the Act goes too far in limiting commercial messages that are authentic. The case was brought, in separate suits, against American Blast Fax and Fax.com, by Missouri Attorney General Jay Nixon.

However, in August, the FCC imposed its largest fine ever, $5.4 million, on fax.com, for 489 violations of the Telephone Consumer Protection Act. It was the first fine levied against a fax broadcaster. The Commission also issued over 100 citations and letters of inquiry to customers of fax.com, warning them that they could face fines themselves if they continued to send unsolicited faxes.

The FCC, at its September Open Commission Meeting, announced plans, in addition to issuing a Notice of Proposed Rulemaking regarding its telemarketing rules and the possible establishment of a "do-not-call" list, for a reexamination and potential revisions to its rules governing unsolicited commercial faxes. Information about the FCC's plans can be found at http://www.fcc.gov.

Next Steps

We will monitor the developing situation at the FCC in these areas.

Media Ownership Rules

Background

To promote diversity, competition and localism in the media, the Federal Communications Commission (FCC) has adopted a series of media ownership rules over the years. For example, a company may not own a newspaper and a television station in the same market, or a TV station and cable system in the same market; a single company may not own a collection of TV stations that reach more than 35% of the nation's homes.

Status

Several of the FCC's media ownership rules have been struck down in recent court challenges. Also, the Telecommunications Act of 1996 made several changes in broadcast ownership law and directed the Commission to re-examine its various media ownership rules every two years. In September, the FCC announced a comprehensive review of six media ownership rules to determine whether those rules continue to promote diversity, competition and localism in the media market. The text of the FCC proposal is available at their website at www.fcc.gov. Comments on the proposal were due on January 7, 2003.

Next Steps

ANA sought input from our members about the impact of any changes in the media ownership rules. Some advertising agency leaders have expressed concern that further media consolidation could lead to increased ad costs, reduced diversity and more difficulty for regional marketers to buy in smaller geographic markets.

Protection of Digital Broadcast Television

Status

In December, ANA joined with Viacom, the American Association of Advertising Agencies (AAAA), the National Association of Broadcasters (NAB) and the Motion Picture Association of America (MPAA), among others, to file comments with the Federal Communications Commission (FCC) on the issue of digital broadcast copyright protection. Our comments argued that digital broadcast television is subject to an extraordinarily high risk of unauthorized redistribution over networks such as the Internet. This would threaten its viability as a widely used method for the distribution of high-value programming. The solution to this problem is so-called Broadcast Flag technology, which is a code embedded in a television program that signals that the program must be protected from unauthorized distribution. It protects the content of the programming, while not limiting the ability of consumers to record copies for personal use. We urged the FCC to adopt the Broadcast Flag solution, which would provide the most appropriate and efficient solution for the protection of digital broadcast television, and prevent piracy.

Advertising and Marketing in Schools

Background

There have been many attempts in the past few years to limit the exposure of children to advertising and marketing. Legislators in the last two Congresses have focused particularly on advertising issues impacting the school system.

Status

ANA was active in 2001 in opposing the legislation by Senators Christopher Dodd (D-CT) and Richard Shelby (R-AL) that would have imposed a highly restrictive privacy regime regulating the collection of information in schools. Due to the lobbying of ANA and other interested groups, the final version of the education reform bill, passed in December and signed by President Bush in January 2002 contained a more reasonable approach to protecting the privacy of students without limiting the abilities of schools to develop partnerships with businesses.

Increasingly, as schools around the country face financial difficulties, many have turned to such partnerships with businesses as an alternative source of funding, including permitting advertising and marketing to their students. A school in Vernon Hills, IL, for instance, offered the naming rights to its new football stadium to a corporation. In response to these types of developments, legislators in Maryland introduced a bill in 2002 that specifically targeted marketing and advertising in schools. ANA filed testimony with the Maryland General Assembly in opposition to the bill. We argued that the state government was dictating a one-size-fits-all policy for local schools to work with businesses. By mandating specific "findings" and a specific hearing process before entering into any contracts, the bill would allow the state to micro-manage local school operations. We feel that this is an issue best decided at the local level, to ensure that the unique needs of the district, including the special needs of particular schools, are represented, and the values of the local community are reflected.

Some legislators have suggested even more restrictive proposals impacting school advertising. In her 2000 campaign for the Senate, for example, Senator Hillary Rodham Clinton (D-NY) argued that advertising to children in elementary schools should be banned. She also proposed that the FTC be given the authority to restrict any advertising aimed at children that is "harmful" to their health or well-being.

Next Steps

ANA will continue to monitor developments in this area, as this issue will most likely remain at the forefront for the foreseeable future.

Media Content and Child Protection

Background

There has been a considerable movement at the federal level to limit the amount of violence young people are exposed to in music, video games, on the Internet and in movies and on television. This is true both in numerous Committees of the House and Senate, and at the Federal Trade Commission. ANA has taken a lead on this issue as well, through the development of the Family Friendly Programming Forum.

Status

A number of bills from the first session of the 107th Congress remained pending in 2002. This included the Media Marketing Accountability Act of 2001 (S. 792), introduced by Senator Joseph Lieberman (D-CT). It would have given the FTC regulatory authority over activities that are considered unfair or deceptive, including intentionally advertising or marketing adult rated material to minors or marketing to an audience with a large portion of minors. An analysis of the proposal conducted on ANA's behalf by constitutional expert Robert Corn-Revere from the law firm of Hogan & Hartson found it to be unconstitutional. Senator Sam Brownback (R-KS) introduced the Children's Protection Act of 2001 (S. 124), which would have exempted from antitrust laws industry agreements that involve voluntary guidelines relating to content for the broadcast, video game and music industries; the exemption did not apply to the sale or purchase of advertising.

Additionally, a bill introduced by Senator Fritz Hollings (D-SC), the Children's Protection from Violent Programming Act (S. 341), required the FCC to evaluate the v-chip and content ratings and establish whether children are being protected from violent content by the use of these methods. In the House of Representatives, Rep. Steven Israel (D-NY) introduced a version of the Lieberman bill, and Rep. Ronnie Shows (D-MS) introduced companion legislation to the Hollings bill. No action was taken on any of these bills.

The FTC issued the third follow-up to its 2000 report to Congress on the marketing of violent entertainment to children. This report showed "continued progress by the movie and electronic game industry and improvement by the music industry in including rating information in advertising" to guide parents in determining if material contains content unsuitable for children. It also concluded that the movie and electronic game industries are following through with a pledge to limit ad placements in teen-oriented media, but determined that some inappropriate ads are still reaching children, especially on television. The report described areas where the entertainment industry can improve its self-regulatory efforts, and noted the Commission's continued support for private sector initiatives by the industry, rather than new legislation. The report can be found on the Internet at http://www.ftc.gov/reports/violence/mvecrpt0206.pdf.

ANA is a sponsor of the Family Friendly Programming Forum, a coalition of over forty national advertisers that helps develop and promote television programming suitable for viewing by people of all ages. Specifically, it looks for programming that would be enjoyable to a broad family audience. The Forum held its fourth annual Family Television Awards in August. The awards ceremony took place in Los Angeles and honored several family-oriented television programs. More information on

the Forum can be found on ANA's website, at http://www.ana.net/family.

ANA's Position

ANA favors private sector initiatives in response to the issue of media content. We oppose any legislative attempts to limit the legitimate rights of the entertainment industry to promote and advertise their products. ANA advocates self-regulation and parental education, combined with voluntary private sector innovations such as the v-chip, as the best means to monitor the amount of unsuitable content that reaches an underaged audience.

Next Steps

While there was little action on these various bills in the 107th Congress, we expect that this issue will remain at the political forefront. Senators Lieberman, Hollings and Brownback have long been supporters of legislation restricting media content, and we do not expect their positions to change in the next Congress. As we have done repeatedly in the past, ANA will respond proactively to any new initiatives in this area.

Prescription Drug Advertising

Background

Direct-to-consumer prescription drug advertising continues to face a barrage of criticism in the political arena as an alleged important factor in the high costs of health care. Since the Food and Drug Administration modernized the regulations that restricted DTC advertising in 1997, spending on ads by drug companies has increased from $600 million in 1996 to $2.5 billion in 2001. This figure is small in comparison to the amounts that drug companies spend on other types of prescription drug promotion. However, DTC advertising continues to face scrutiny from the Congress and the FDA.

Status

2002 was an especially active year in Congress on the DTC advertising issue, as it was for the prescription drug issue in general. Congress prepared to confront a number of issues that could be used as a justification to attack DTC advertising; specifically the reauthorization of the Prescription Drug User Fee Act, or PDUFA; the revision of the Hatch-Waxman generic drug law; and proposals to add a prescription drug benefit to Medicare. The year began with pointed statements from various members of Congress, particularly from Ways and Means Chairman Bill Thomas (R-CA). Thomas's staff stated that the Chairman was considering, as part of a Medicare prescription drug benefit, that patients pay a higher co-payment for brand name advertised drugs, than they would for brand name non-advertised drugs or generics. Fortunately, this proposal did not garner much support, and the House prescription drug bill passed in June without its inclusion.

Many of the proposed Medicare prescription drug bills contained sections that required studies by the GAO on utilization rates of prescription drugs and the affect advertising may or may not have on them, but the final version passed by the House did not include these proposals either.

A number of bills have been introduced to limit the tax deduction for DTC prescription drug advertising expenses. In May, Senator Debbie Stabenow (D-MI) introduced S.2486, the Fair Advertising and Increased Research (FAIR) Act. A companion bill was introduced in the House by Rep. Frank Pallone (D-NJ). This bill would have denied the tax deduction for advertising expenses to prescription drug advertisers for amounts over and above those spent on research and development in a single tax year. Senator Stabenow threatened to introduce the bill as an amendment to the Senate's generic drug legislation, the Schumer-McCain bill. The generic bill, however, passed in late July without Senator Stabenow's amendment. ANA sent a letter to each member of the Senate stating our strong opposition to the Stabenow proposal. We also met, along with other trade associations and industry groups, with Senator Stabenow to show that other industries beyond the pharmaceutical industry were deeply concerned about the adverse precedents this proposal would create. These bills died at the end of the 107th Congress.

Additionally, Rep. Thomas Allen (D-ME) had introduced a bill in May (H.R. 4833) that would authorize the FDA to impose penalties of up to $10 million for false and misleading DTC ads. This legislation is likely to be revived in the 108th Congress, despite the fact that the FDA, in testimony before the Congress, has stated that it "is not aware of any evidence that the risks of DTC promotion outweigh its benefits."

ANA's Position

ANA continues to strongly support the right of pharmaceutical companies to advertise directly to consumers. DTC advertising remains the most heavily regulated form of advertising in the United States. Meanwhile, study after study has shown that DTC advertising has major benefits. The National Medical Association, the nation's largest African-American physician group, for instance, concluded in a study released in April that drug ads serve to increase awareness of medical conditions and lead to improved doctor-patient communication in minority communities. Information about the NMA study can be found at http://www.nmanet.org. Similar findings were also detailed in a 1999 survey by the FDA itself. ANA has been instrumental in developing and distributing research in the past on this issue. For example, ANA provided testimony in the Congress that included a study by Professor Frank Lichtenberg of Columbia University that found that expenditures on new drugs by patients provided dramatic savings for the U.S. health system by helping to prevent or mitigate severe health conditions.

Next Steps

ANA dodged a number of major political bullets in the DTC area in 2002. ANA will remain as vigilant as possible, as attempts to limit DTC advertising are almost certain to arise in the upcoming Congress. We will continue to work closely with our pharmaceutical company members and other industry groups to defeat any proposals to limit DTC advertising.

FDA First Amendment Request

Background

The Food and Drug Administration is the federal agency with primary responsibility for oversight of health claims regarding the labeling of food products, dietary supplements, medical devices, and prescription drugs. It also, until the last several years, imposed a very restrictive approach in regulating direct-to-consumer prescription drug advertising.

Status

In May, the FDA, in an unusual but praiseworthy development after a series of adverse rulings in the courts, asked for public comment to ensure that its regulations, policies, and practices continue to comply with First Amendment principles.

ANA assisted the Freedom to Advertise Coalition (FAC) in preparing and filing detailed comments with the FDA. FAC's 38 pages of comments discussed the FDA's regulations regarding direct-to-consumer prescription drug advertising and health claims for food products and dietary supplements. FAC argued that the FDA, to ensure its policies are not contrary to the *Central Hudson* test, which spells out the U.S. Supreme Court's First Amendment requirements for regulating advertising, "must have concrete evidence that its policies directly and materially advance its interests." The FDA must also be able to demonstrate that its chosen policies to restrict speech "are no more extensive than necessary." FAC urged the FDA to conduct a First Amendment impact study of any policies that restrict claims in labeling or advertising. Also, to ensure that its policies comply with the *United Foods* decision, the FDA must prove that "any required disclaimers, qualifying information and warnings are absolutely necessary to prevent customers from being misled." The comments stated FAC's support for the FDA's issuance of guidance in the 1990's regarding DTC prescription drug advertising, but also argued that the FDA should reexamine its policies to ensure that several specific provisions were not in violation of the First Amendment.

ANA also filed our own individual comments, asking that the FDA reconsider the requirement that concurrent print ads contain the entire package label for the product. Both sets of comments were submitted to the FDA in September. They can be viewed at the Government Relations section of our website, at http://www.ana.net.

In October, the FAC submitted supplemental comments to the FDA in response to some of the issues raised by the filings of other individuals and organizations. For example, FAC's follow up comments noted, in response to the comments of another respondent, that the FDA cannot simply declare, at will, that certain speech is "inherently misleading" to avoid the constraints of the First Amendment. This would amount to a *de facto* modification of the First Amendment. The supplemental comments also can be viewed at the Government Relations section of our website.

Next Steps

The situation at the FDA remains fluid. The agency has taken great strides in the past few years to bring its regulations into compliance with the First Amendment. However, the FDA faces

pressure from certain legislators on the Hill to limit prescription drug advertising, and these types of proposals could be extended in the future to other product categories. As the FDA considers all the comments it received on this issue, we will continue to analyze this information and determine whether it is necessary to file further reply comments.

Political Advertising in Wireless Media

Target Wireless Request

In August, ANA sent a letter to the Federal Election Commission (FEC) resulting from a request from Target Wireless, a wireless media company. Target Wireless had requested an advisory opinion from the FEC regarding disclosure requirements for political advertisements delivered through wireless devices. We wrote in support of Target Wireless's request. While none of our members conduct political advertising, we felt it important to get involved in this issue. Attempts to restrict political speech raise serious First Amendment concerns, just as attempts to restrict commercial speech create similar constitutional problems. Burdensome disclosure requirements in all types of advertising limit the amount of information that can be conveyed to the consumer. With wireless devices, there is a limit to the amount of information that can be displayed, which makes space an issue as well.

Status

The FEC approved Target Wireless's request, and granted a disclosure exemption for political advertising on wireless devices. The FEC cited the limited space issue, as well as the precedent set by bumper stickers and other novelty items, such as pens and pencils, in its remarks.

Alcohol Beverage Advertising

Background

Alcohol beverage advertising remained an important issue in 2002, as it continued to face scrutiny from Congress, the courts, and the Federal government. ANA has worked with our alcohol beverage company members in the past to oppose unreasonable regulations on their advertising.

Status

Distilled Spirits Advertising

The fallout from NBC's decision in December 2001 to be the first broadcast network to air distilled spirits ads spilled over into the first half of 2002. NBC had announced strict guidelines for distilled spirits advertising, limiting the ads to the time period between 9 and 11 pm and late night, and requiring that all actors in the ads be over 29 years of age. NBC also required that social responsibility ads be broadcast as part of the package with the broadcast of alcohol beverage product advertising. Despite their proposal, the reaction to NBC's decision was heated. A bipartisan group of thirteen Members of Congress, including Reps. Frank Wolf (R-VA), the Chairman of the Subcommittee on Commerce, Justice, State and the Judiciary of the House Appropriations Committee, and Lucille Roybal-Allard (D-CA) sent a letter to NBC in February asking NBC "…to affirm its social responsibility and put back into place its self-regulated ban on liquor advertising." The letter threatened federal regulation if the networks decided to air distilled spirits advertisements. Senator Fritz Hollings (D-SC), the Chairman of the Senate Commerce Committee, threatened to hold hearings regarding NBC's decision, as did the House Energy and Commerce Committee. Interest groups, including the Center for Science in the Public Interest and the American Medical Association also registered their opposition.

Additionally, a report issued by the National Center on Addiction and Substance Abuse (CASA) at Columbia University in February 2002 severely criticized alcohol beverage advertisements and NBC's decision, and called for a ban on all types of alcohol advertisements on television and on billboards. It was revealed a few days after the release of the report that one of its most startling findings, which stated that underage drinkers consume 25% of the alcohol sold in the United States, was false and misleading, and CASA quickly had to retract that statement.

Mothers Against Drunk Driving (MADD) held a press conference on March 21st featuring Rep. Roybal-Allard. The Congresswoman was the sponsor of H.R. 1509, the National Media Campaign to Prevent Underage Drinking Act of 2001, which proposed a program similar to the Office of National Drug Control Policy's advertising campaign. At the press conference, MADD announced that in light of NBC's decision, it was revising its guidelines for alcohol advertising. These guidelines state that all types of alcohol advertising – beer, wine and distilled spirits – should be required to conform to the same strict standards as those proposed by NBC for distilled spirits ads. MADD guidelines also call for the networks to air public service announcements in addition to alcohol beverage advertisements. These standards are more restrictive than those suggested by the FTC in their report on self-regulation in the alcohol beverage industry. MADD's national president, Wendy Hamilton, touted MADD's guidelines as a model for the media to follow. Coincidentally, MADD's press conference occurred the same day that NBC

decided to forgo its decision to air distilled spirits ads. The liquor industry continues to look for television outlets that will air its ads, and one of the major distilled spirits companies announced in May that it would build its own "unwired" network composed of cable and local network affiliates to air its ads.

In August, a letter was sent from MADD and the National Association of Governor's Highway Safety Representatives to members of the House of Representatives. The letter urged members to sign a letter circulated by Reps. Wolf and Roybal-Allard asking the Energy and Commerce Committee to hold hearings on alcohol advertising and its impact on children. This was followed by a report issued by the Center on Alcohol Marketing and Youth (CAMY) at Georgetown University (http://camy.org) that maintained that young people in America see more ads in magazines than people of legal drinking age. The report calls for the FTC to re-open its inquiry into the industry's marketing practices. CAMY also issued a report that claimed similar findings for broadcast and cable television advertising.

In December, the American Medical Association called for the broadcast and cable television industries to voluntarily halt the broadcast of all types of alcohol advertisements (for beer, wine and distilled spirits) before 10pm. The AMA also called for the networks to stop running commercials that use mascots and cartoon characters.

On the state level, the New York General Assembly's Standing Committee on Alcoholism and Drug Abuse held hearings in October in regard to proposed restrictions on alcohol advertising. The restrictions were introduced in response to concerns about underaged drinking. Floyd Abrams, a noted First Amendment attorney, testified on behalf of ANA. He noted that any proposal to restrict alcohol beverage advertising would raise serious First Amendment concerns. In his testimony, Abrams said, "If there is a problem with kids and alcohol, you must deal with it by enforcing the laws that bar stores from selling alcohol to them. If those laws aren't enforced enough, enforce them. If they're not strong enough, strengthen them. If people don't know about the law, teach them. In short, take action that deals directly with the problem, not with speech itself."

Malt Beverages

There also was a continued spotlight on the marketing and advertising of malt beverages, which critics labeled as "alcopops." In February, Mark Anthony International, the maker of Mike's Hard Lemonade filed a complaint with the National Advertising Division of the Council of Better Business Bureaus regarding labeling on Smirnoff's malt beverage product, Smirnoff Ice. The complaint alleged that Smirnoff had misled consumers through its labeling and advertising that Smirnoff Ice contained vodka, when in fact it does not. The NAD referred the case to the Federal Trade Commission and the Bureau of Alcohol, Tobacco and Firearms. In addition, the FTC responded to a 2001 petition from the Center for Science in the Public Interest (CSPI) which alleged that makers of malt beverages were targeting their products to minors. In a June letter, Director Howard Beales of the FTC's Bureau of Consumer Protection wrote that after an investigation by the FTC and ATF, neither agency felt "…that the available information supports the conclusion that the new flavored malt beverages…are targeted to minors." He did recommend, however, some changes regarding alcohol content labeling on malt beverages. Meanwhile, CSPI's George Hacker and Connecticut Attorney General Richard Blumenthal are continuing to pressure the FTC and ATF to take action.

In addition, certain groups continued to struggle to get the ATF to allow the advertising of the

health benefits of moderate alcohol consumption. In May, a panel of the DC Circuit Court of Appeals decided that a case brought by the Competitive Enterprise Institute (CEI) and Consumer Alert was not yet ripe because the ATF had not yet issued its rule on health clams, which is not expected for several months. CEI had argued that ATF had already banned health claims relating to moderate alcohol consumption, in violation of the First Amendment.

ANA's Position

ANA is opposed to regulations that would limit the First Amendment rights of alcohol beverage companies to truthfully advertise their products to adults. We feel that the FTC currently has all the authority it needs to regulate forcefully in this area, and that no additional legislation is necessary.

Next Steps

ANA will continue to monitor developments in this area and respond to any proposals for new federal or state regulation of alcohol beverage advertising. We will continue to meet with policy makers, especially at the FTC, to make them aware of our position.

Food Advertising

Background

In late 2001, the former Surgeon General of the United States, Dr. David Satcher, issued a report that identified obesity and overweight as the second leading preventable cause of death in the United States. Advocacy groups seized on the report, using it to justify their attacks on the marketing techniques of the food industry.

Status

There were two best-selling books published in the past year that garnered significant publicity due to their severe criticism of the food industry's marketing practices. In *Fast Food Nation: The Dark Side of the All-American Meal,* Eric Schlosser calls upon Congress to immediately ban all advertisements aimed at children that promote foods high in fat and sugar. And in *Food Politics: How the Food Industry Influences Nutrition and Health*, author Marion Nestle writes that the parallels between the tobacco industry and the food industry are impossible to overlook. Nestle urges that restrictions similar to those imposed on tobacco advertising be imposed on food marketing. In July a class action lawsuit was filed in a New York state court against four fast food companies. The suit alleged that these companies did not notify consumers in their promotions or advertising about the fat, salt, sugar and cholesterol content of their food products.

Congress also attempted to find new ways to combat obesity in 2002. In July, a bipartisan group of Senators, led by Senators Bill Frist (R-TN), Christopher Dodd (D-CT) and Jeff Bingaman (D-NM) introduced a bill that would provide funding to various programs to encourage increased physical activity and better nutritional behavior. The bill includes funding for an ad campaign by the CDC aimed at encouraging healthy habits among children. Companion legislation was introduced in the House by Rep. Mary Bono (R-CA) in September. No action was taken on either bill.

ANA's Position

ANA remains opposed to legislative or regulatory actions that limit or prohibit food companies from truthfully and non-deceptively advertising their products. We support the efforts of Congress to find new ways to fight obesity, which is a serious national health problem. However, this issue cannot be ameliorated through simplistic attacks on food marketers or through spurious lawsuits.

Next Steps

The obesity problem in America is not going to be easy to resolve. It is the result of a complex multiplicity of societal forces. Thus, there will be continued pressure on the food industry and its advertising. ANA will closely monitor developments in this area. We will continue to work with industry groups such as the Grocery Manufacturers of America, the Ad Council, and our food company members to encourage that healthy habits are pursued by the American public in the food area without limiting the First Amendment rights of advertisers.

Dietary Supplement Advertising

Background

The U.S. Congress created the regulatory guidelines for dietary supplements in the Dietary Supplement Health and Education Act of 1994. Before this law passed, dietary supplements were subject to the same regulatory requirements as foods. As the law is relatively new, the Congress, the Federal regulatory agencies, and State governments are still attempting to formulate regulations for this fast-growing industry, including regulations governing health claims in advertising.

Status

There was activity on both the Federal and State levels concerning the regulation of dietary supplements in 2002. Rep. Ron Paul (R-TX), who introduced H.R. 2265, the Foods are Not Drugs Act in 2001, introduced H.R. 3811, the Health Information Independence Act of 2001 in early 2002. This bill would set up a scientific review system independent of the Food and Drug Administration to evaluate health claims made by food and dietary supplement manufacturers.

In California, a bill was introduced in the State Senate (SB 1948) that would mandate state-specific advertising requirements for dietary supplement manufacturers. The bill would require all print advertising and displays for dietary supplement products to include "a clear and conspicuous statement referring the consumer to the product label," directing them to the voluntary warnings on product labeling. ANA sent a letter to the members of the Appropriations Committee to notify them of our opposition to the bill, stating that we felt the legislation raised serious First Amendment and interstate commerce concerns. This bill was defeated.

ANA's Position

Truthful, non-deceptive advertising of dietary supplements is useful for consumers, However, in the case of the California legislation, while we support appropriate warning labels on product packaging, we oppose requirements that all print ads include a specific statement referring consumers to the product label warnings. Advertisements are not intended to be an encyclopedia of all information about a product. The California bill would set a dangerous precedent for consumer products beyond the dietary supplements category.

Next Steps

We will continue to monitor legislative and regulatory developments on the federal and state levels that will affect the First Amendment rights of dietary supplement manufacturers.

Media Self-Regulation of Advertising

Background

The FTC is the federal agency responsible for taking action against false and misleading advertising. It takes a number of enforcement actions each year against companies that conduct such advertising. Certain FTC Commissioners in the past have suggested that they should extend their enforcement to media that carry advertising that is "self-evidently" false or deceptive.

Status

The FTC issued a report in September that examined claims made in advertisements for weight loss products. The report found that forty percent of advertisements in this category contained one obviously false claim. Most of these claims contended that consumers could lose weight just by using the advertised product, without changing one's diet or exercising. The survey also found that there were two times as many ads for weight loss products as in 1992, and more deceptive claims, despite an increase in law enforcement actions throughout the 1990's. The FTC held a workshop in November, during which Commissioner Sheila Anthony chastised the media for putting "pocketbook interests above the public interest they are claiming to serve." Chairman Timothy Muris, in a subsequently published interview, indicated that he would even consider taking media outlets to court over the publication of any clearly false and misleading weight loss ads. Many groups, including the Cable Television Advertising Bureau and the Magazine Publishers of America, voiced their concerns with this approach.

Next Steps

We anticipate that the FTC will continue to focus on this issue.

Tobacco Advertising

Background

The Federal Trade Commission traditionally has possessed the authority to regulate tobacco advertising. In 1996, the Food and Drug Administration (FDA) promulgated regulations that would have given it authority to regulate tobacco products and advertising. The Supreme Court invalidated those regulations, deciding that Congress had not granted the authority to the FDA. Subsequently, there have been many attempts in the Congress to transfer jurisdiction over tobacco advertising from the FTC to the FDA. Meanwhile, since the 1998 Master Settlement Agreement with the state Attorneys General, tobacco companies have operated under major self-imposed advertising restrictions.

Status

The past year was the most active on the tobacco advertising front in some time. There was substantial activity on the legislative front in both Houses of Congress. A number of bills were held over from the first session of the 107th Congress, and additional bills were introduced in the most recent session as well. Senator Dianne Feinstein (D-CA) and Representative Lois Capps (D-CA) introduced versions of the National Cancer Act of 2002 in their respective Houses, which contained provisions granting the FDA oversight of tobacco labeling and advertising. Rep. Mike McIntyre (D-NC) also introduced a bill, the Tobacco Livelihood and Economic Assistance for our Farmers Act of 2002, which would give the FDA regulatory authority over tobacco products, and would have banned the use of cartoon characters in ads, outdoor ads, and ads in publications whose youth readership is more than 15% of its total readership.

In June, Senator Edward Kennedy (D-MA) introduced S.2626, the Youth Smoking Prevention and Public Health Protection Act. One of the provisions in the bill would put into effect the sweeping regulations the FDA promulgated in 1996. ANA filed testimony with the HELP Committee stating our opposition to this aspect of the bill. We noted that many legal experts from across the political spectrum, including constitutional expert Lawrence Tribe of Harvard University and Judge Robert Bork, have determined that these regulations would result in a *de facto* ban on tobacco advertising and would violate the First Amendment. Also, since the tobacco industry voluntarily agreed to a number of marketing restrictions as a part of the Master Settlement Agreement with the states, the FDA's restrictions are unnecessary. The American Civil Liberties Union (ACLU) and the Washington Legal Foundation also filed in opposition to the bill.

While Rep. James Hanson's (R-UT) bill, H.R. 3907, did not remove oversight of tobacco advertising from the Federal Trade Commission, it did call for stronger labeling and advertising requirements.

The Justice Department also jumped into the debate over tobacco advertising, when it proposed a series of advertising related remedies in its civil lawsuit against tobacco manufacturers. These remedies are similar to those proposed in much of the legislation that was introduced in Congress: the elimination of point of sale advertising and trade promotions, the restricting of advertising and packaging to a black and white, print-only format, and the requirement that graphic health warnings compose at least 50% of tobacco product packaging and advertising.

Through the Freedom to Advertise Coalition (FAC), ANA has contacted Attorney General John Ashcroft to express our opposition to these restrictions.

There was activity on the smokeless tobacco issue as well. U.S. Smokeless Tobacco Co., which had asked the FTC for an opinion regarding whether snuff could be advertised as less dangerous than cigarettes, withdrew the petition pending further research.

ANA's Position

ANA takes no position on the regulation of tobacco products themselves, but we remain strongly opposed to any attempts to prevent the rights of tobacco companies to truthfully advertise a product that remains entirely legal for adults over 18. We also feel that authority over tobacco advertising should remain with the FTC, as it has the expertise and experience to regulate tobacco advertising.

Next Steps

Attempts to limit tobacco advertising will undoubtedly continue. The shift in power in the Senate to the Republicans does not mean this issue will disappear. In the upcoming Congress, we anticipate that Senator Bill Frist (R-TN) will reintroduce his legislation to transfer control over tobacco advertising to the FDA. We will continue to work with the FTC, Congress and the courts to protect the right of tobacco companies, like all other companies, to truthfully and non-deceptively advertise their products.

Global Marketing Developments

Background

ANA has worked in the past, as a member of the World Federation of Advertisers (WFA), to help our member companies communicate with consumers around the world. This has taken place as the advertising industry responds to the rapid changes in the developing global marketplace. We have endeavored to help devise a strategy for advertisers to effectively compete in this new environment.

Status

ANA took part in two important meetings in 2002 with high-level government officials to discuss issues related to global marketing. The first meeting was with Charlotte Beers, Under Secretary of State for Public Diplomacy and Public Affairs, and a former major executive in several advertising agencies. This meeting took place in February, and included representatives from several of our member companies and The Ad Council. It was held in response to the events of September 11th and examined how to improve America's image abroad. Specifically, the Under Secretary sought advice on how to better communicate messages about American values throughout the world.

The second meeting took place in April with representatives from the Office of the U.S. Trade Representative (USTR). This meeting concerned developing an advertising industry position for upcoming trade negotiations, as the industry faces significant obstacles and barriers in many countries. The American Association of Advertising Agencies and the U.S. Council for International Business also participated in the meeting.

Next Steps

We plan to follow-up these meetings in the coming months to accelerate the progress already made. We will also continue to work with the WFA to protect the rights of advertisers, not just in the United States, but around the world.

Key Court Cases

Since the Supreme Court's decision in the *Virginia Pharmacy* case in 1976, the courts have afforded greater protection under the First Amendment to commercial speech. Nevertheless, the protection advertising has attained under the Constitution continues to be challenged in the courts. ANA has vigorously fought to see that the rights of advertisers to freely and truthfully promote their products are strengthened and clarified. As a result, we have played a role in nearly every major commercial speech case, supporting the rights of advertisers with *amicus* briefs and as litigants. This effort has reaped important benefits for advertisers, as the Supreme Court has increased the protection afforded commercial speech in its recent decisions on the issue.

The following are key court cases ANA is currently tracking at various levels of the judicial system that deal with commercial speech, and also the important cases which were decided by the Supreme Court in its 2002 term. We also post regular updates on court cases and legal issues on our Legislative, Regulatory and Legal Tracking System in the Government Relations section of our website, at http://www.ana.net.

Thompson v. Western States Medical Center

On April 29, 2002, the U.S. Supreme Court upheld, in a 5-to-4 decision, the rulings of the federal district court in Nevada and the U.S. Court of Appeals for the Ninth Circuit that the Food and Drug Administration Modernization Act's (FDAMA) prohibition of the promotion or advertisement of compounded drugs by pharmacists violated First Amendment guarantees of free speech. Compounding is a process by which pharmacists mix ingredients to create a specific medication for an individual, typically because the patient is allergic to ingredients in a mass produced product. Specifically, the court ruled, in applying the *Central Hudson* test, that the government failed to demonstrate that the restrictions prohibiting the advertisements under the FDAMA were not more extensive than necessary. Writing for the majority, Justice O'Connor found there were a number of things the government could do to protect consumers that did not involve a ban on advertising. She wrote that "regulating speech must be a last-not first-resort. Yet here it seems to have been the first strategy that the government thought to try."

ANA is hopeful that this ruling will have a positive impact on pending and future commercial speech cases. The case is also particularly timely, as several members of Congress are proposing restrictions on direct-to-consumer prescription drug advertising.

Ashcroft v. ACLU

On May 13, 2002, the Supreme Court handed down its ruling in this important commercial speech case. This case was a challenge to the Child Online Protection Act, or COPA. COPA was passed by Congress in 1998 to impose civil and criminal penalties on commercial speech on the Internet that is "harmful to minors." COPA was a follow-up to the Communications Decency Act (CDA), which was declared unconstitutional in a unanimous decision of the U.S. Supreme Court in *ACLU v. Reno*, 521 U.S. 844 (1997).

The U.S. Court of Appeals for the Third Circuit held that the criminal provisions of COPA violate the First Amendment by suppressing a large amount of commercial speech on the

Internet that adults are entitled to communicate and receive. The Supreme Court ruled that COPA's reliance on community standards to identify material that is "harmful to minors" does not render the statute substantially overbroad for First Amendment purposes. It held that this aspect of COPA does not render the statute facially unconstitutional. The Court did not, however, rule as to whether COPA was overbroad for reasons other than its use of community standards, i.e., whether the statue is unconstitutionally vague, or whether the statute survives strict scrutiny. The case was vacated and remanded to the Third Circuit for further review. The government remains enjoined from enforcing COPA absent further action from the lower courts.

ANA filed an *amicus* brief with the Court in this case. Our brief was prepared by Steven Brody, a constitutional expert at the law firm of King & Spalding. COPA specifically singled out online commercial speech for regulation that does not apply to speech for non-commercial purposes. Our brief urged the Court to make clear that the government may not treat commercial enterprises as if they were second-class citizens in regard to the First Amendment.

Children deserve to be protected from harmful or inappropriate material, but over twenty years ago in the *Bolger* case, the Supreme Court stated that efforts to restrict advertising cannot lower discourse in society "to the level of the sandbox." That is precisely what would happen if the government were permitted, under COPA, to attempt to childproof all commercial speech on the Internet. ANA will continue to monitor this case as it progresses through the court system.

Eller Media Company v. City of Cleveland

In 1999, Eller Media Company challenged a Cleveland ordinance that prohibited most outdoor advertising for alcohol beverage products. A federal district court ruled that the ordinance was invalid. An appeal from that decision is pending. ANA has filed a "friend-of-the-court" brief with the United States Court of Appeals for the Sixth Circuit calling the sweeping alcohol billboard ban an unconstitutional censorship scheme. The case is still pending before the court.

Korean-American Grocers Association v. City of Los Angeles

As a result of the decision in the Supreme Court's Lorillard case, another city has been successful in rescinding bans placed on outdoor advertising. In August 1999, nine trade associations challenged the Los Angeles city ordinance banning all "publicly visible" outdoor advertising for alcohol beverage products. The plaintiffs' motion for a temporary injunction on enforcement was granted. ANA was a member of the coalition providing support for the litigants. In January, the Los Angeles City Council decided to repeal the city ordinance in question because of the decision handed down in the *Lorillard* case.

State of California v. RJ Reynolds Tobacco Company

On June 6, 2002, the Superior Court of California for San Diego County ruled that R.J. Reynolds Tobacco Company violated the 1998 Master Settlement Agreement with the state Attorneys General by indirectly targeting youth in its tobacco advertising. The Court ruled that RJR made no attempts to change its print advertising campaign in a way that would stop it from indirectly targeting minors, and avoided doing research to determine the extent to which its print advertisements in magazines such as *Sports Illustrated* and *Rolling Stone* reached an under-aged audience. RJR was fined $20 million and was ordered to take a number of specified actions to

comply with the terms of the MSA. RJR has stated that they will appeal this decision. ANA is determining whether we should file a "friend-of-the court" brief in this litigation.

Kasky v. Nike

The Supreme Court of California ruled against Nike, Inc. on March 2, 2002 in a case brought under California law for false advertising and unfair competition. The case alleged that Nike, in response to public criticism and to induce consumers to continue buying its products, made allegedly false statements of fact about its labor practices and working conditions in its overseas factories. The Court did not take up the issue as to the truth of Nike's statements, limiting itself only to a determination of whether or not Nike's claims were commercial or noncommercial speech. Commercial speech is given less protection under the First Amendment than non-commercial speech, and can be subject to government prohibition if it is found false or misleading. Nike argued that its statements were not commercial speech because they were a part of "an international media debate on issues of intense public interest." The Court decided that because Nike's statements were directed by a commercial speaker to a commercial audience, and because they consisted of factual representations about its own business operations, they were thus commercial speech for purposes of applying state laws barring false and misleading commercial messages. In doing so, the California Supreme Court, in its 4 to 3 decision, overturned a lower court ruling that stated that Nike's statements were noncommercial speech and afforded the greatest measure of protection under the First Amendment. The case was remanded to the lower court for further review.

This case is important to advertisers for two reasons. First, virtually all forms of a company's communication would fall under the definition of commercial speech as spelled out by the California Supreme Court, and thus be afforded less protection by the First Amendment. The majority decision, by Associate Justice Joyce Kennard, states that, "In the context of regulation of false or misleading advertising, this typically means that the speech consists of representations of fact about the business operations, products or services of the speaker…made for the purpose of promoting sales of, or other commercial transactions in, the speaker's products or services." This would cover not just advertising, but statements "made in the context of a modern sophisticated public relations campaign intended to increase sales and profits by enhancing the image of a product or of its manufacturer or seller." The second reason is that while the speech of the individual who makes statements regarding a company's business practices is given full First Amendment protection, the company's statements in its defense are given lesser protection. In her dissent, Associate Justice Janice Brown argues that the differences between commercial and noncommercial speech have blurred, and she urges a reevaluation of the commercial speech doctrine. She writes that, "Making Nike strictly liable for any false and misleading representations about its labor practices stifles Nike's ability to participate in a public debate initiated by others." Further complicating this case is the fact that California's Business Code allows private citizens to sue even if they have not been personally injured. Therefore, any time an individual believes that a company has been inaccurate in its claims made or viewed in California, be it in a press release, interview, advertisement or other public statement, they can bring suit charging a violation of the California Business Code. Nike asked for a rehearing of the case by the California Supreme Court. When the rehearing was not granted, Nike asked the U.S. Supreme Court to review this decision.

Status

ANA will continue to monitor developments in this extremely important case.

Paramount Pictures et. al. v. ReplayTV, Inc. and SONICblue, Inc.

A Personal Video Recorder (PVR) is a device which allows consumers to record television programs digitally and store them for later viewing. A model recently introduced by SONICblue, Inc., called the ReplayTV 4000, has a feature which allows viewers to skip commercials. It is this ability that is part of a lawsuit against SONICblue, Inc. involving many of the largest media companies in the country, including AOL Time Warner, Viacom, Disney and NBC.

The lawsuit, which was filed in United States District Court for the Central District of California in late 2001, alleges that SONICblue's ReplayTV 4000 lets viewers digitally record programs and then use a feature called AutoSkip which plays back the program commercial free. It also allows them to set AutoSkip so that it will delete all commercials in all future playbacks of programming. This case is still pending before the court. Meanwhile, SONICblue has been actively promoting the device's commercial skipping ability in advertisements and on its website.

Status

ANA will monitor the lawsuit as it progresses through the judicial system. ANA believes that if this technology were widely utilized, it could seriously erode advertising on broadcast and advertising supported cable media.

Attempts to Restrict Lawyer Advertising in Alabama

The Supreme Court of Alabama considered proposals in September that would have placed new restrictions on advertising by lawyers. It would have required new and numerous disclosures and captions on any lawyer advertising. While ANA does not have lawyers as members, we felt we had an interest in maintaining the freedom to advertise of all persons and firms that supply goods and services to the public. ANA intervenes in cases which might create adverse precedents for the advertising community. ANA's General Counsel, Douglas J. Wood, of the law firm of Hall Dickler Kent Goldstein & Wood, sent comments on our behalf to the Alabama Supreme Court, noting that the American Bar Association and every state has revised their lawyer advertising regulations to allow for some form of lawyer advertising in recent years. Our letter also discussed the First Amendment implications of restricting commercial speech that was truthful and non-misleading. We asked the Alabama Supreme Court to review the pertinent U.S. Supreme Court cases, such as the decision in *Zauderer*, which held that disclosure requirements must be reasonably related to the government's interest in preventing consumers from being deceived.

Coalitions

ANA remains an active and influential member of the Advertising Tax Coalition (ATC); the Freedom to Advertise Coalition (FAC); the State Advertising Coalition (SAC); and the Coalition for Health Care Communication. These coalitions enhance the efforts of the diverse groups that share the common interest of protecting the rights of advertisers to marshal their forces. They provide the industry with a united front when lobbying Congress and government agencies, and serve to strengthen our individual efforts.

Advertising Tax Coalition

The Advertising Tax Coalition (ATC) was established in 1988 to direct the fight against federal advertising tax proposals. There are currently eight member associations including: the ANA; American Advertising Federation (AAF); American Association of Advertising Agencies (AAAA); Grocery Manufacturers of America (GMA); Magazine Publishers of America (MPA); National Association of Broadcasters (NAB); National Newspaper Association (NNA); and the Newspaper Association of America (NAA). In its efforts to prevent ad tax proposals, the ATC meets with members of the tax-writing committees in Congress to educate leaders on the value of advertising and the importance of not undermining this key engine of the economy through taxation. In 2002, the ATC was heavily involved in the debate over various proposals in both Houses of Congress to limit the tax deductibility of direct-to-consumer prescription drug advertisements.

Freedom to Advertise Coalition

The Freedom to Advertise Coalition's (FAC) purpose is to oppose proposals that restrict truthful and non-deceptive advertising for any legal product or service. FAC's members include ANA and four other associations: the American Advertising Federation (AAF); American Association of Advertising Agencies (AAAA); Magazine Publishers of America (MPA); and the Point of Purchase Advertising Institute (POPAI).

Since the formation of FAC in 1987, its efforts have been successful against government agency and congressional proposals to restrict advertising. In 2002, FAC was instrumental in resisting limits on alcohol and tobacco advertising and opposing regulations and legislation against direct-to-consumer prescription drug advertising.

State Advertising Coalition

The ANA, The American Association of Advertising Agencies (AAAA), and the American Advertising Federation (AAF) formed the State Advertising Coalition (SAC) in 1986 to provide information and resources necessary to combat state and local overly restrictive advertising proposals. Since its formation, SAC has been successful at responding and defeating all ad tax proposals in the states. This perfect record remained intact in 2002, as ad tax legislation was defeated in Florida, Tennessee and Nebraska.

Coalition for Healthcare Communications

The Coalition for Healthcare Communications (CHC) was formed in 1991 for the purpose of defending organizations that dedicate their time to provide truthful information about pharmaceutical and medical products without inappropriate government intervention. The CHC advocates the flow of this information to health professionals and consumers for educational purposes so that prescription drugs and medical devices can be used efficiently and safely.

The members that form the CHC include the ANA; the American Association of Advertising Agencies (AAAA); the American Advertising Federation (AAF); American Business Media; the American Medical Publishers Association (AMPA); Association of Medical Publications (AMP); Healthcare Businesswomen's Association (HBA); Healthcare Marketing and Communications Council (HMC Council); Medical Marketing Association (MMA); Midwest Healthcare Marketing Association (MHMA); and the Public Relations Society of America (PRSA). More information about the CHC can be found at http://www.cohealthcom.org.