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**THE COMPARISON OF ADVERTISING LAWS AND REGULATIONS  
BETWEEN THE UNITED STATES AND THAILAND**

**By**

**Vittratorn Chirapravati**

**A THESIS**

**Submitted to**

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## **ABSTRACT**

### **THE COMPARISON OF ADVERTISING LAWS AND REGULATIONS BETWEEN THE UNITED STATES AND THAILAND**

**By**

**Vittratorn Chirapravati**

**This study focused on a comparison of advertising laws and regulations of Thailand with those of the United States. Thai advertising regulations are general in scope, as they usually do not pertain to specific product categories. In addition, extensive government control and the authority to censor have resulted in regulations which allow or possibly mandate subjective interpretation. The methods of establishment and enforcement of U.S. advertising laws and regulations serve as a model for Thailand. Various legal references and the results of business and advertising studies provided the information for the study. The results indicate that subsequent punishment allows more freedom and fairness than does preclearance and possible censorship. Also, self-regulatory mechanisms appear to strengthen the effectiveness of regulation. A gradual change in advertising regulations are likely to occur in Thailand in the near future, and this change is likely to be influenced by existing regulations in developed countries.**

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## **LIST OF ABBREVIATIONS**

<b>AAAA</b>	<b>American Association of Advertising Agencies</b>
<b>AAT</b>	<b>Advertising Association of Thailand</b>
<b>ABA</b>	<b>American Bar Association</b>
<b>ABC</b>	<b>American Broadcasting Company</b>
<b>ACT</b>	<b>Action for Children's Television</b>
<b>ATF</b>	<b>Bureau of Alcohol,Tobacco and Firearms</b>
<b>BDB</b>	<b>Broadcasting Directing Board</b>
<b>CARU</b>	<b>Children's Advertising Review Board</b>
<b>CBS</b>	<b>Columbia Broadcasting System</b>
<b>CPB</b>	<b>Consumer Protection Board</b>
<b>FCC</b>	<b>Federal Communications Commission</b>
<b>FDA</b>	<b>Food and Drug Administration</b>
<b>FDC Act</b>	<b>Food,Drug,and Cosmetics Act</b>
<b>FEC</b>	<b>Federal Election Commission</b>
<b>FECA</b>	<b>Federal Election Campaign Act</b>
<b>FPL</b>	<b>Fair Packaging and Labeling Act</b>
<b>FTC</b>	<b>Federal Trade Commission</b>
<b>GNP</b>	<b>Gross National Product</b>
<b>MBS</b>	<b>Mutual Broadcasting System</b>
<b>MDR</b>	<b>Media Data Resources</b>
<b>MPB</b>	<b>Metropolitan Police Bureau</b>
<b>NAD</b>	<b>National Advertising Division</b>
<b>NARB</b>	<b>National Advertising Review Board</b>
<b>NBC</b>	<b>National Broadcasting Company</b>
<b>NBN</b>	<b>National Black Network</b>
<b>OAAA</b>	<b>Outdoor Advertising Association of America</b>
<b>USPS</b>	<b>U.S. Postal Service</b>

## **PART I**

### **ADVERTISING IN OUR LIVES**

Advertising has a great impact on our lives, whether in the United States or in Thailand, or even in the socialist countries. It is something we see and hear every day, something that is familiar to everyone. Many billions of dollars are spent each year on advertising which, in its various forms, accosts us from early morning news programs until the late shows at night. As a result, we see and hear many advertisements everyday. As Richard W. Pollay stated:

The proliferation and the intrusion of various media into the everyday lives of the citizenry make advertising environmental in nature, persistently encountered, and involuntarily experienced by the entire population. It surrounds us no matter where we turn, intruding into our communication media, our streets, and our very homes.<sup>1</sup>

Jeffrey Schrank also admits that advertising occupies major space in all media and intrudes in our lives. As he points out:

And so we are denied chances to discover the value of silence and nothingness, an environment conducive to contemplation. Advertising has taken quiet away from us, has made the choice impossible. Our minds become jammed with bits and pieces of jingles, buzz words, products, advertising images, brand names and slogans so there is no room for meditation and little room for self-confrontation.<sup>2</sup>

In both the United States and Thailand, the advertising dollars go into various media: radio and television; magazine and newspaper space; outdoor display and direct mail. The use of advertising dollars will undoubtedly grow in volume and importance, as witnessed by the World Media Advertising Expenditures study conducted by Starch INRA Hooper INC. The United States media advertising expenditures in 1986 were \$63018 million U.S. dollars, and reflect about a 46% increase from the \$43148 million U.S. dollars spent in 1982.

Advertising expenditures have also been increasing in Thailand. The Thai media advertising expenditures in 1986 were \$215.12 million U.S. dollars, and reflect about a 53% increase from \$140.60 million U.S. dollars in 1982. (see Table 1). Conditions of the economic scene throughout the world call for the increased use of advertising to achieve economic, social, and political goals. Concentration of production in the hands of fewer and larger manufacturers and greater population mobility are trends which separate the producers even further from buyers, which thus necessitates greater needs for advertising.

**Table 1**  
**REPORTED CHANGES IN TOTAL MEASURED MEDIA**  
**ADVERTISING EXPENDITURES: 1982-1986**

Total Reported Measured Media Advertising Expenditures (\*)  
( in millions of U.S. Dollars )

Country	1982	1983	1984	1985	1986
Thailand	140.60	153.20	202.90	208.60	215.12
United States	43148.00	49758.00	54813.00	58530.00	63018.00

(\*) Measured Media includes Print, Television, Radio, Cinema and Outdoor & Transportation, where available for advertising.

Source: World Advertising Expenditures (New York: Starch INRA Hooper in cooperation with the International Advertising Association, 1987, p.11)

People who possess greater discretionary income also expand the need for advertising. The development of new products requires that potential users be informed of their existence and of their benefits to consumers. As more women enter the work force, traditional shopping patterns will break down, and advertising will most likely receive more attention by busy consumers. Since working women do not have enough time to scrutinize the label of each and every product in a variety of stores in an attempt to understand what exactly



is on the market, their knowledge of goods and services is more often absorbed from advertisements--especially from printed media such as women's service magazines and working-women magazines.

Unlike a personal sales appeal or a telephone solicitation, the content of an advertising message is a matter of public record. The messages blared over the airwaves and displayed in printed material interact with society in many ways. Consumers and competitors alike are in a better position to expose dishonest advertising. Regarding advertising's visibility, William S. Sachs wrote:

Of all business practices, none is more open to public scrutiny than advertising. Its messages are fully exposed to public view. They are everywhere, in the press, in broadcasts, on trains and buses, on the highways.<sup>3</sup>

Since advertising has such a high profile, it is often placed under closer evaluation, debate, and criticism. As Richard W. Pollay said, advertising deserves to be analyzed objectively both by insiders and outsiders, because it is a major means of transmitting social values. To make this point, he notes:

While there are many institutions that carry out value transmission, such as the family, church, military, courts, universities, etc., there is good reason to pay particularly close attention to advertising as a carrier of cultural values. Unlike other institutions advertising is the only institution that plays a major role in the mass media, thereby giving it a far more universal influence.<sup>4</sup>

Although advertising in both the United States and Thailand is generally accepted as being a useful business tool, there are many who question its value to society beyond its immediate commercial effects. This concern is manifested in the form of the large number of criticisms which have been made both of advertisers and of the advertising process. Opinions of advertising range from those with a belief in the value of advertising as a cure for business and economic malaise, to those having the attitude which ultimately wishes for all advertising to be eliminated.

## **DIFFERENT VIEWS TOWARD ADVERTISING**

Different views toward advertising exist in both the United States and Thailand. In general, views toward advertising in both countries can be categorized by aspect--positive and negative. People are not all alike; nor are they all alike in the way that they feel about advertising. As Rotzoll, Haefner and Sandage explained:

Advertising in contemporary society is highly susceptible to differing interpretations because of its complexity, fluidity, lack of clear outcome, etc. To follow this reasoning, much of what is seen in advertising depends on who's looking and where.<sup>5</sup>

Laohawattana Suthep also states that views toward advertising differ according to one's decision. <sup>6</sup>

Although the United States and Thailand are similar in terms of having positive and negative views toward advertising, there are numerous differences between these views in detail. The similarities in these views toward advertising in both countries influence the similarities in the advertising legislation. On the other hand, differences in these criticisms are the cause of the differences in the advertising restrictions. The remaining sections in this chapter summarize the most commonly cited positions regarding advertising in the United States and Thailand.

## **THE UNITED STATES**

### **POSITIVE VIEWS TOWARD ADVERTISING**

#### **ECONOMIC CONTRIBUTIONS OF ADVERTISING**

According to the MacBride Report of the United Nations Commission, advertising can be viewed in the following way:

Advertising undoubtedly has positive features. It is used to promote desirable social aims, like savings and investment, family planning, purchases of fertilizer to improve agricultural output, etc. It provides the consumer with information about possible patterns of expenditure...and equips him to make choices; this could not be done, or would be done in a much more limited way, without advertising. Finally, since the advertising revenue of a newspaper or a broadcaster comes from multiple sources, it fosters economic health and independence, enabling the enterprise to defy pressure from any single economic interest or from political authorities.<sup>7</sup>

#### **1. Advertising as market information**

Polling friends and relatives, or reading articles in newspapers or magazines, may provide consumers with the information needed to make a purchase decision. However, these information from these sources often is not available or is inadequate, and advertising fills the informational gap. The information carried in advertisements may aid consumers in making up their minds when confronted with numerous product choices in the marketplace; it saves their most scarce resource--time. Without advertising, a consumer would have to scrutinize the label of each and every product in a variety of stores in order to understand what exactly is on the market.

The study conducted in the "Consumer View of Advertising-1974" by Rena Bartos has shown that consumers view advertising as market information. She reported the following in the Annual Meeting of the American Association of Advertising Agencies:

Apparently, consumers appreciate the essential function of advertising as a good way to find out about products. Advertising tells them which new products are on the market, what products are available, where to find the ones they want, how products work, and what they will cost.<sup>8</sup>

## 2. Advertising promotes or encourages quality products.

The more advertising for a product, the more incentive a manufacturer has to keep quality high, since with advertising the consumer has a resource for identifying the product and can stop buying an unsatisfactory product.<sup>9</sup> An example of how advertising promotes or encourages quality products is given below in an FTC summary study, and summarizes the results of an FTC study of prescription drugs.<sup>10</sup>

In the oral-diuretic drug market, brands offering "important therapeutic gains" were promoted on the average \$1.25 million more annually than brands offering no therapeutic gain. There was, however, an even greater promotional expense for brands offering "modest therapeutic gains" \$1.44 million per year more than brands offering no therapeutic gain. Similarly, with antianginal drugs, brands offering modest or important therapeutic gains were promoted with more dollars than those offering no therapeutic gains. Firms tend to put advertising dollars behind products whose high quality-or pretty high quality-is likely to be a stimulus to sales itself.<sup>11</sup>

Nevertheless, not all advertised goods are quality products; advertising can be used to give the impression of status and quality to inferior goods. Advertising is not the only factor that promotes or encourages quality products; there are still other factors (such as branding).

## 3. Advertising and the media.

Fundamental to all media is income derived from advertising. Without it, the media would certainly not exist in their present forms, nor in such prolific numbers. In addition, there would be fewer entertainment programs on free television, and newspapers and magazines would cost more.

Watson Dunn and Arnold Barban mentioned the relationship between advertising and the media; the media depend largely on advertising for their support. They stated the following:

The average daily newspaper receives about 75 percent of its revenue from advertising (roughly one-third of this from classified and the rest from local display and national advertising). Most television and radio stations and their networks depend entirely on advertising for support.<sup>12</sup>

In addition, William E. Francois Pointed out:

Revenue from advertising is the lifeblood of American newspapers (providing about 75 percent of the revenue for the average daily paper). It provides at least half of the revenue for many magazines, and it is the sole supporter of commercial radio and television.<sup>13</sup>

Donald W. Jugenheimer and Gordon E. White mentioned in their book:

Most of the money that is spent on advertising goes for media. Think about it; of an advertising budget, about eighty-five percent is kept by the media, while the other fifteen percent goes to the advertising agency. And even within the advertising agency, part of that income goes for media, with the rest for research, creative work, administration, general expenses, and profit.<sup>14</sup>

Advertising enables both printed and broadcast communications to operate without financial support from government, political parties, or other special interest groups.

#### 4. Advertising as an aid to mass production and lower prices.

Advertising, as one of the most important tools of marketing, helps the producer to inform the market of the goods he makes. No other means has been found to tell so many people so quickly about those goods--and, in most cases, so cheaply. The theory of economy of scale, which describes the relationship between advertising and manufacturing costs, is summarized by Jules Backman:

One way to reduce costs of the products is to sell more items, so that they can be made in a large volume and the production and selling costs can be spread across more

items. Each item then has to bear fewer of the costs involved, so the items can be sold for less in the market place. This process of expanding production and lowering the unit cost is called economy of scale - operating on a large scale may increase costs, but the costs do not go up as fast nor as much as does production, so the costs per unit are reduced.<sup>15</sup>

Thus by providing a relatively inexpensive means of selling goods, mass advertising enables the producer to reduce their manufacturing and hence their selling costs.

#### 5. Advertising creates employment.

Advertising creates employment not only in the advertising agencies themselves, but also in other related jobs. A case in point is the American Association of Advertising Agencies. It has been estimated that about 200,000 people are employed in the four major areas of advertising in the United States: (1) agencies, (2) advertisers, (3) media, and (4) suppliers and special services. According to Advertising Age projections of U.S. Census of Business data, about 8,000 agencies in 1977 employed 82,515 people and paid them approximately \$1.5 billion in salary and wages.<sup>16</sup>

Michael Rothschild also comments on how advertising creates employment:

Approximately 100,000 people work at more than 8,000 advertising agencies in the United States. In addition, many thousands more work in advertising-related jobs in the millions of firms that advertise their products and services. Others do advertising-related work with the thousands of media vehicles that deliver advertising messages, and still others work in public relations, develop sales promotions materials, do research, or sell something either as a retail or industrial salesperson.<sup>17</sup>

## THE UNITED STATES

### NEGATIVE VIEWS TOWARD ADVERTISING

#### I. ECONOMIC CRITICISMS OF ADVERTISING

##### 1. Advertising fosters monopoly.

The claim has been made by some economists that advertising increases barriers to entry into the marketplace and reduces competition, as a result of increases in concentration and increases in monopoly profits. Critics often point out that advertising makes consumers prefer a certain brand or item, to the exclusion of all other competing items. In addition, the big budget of some advertisers creates such brand loyalty that potential competitors find it impossible to enter the market. Also, big advertisers drive out small-scale advertisers by achieving economies of scale.

##### 2. Advertising is false, deceptive, or misleading.

Critics believe that false, deceptive, or misleading advertising does not permit the free flow of accurate information--which, in turn, affects the way the economic system operates. Truthful and accurate information is essential to the market system; it can help consumers make better buying decisions. Sellers are forced to provide the best product at the best price if consumers have accurate information.

##### 3. Advertising is wasteful.

Critics say that repetition of advertising is wasted, and that the resources that are devoted to advertising could better be used for other purposes. Advertising is thought to be wasteful when so much time and effort is spent telling the same people the same messages. In addition, critics agree that some advertisers waste money because they are advertising to the wrong markets for their products. Also, some advertisers are wasteful in producing

great quantities of display material that will not be used.

Critics not only deplore waste that occurs in the carrying out of advertising, but also the large amounts of money spent in advertising to describe product differences. According to critics, the differences that advertisers claim exist between certain products or services are often not important enough to warrant such expenditures.

#### **4. Advertising increases prices.**

The claim made by critics is that advertising is an unnecessary business cost which is responsible for a higher selling price. This criticism of the economic role of advertising is based on the increased cost of a service or product that must be charged to help pay for the advertising of that product. If a company advertises a lot, then, it must pass along these costs to the consumers who buy the company's goods. Therefore, advertising causes the prices we pay for services and goods to be higher than they would be without advertising.

Only four of the many examples of economic criticisms of advertising have been listed. For a longer list see pages 20 and 21 of reference 18.

## **THE UNITED STATES**

### **NEGATIVE VIEWS TOWARD ADVERTISING**

#### **II. SOCIAL CRITICISMS OF ADVERTISING**

##### **1. Advertising is persuasive--not informative.**

Some critics believe that advertising is not interested so much in fulfilling the desires of consumers as in changing desires to fit that which has been produced. They point out that there is not complete information in advertising, because most advertisers present only the positive aspects of their products and avoid mentioning negative aspects.



These criticisms have led to legislation such as the Federal Food, Drug, and Cosmetic Act (FDC Act), which is designed to insure that labeling and packaging are truthful, nondeceptive, and informative.

2. Advertising has replaced the family.

Some people believe that advertising has replaced the family. "At one time, most of us learned how to do things, what is right and what is wrong, from our families and schools. But now, the mass media have become an important part of the socialization process that tells us how to act and how to get along with other people."<sup>19</sup>

3. Advertising ruins the right rules of language.

Some critics state that advertising ruins the right rules of language because advertising language often uses structures that do not often occur in other types of text.<sup>20</sup> This argument appears to be supported most strongly by linguists.

According to Richard Jackson Harris and his colleagues:

Advertising touches everyone's life. It is not unusual for an infant's first spoken sentence to be an advertising jingle from television. By the time an American child is eighteen, he or she has seen around 360,000 television advertisements. Advertising is omnipresent in most societies of the world, whether rich or poor, Eastern or Western.<sup>21</sup>

4. Advertising influences the media.

The charge that advertisers influence the media is based largely on the media's dependence on advertising for their support. Because advertising pays the costs of our mass media, and almost all of the costs of our broadcast media, it would seem possible that the media would avoid publicizing any bad or unfavorable information about advertisers' products or services. As Watson Dunn points out:

Advertisers may, from time to time, be interested in any of the following: omission or "burying" of an embarrassing news story; coloring of a news story involving them; extra publicity favorable to them; or shading of editorial opinion to agree with their opinions.<sup>22</sup>

5. Advertising impacts on materialism.

The claim has been made by some critics that advertising impacts on materialism. While individual advertisements may be imperfect and ineffective, advertising in the aggregate is seen as preoccupying society with material concerns, making consumption a highly salient act much of the time.

Richard Pollay explains the impact of advertising on materialism as follow:

The intent of advertising, especially in the aggregate, is to preoccupy society with material concerns, seeing commercially available goods or services as the path to happiness and the solution to virtually all problems and needs.<sup>23</sup>

6. The effect of advertising upon children.

Some critics maintain that children are especially vulnerable to the appeals of advertising and that any advertisement directed to them should be regulated strictly. There are two aspects of this problem: (1) the effect of advertising on the purchasing behavior of children and (2) the effect of advertising on their living behavior. <sup>24</sup> These criticisms have led to a large number of voluntary guidelines and media rules of advertising toward children.

7. Advertising sells products that people neither need nor want.

Advertising has been accused of creating needs and wants in consumers. As David Potter said:

The individual can be educated to perform his role as consumer, especially as a consumer of goods for which he feels no impulse or need. Clearly he must be educated, and the only institution which we have for instilling new needs, for training people to act as consumers, for altering men's values, and thus for hastening their adjustment to potential abundance is advertising.<sup>25</sup>

### **8. Advertising exhibits poor taste.**

Criticisms of taste in advertising are provoked both by the products themselves and the manner of presentation. "The advertisements that most often offend people are those emphasizing sex, violence, or body functions." <sup>26</sup> Therefore, many voluntary guidelines and media rules have been created to reduce poor taste in advertising. For example, advertising of some products--such as female and male contraceptives--is prohibited by ABC, CBS, and NBC networks. Such advertising is carried on some non-network media.

## **THAILAND**

### **POSITIVE VIEWS TOWARD ADVERTISING**

#### **ECONOMIC CONTRIBUTIONS OF ADVERTISING**

##### **1. Advertising as market information.**

Advertising is viewed as market information in the United States; it is also viewed as such in Thailand. Thai people feel that advertising not only helps to save the consumer time in learning what choices of products are on the market, but also provides knowledge of what each product offers.

##### **2. Advertising and the media.**

As in the United States, advertising plays a major role in the support of the media. Although all broadcast media are government-owned in Thailand, advertising provides nearly all revenue for the operation of television and radio stations. It is in this way that the advertising industry plays a role in reducing government expenses; this reduction of government expenses ultimately benefits the taxpayer. In addition, advertising has contributed to the improvements in the media, by enabling it to expand and compete, and also by providing monetary sources to develop the media for the benefit of the media,

the advertiser, and the consumer. <sup>27</sup>

### **3. Advertising creates employment.**

As in the United States, advertising creates employment--both in advertising agencies and in other related jobs (public relations services, art studios, direct mail services, film production, etc.) Approximately 3,000 people are employed in advertising agencies in Thailand and roughly 850 people are employed in advertising-related work. <sup>28</sup>

### **4. Advertising improves people's lifestyles.**

Advertising has made a contribution to the improvement of people's lifestyles by making them aware of new or improved products or services that are eventually accepted as standard. For example, many Thai people changed from washing their clothes by hand to using a washing machine. This lifestyle only recently changed, after the use of washing machines had been heavily advertised on television.

### **5. Advertising promotes or encourages quality products.**

Thai people often believe that advertised products, in terms of quality, are better than products that are not advertised; they tend to have more confidence in buying advertised products. <sup>29</sup> Again, as in the United States, with the use of advertising, the consumer has a resource for identifying the product and can stop buying an unsatisfactory product; the more advertising for a product, the more incentive a manufacturer has to keep quality high.

**THAILAND****NEGATIVE VIEWS TOWARD ADVERTISING****I. ECONOMIC CRITICISMS OF ADVERTISING****1. Advertising is wasteful.**

Thai people believe that certain products have very similar qualities and that the only differences between them are the brand name, packaging and advertising. Many Thai people argue that the creation of differences between various products by advertising is unnecessary.<sup>30</sup>

**2. Advertising increases prices.**

Like the Americans, many Thai people believe that they are charged more when they buy advertised products or services. They believe that they have to pay not only for the cost of the product or service itself, but also for the advertising.

**THAILAND****NEGATIVE VIEWS TOWARD ADVERTISING****II. SOCIAL CRITICISMS OF ADVERTISING**

In Thailand, social criticisms are more prominent than economic criticisms. All advertising voluntary guidelines are enacted to protect against certain acts or practices that harm consumers.

**1. Advertising is persuasive--not informative.**

Many Thai people believe that advertising uses various forms of influence to persuade consumers to choose a particular product--such as the use of fantasy, comedy, or beauty in an advertisement. It is known that if an advertisement strikes the right chord, consumers will be interested in trying the product. Often, the interest is to the extent that consumers will actually buy the

product; it is then that the advertisement has achieved its goal. This criticism has led to the establishment of laws such as the Thai Food and Drug Association Act and the Consumer Protection Act (of Thailand); these Acts that require any advertisement or label to contain truthful and informative statements.

## **2. Advertising ruins the right rules of language.**

One of the most frequent criticisms about advertising pertains to the language that is used. Many Thai people, particularly linguists, professors, and educators, claim that advertising erodes the structure of the Thai language. They worry that children will learn such wrong rules of language from advertisements, especially from television. These criticisms caused the federal advertising regulatory authorities to scrutinize the content of advertising very carefully. For example, the circular of the Broadcasting Directing Board states that all advertising content must be written with right rules of language, otherwise it will not be approved by the Board.

## **3. The effect of advertising upon children.**

Thai critics believe that advertising primarily affects children in three ways: (1) Children are made aware of and want various products which parents may consider unnecessary, harmful, or too expensive, (2) Children spend money on unnecessary items, some of which may be harmful to their health, and (3) Children mature much too quickly for their particular age group. These criticisms led the government to closely monitor advertising that is aimed at children. As a result of these criticisms, most advertising agencies consider the effect that the advertisement will have on children very carefully before producing a particular advertisement.

#### **4. Advertising ruins religion.**

There are many Thai people, as well as many officers in the Religious Affairs Department, who are concerned that advertising may ruin Buddhism. They believe that advertisements may ruin the faith to the religion. The Buddhist religion is one of the two most important institutions (in addition to the monarchy), and advertising related to it is viewed as being highly offensive. Advertisements were once made to sell Buddha images; criticism led to the Broadcasting Directing Board's prohibition of all advertisements that related to selling Buddha images or other sacred objects.

#### **5. Advertising exhibits poor taste.**

As in the United States, poor taste in advertising--including sex, violence, and body functions--is often criticized. These advertisements are considered immoral or unfitting by the majority of the Thai people. This negative view toward these particular advertisements resulted in the establishment of strict rules (by both the Broadcasting Directing Board and the Consumer Protection Board) to govern the decency and sexism in advertising.

### **NEED FOR ADVERTISING CONTROL**

There has been a public outcry for more stringent regulation in both countries. In addition to the economic and social criticisms already mentioned, there are other reasons for controlling advertising; these criticisms, as with those previously mentioned, have prompted the creation of governmental legislation and the establishment of regulatory agencies in both the United States and Thailand.

#### **1. Unethical behavior.**

Since deceptive and other forms of unethical behavior occur in the

field of advertising, in both the United States and Thailand, many legal restrictions have been placed upon advertisers in an attempt to control unethical behavior. Many groups and individuals in the United States have been active in consumer issues since the late 1800s; those in Thailand began in the late 1900s.

Public-interest groups have increased in number and power. They lobby government officials and put pressure on business executives to pay more attention to consumer rights, women's rights, and senior citizen rights. The growing number of pressure groups have combined to put more pressure, and sometimes restraints, on marketers.

## 2. Vulnerable consumers.

Not all people are capable of separating lies from truth; therefore, advertising regulations have been developed to protect consumers from being deceived by misleading or fraudulent advertising. Michael Schudson categorizes vulnerable consumers as follows:

Five groups, whose situational or structural ignorance makes them unusually vulnerable to advertising, are highly mobile people, highly immobile people, children, the poor, and many of the relatively poor and poorly educated people in the Third World.<sup>31</sup>

Advertising voluntary guidelines have been created to protect vulnerable consumers. As an example, guidelines for advertising directed to children have been established in both countries.

## 3. Applied behavioral technologies.

Advertisers in the United States and Thailand employ sophisticated techniques of intensive persuasion that amount to manipulation. The sophisticated techniques include the applied behavioral technologies for consumer behavior and advertising research, which give at least the major



advertiser a large arsenal of information and the techniques with which to finetune a message. The information and techniques to be utilized are obtained from experienced professionals running market research surveys, focus groups, copy testing procedures, recall and awareness tests, and test markets. As Richard W. Pollay said:

That advertising should be seen as influential is not unreasonable, for it is clearly designed by professionals to be persuasive. These professional adsmiths are craftsmen of a high order and, like musicians, poets, filmmakers or novelists, create communications simultaneously richly evocative and yet in some respects sublimely subtle. But unlike these other communication craftsmen, advertisers have a wide spectrum of research techniques, organizations, and information to draw on.<sup>32</sup>

As a result of these applied sophisticated techniques, there has been an expansion in the regulatory environment of advertising and a plethora of proposals for further controls in both countries.

#### 4. Consumer alienation and support of advertising regulations.

The research findings of Durand and Lambert suggest that:

"grass-roots support for expanding and implementing certain advertising regulations may flourish among consumers who experience one or more forms of alienation: powerlessness, meaninglessness, normlessness and cultural estrangement."<sup>33</sup>

"Consumers experiencing a high level of powerlessness may support government controls on advertising, particularly if advertising is viewed, either explicitly or implicitly, as tipping the balance of power in the marketplace in favor of advertisers."<sup>34</sup>

"Consumers who experience meaninglessness may tend to support regulatory proposals that appear to require the inclusion of more information of a substantive nature in advertisements."<sup>35</sup>

"Consumers who sense normlessness may be more apt to favor (a) corrective advertising in instances where deceptive has been ruled, (b) compulsory affirmative disclosure, and (c) limits on advertising expenditure."<sup>36</sup>

**"People who suffer from cultural estrangement tend to see the beliefs and goods considered important by most of the society as valueless, tasteless, shallow, and purposeless. Consequently, the culturally alienated may have a tendency to be critical of advertising and to support advertising regulation." <sup>37</sup>**

**All of the reasons mentioned above are a cause of the development of advertising rules and regulations. Advertising in Thailand, for the foreseeable future, is apt to continue under close scrutiny by government regulatory agencies, consumer groups and critics, and the general public. Advertising in the United States, however, is apt to continue under close scrutiny by self-regulatory mechanisms, including those of individual media and those of particular industries. As Miracle and Nevett point out:**

**In the United States it (trend) is likely to continue toward greater reliance on advertising self-regulation. This trend in the United States is an opportunity for the U.S. advertising industry to "put its house in order" in a way that will forestall the tendency of government to be as activist in the future as it has been in the past. <sup>38</sup>**

## **COMPARISON**

**The summary of the different views toward advertising between the United States and Thailand presented in this section indicates the need for similarities and differences in advertising rules in both countries. Similar advertising rules and regulations in the two countries have been developed largely in response to a number of similar criticisms. Similarly, differing rules and regulations have been derived from differing criticisms.**

**The major difference in advertising policy between the United States and Thailand, as discussed in Part I, is based on the negative views toward advertising. In the United States, the economic criticism is primarily emphasized, particularly the criticism of monopoly as well as that of false and**

deceptive advertising. The U.S. government has focused on preserving competition in order to maintain the effectiveness of the market system. In Thailand, the social criticism is heavily emphasized. The Thai government is concerned more with the cultural base, and this has resulted in the prohibition of certain acts or practices; thus, their aim is to protect consumers rather than competition. In the United States, much legislation is created that pertains to the preservation of competition and the protection of consumers.

The positive views toward advertising are similar for both countries; however, not all positive views are the same. The American and Thai people have praised advertising for providing market information, promoting product quality, supporting the media, and creating employment.

Similarities are found in social criticisms of advertising, which, in turn, influence the similarities in advertising legislation. The people of both countries view advertising as being more persuasive rather than informative. Advertising is viewed negatively, in both countries, because it destroys the right rules of language. Also, the effect of advertising upon children is viewed negatively, in both countries, and has resulted in strict rules for advertising toward children. In both countries, the government and other advertising-related authorities closely scrutinize advertising aimed at children. Lastly, advertising is viewed negatively due to its (often) exhibition of poor taste. It is as a result of these criticisms, that advertisers and advertising agencies now consider the effect of their advertisements very carefully before producing particular advertisements.

## **CONCLUSION**

If advertising is consistent with its culture and utilizes messages that employ symbols and cultural values that are readily understood and accepted

by the intended audience, advertising rules and regulations would not necessarily need to be created. However, unethical behavior occurs in the field of advertising, just as it does in most businesses and professions. Deceptive advertising can result in unfortunate effects on consumers and the economy. These effects range from misspent money on an item that did not live up to its expectations to hazardous accidents resulting from the misrepresentation of faulty goods. To protect consumers against misleading or fraudulent advertising, advertising rules and regulations have been created in both the United States and Thailand.

## **PART II**

### **COMPARISON OF THE UNITED STATES AND THAILAND**

#### **Introduction**

In general, similarities and differences in the advertising regulatory systems of two nations stem from similarities and differences in their environmental characteristics, including their cultural, economic, legal, political, and social systems. In this section, prominent variables relating to the United States and Thailand are compared to see how they influence similarities and differences in advertising rules and regulations. As Miracle and Nevett stated:

Before the similarities and differences and the reasons for them (advertising rules and regulations) can be specified one must understand each system separately. The deeper understandings from the comparisons emerge later. <sup>39</sup>

#### **National Similarities and Differences**

##### **Size and Location**

The main landmass of the United States of America lies in the northern part of the Western Hemisphere, and is bordered by Canada to the north, Mexico and the Gulf of Mexico to the south, the Atlantic Ocean to the east, and the Pacific Ocean to the west. Alaska, which is northwest of Canada on the Arctic Circle, and Hawaii, which is approximately 2,000 miles west of the Continental U.S., in the central Pacific, are separated from the 48 contiguous U.S. states. The United States is the fourth largest country in the world, both in area and population (more than 240 million people). <sup>40</sup>

Thailand is located in Southeast Asia, covers almost 200,000 square miles of the Indochinese Peninsula, and is much smaller than the U.S. (roughly four-fifths the size of Texas). <sup>41</sup> Thailand is bordered by Burma to the west and

north, Malaysia to the south, Laos to the north and northeast, and Cambodia to the east. Thailand's population is more than 50.7 million ,which is roughly one-fifth that of the United States, and is increasing at a rate of 1.6 percent annually.

### Comparison

One reason for the differences in the nature of the advertising regulatory systems in the United States and Thailand is due to the difference in size of the two nations. The United States is almost eighteen times larger than Thailand; thus, advertising restrictions in Thailand are enforced by a centralized system, and they apply to both national and local advertising of products and services. Advertising controls in the United States, however, are enforced by both centralized and decentralized systems. This results from the wide diversity of cultural and social activities as well as the ethnic and racial heterogeneity, depending on the region of the country. In addition to the federal legislative control, nearly all states have enacted their own consumer protection laws.

*enforced by  
govt. agency*

### Political System

The United States of America is a federal republic of 50 states. Washington, in the District of Columbia, is the nation's capital. Under the federal system of government, according to the U.S. Constitution, extensive powers are reserved by the states, so that each of the 50 constituent states and the District of Columbia exercises a measure of internal self-government. The federal government consists of three branches: the executive, legislative, and judicial. The President heads the executive branch. The legislative branch, the Congress, is made up of two chambers: the Senate and the House of Representatives. The basis of the U.S. political structure is the two-party system, with the two parties being the Democratic and Republican parties. The judicial

branch consists of a system of courts headed by the Supreme Court. The Supreme Court rules on the constitutionality of laws on appeal from lower courts. There is no appeal against the Supreme Court's decision. There are subordinate federal courts throughout the country. State governments follow much the same pattern as that of the federal government. Each state has a governor as the chief executive, with power divided among the executive, legislative and judicial branches. 42

Thailand is a quasi-democratic country, yet its form of democracy is substantially different from that of the United States in numerous ways. The Thai political system operates under a constitutional monarchy, but the king is above partisan conflict and is widely respected as the living symbol of national unity and of the historical continuity of the Thais as a sovereign, independent people. The framework for Thai government and politics is the constitution that was promulgated on December 22, 1978. This document was the thirteenth (including three interim versions) since 1932 when, for the first time, Thailand embarked on constitutionalism in what had until then been a society ruled by an absolute monarchy. The Constitution calls for a democratic system of government with the king as the head of state. The sovereign power of the state is to be exercised by the monarch through the bicameral National Assembly, the Council of Ministers (Cabinet), and the courts. Actually, the real power is exercised by the prime minister--an elected deputy of the assembly who may or may not be a member of a political party. The prime minister need not be an elected delegate of the National Assembly, and may assume the position solely by assertion of leadership, with his role subsequently legitimized through pro forma royal appointment. 43

Although the Thai political system is a parliamentary democracy, the bureaucratic structure and authoritative values still exist in its political structure; both are direct descendants from the absolute monarchy. In the past, under the political system of an absolute monarchy, the authority was held by the king, who governed with the princes and nobility. Traditional society was elaborately stratified in the Sakdina system, an equivalent to the European feudal system; the Sakdina system reflects the interplay of personality--the importance of a leader and his following--within a hierarchical structure of authority. <sup>44</sup> These characteristics in the past have affected the political structure of the present.

### Comparison

Both the United States and Thailand are democratic countries, but they are substantially different from one another. In the United States, the Constitution provides certain powers to the federal government as well as to the states; it is this decentralized power that has influenced the decentralized control of advertising. The jurisdiction of retail and local advertising is reserved by each state, and the interstate commerce and national advertising is regulated at the federal level.

In Thailand, as the political system consists of bureaucratic structure and authoritative values, the advertising rules and regulations are therefore enforced almost solely by the government regulatory agencies. The advertising controls in Thailand, then, are described by authoritarian theory; that is, advertising restrictions are enforced by a centralized system and apply to both national and local advertising. The authoritative control can clearly be seen in broadcast media: any original story board must be submitted to the Broadcasting Directing Board for preclearance and approval.



### **Legal System**

With respect to legal system, the United States inherited common law, with its faith in the ability of courts to fashion rules for resolving disputes, from England, prior to the American Revolution. Freedom of speech and freedom of the press are protected by the First Amendment to the Constitution. The absolute nature of the First Amendment to the Constitution states that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances." However, the First Amendment is not absolute and can be waived in exceptional circumstances; the exceptions are obscenity, libel and slander, and incitement to riot.

In contrast with the United States, Thailand uses the civil law system. In Thailand, freedom of speech and freedom of the press are guaranteed, with the exception of the threatening of public order, good morals, public safety, or the security of the state. The current issue of the Constitutional Law of Thailand (1978), Section 34 states that "People have freedom of speech, writing, printing and advertising." The major difference indicated by this comparison seems to be regulation of "good morals" in Thailand, whereas morals are not regulated to the same extent in the United States.

There are similarities between the First Amendment to the Constitution of the United States and the Constitutional Law of Thailand: (1) they are important legislative Acts that affect advertising rules and regulations and (2) both Acts guarantee the right of free expression. However, the protection of freedom of expression contained in the First Amendment to the Constitution of the United States and the Constitutional Law of Thailand are not absolute, and thus regulation of commercial speech is allowed.

## Religion

In the United States, complete freedom of worship is guaranteed by the First Amendment to the Constitution. About 60 percent of the population belongs to an organized religious group; of this number, about 96 percent are Christians and approximately 4 percent are Jews. <sup>45</sup> Less than one percent belong to other religions.

In Thailand, Theravada Buddhism is the professed religion of more than 95 percent of all Thais and casts strong influences on daily life; 4 percent of the people are Muslim, and the rest adhere to other faiths. <sup>46</sup> The Buddhist religion plays an important role in Thai society: it has contributed greatly to shaping and influencing Thai behavior. Therefore, many advertising restrictions are created to maintain and protect the sacredness of the Buddhist religion. The Broadcasting Directing Board prohibits any advertisement of Buddha images or other objects in the Buddhist religion, based on the belief that it may ruin the sacredness and faithfulness of the Buddhist religion.

## Education

In the United States, most states require that children attend school until they are 16 years of age; some states require that they attend until they are 18 years of age. Education at the primary and secondary levels is available free of charge to all children in public schools. <sup>47</sup> In Thailand, the primary level education is compulsory and is free of charge for the six year period. The government requires children to attend school until they are 11 years of age. <sup>48</sup> The literacy rate (at the primary level) for the people of the United States in 1985 was 97 percent <sup>49</sup>, while that of Thailand was 88 percent. <sup>50</sup> Although literacy rates, as compared at the primary level, are not much different between

the countries, the literacy rates at higher educational levels (secondary and post-secondary) are substantially different between the countries. The enrollment in secondary education as percent of age group in the U.S. was 95<sup>51</sup>, compared with only 28.5<sup>52</sup> for Thailand (see Table 2).

**Table 2**  
**Projected Educational Percentage, 1988**

	United States	Thailand
Percent literate (the population over age 15)	97.0	88.0
Enrollment in secondary education as percent of age group	95.0	28.5
Enrollment in higher education as percent of population aged 20-24	57.0	22.0

Source : Trend & Opportunities Abroad, 1989, Published by American Demographics, Inc., Ithaca, New York,  
p. 89, 187

The differences in the literacy of the populations of the two countries result in differences in media use. The majority of the people in the United States are more educated than those in Thailand; therefore, print media attracts a larger proportion of advertising dollars in the United States than in Thailand. However, a greater share of advertising expenditures in television and radio reflects the orientation of Thailand toward broadcast media (for details, see later section entitled Comparison of Media Expenditures).

**Summary of General Characteristics Between the United States and Thailand**

Characteristics	United States	Thailand
System of Government	Federal	Parliamentary
	Democracy	Democracy
Leader of the State	President	Prime Minister
Legal System	Combination of Common	Civil Law
	Law and Civil Law	
Primary Religion	Christian	Buddhism

**MEDIA-GOVERNMENT RELATIONSHIPS**

Kim Rotzoll, James Haefner and Charles Sandage explained that there are two basic theories of media-government relationships: the authoritarian and the libertarian theory.<sup>53</sup> Under the authoritarian theory the media are, in essence, controlled by government and are used to inform people of what the authorities want them to know. Furthermore, the government functions as a gatekeeper to keep out of the media any information that it feels might be detrimental to its authority. This theory is still held by most totalitarian governments and is at times embraced by quasi-democratic regimes when the position of the party in power is endangered. Under libertarian theory, however, the media are expected to perform certain functions for the benefit of society. According to Frederick Siebert's summary of the libertarian theory for the press, which can be applied to all media:

The press is not an instrument of government, but rather a device for presenting evidence and arguments on the basis of which the people can check on government and make up their minds as to policy. Therefore, it is imperative

that the press be free from government control and influence. In order for truth to emerge, all ideas must get a fair hearing; there must be a "free market place" of ideas and information. Minorities as well as the strong must have access to the press. This is the theory of the press that was written into our Bill of Rights. <sup>54</sup>

The United States utilizes libertarian theory, while Thailand utilizes authoritarian theory. <sup>55</sup>

### Summary of Media-Government Relationships

<u>The United States</u>	<u>Thailand</u>
Libertarian Theory	Authoritarian Theory
Free marketplace of Ideas and Information	Strictly Control of Ideas and Information
Media as Watchdog	Government Instruments
Little Government Control	Government Control
Private Ownership	Government Ownership

### PRIOR RESTRAINT

Legal controls on the mass media generally fall into two categories: prior restraint and subsequent punishment. <sup>56</sup> Prior restraint involves an act by a government agency that is used to prevent facts or ideas considered unacceptable (as determined by the government agency) from ever being disseminated. Subsequent punishment allows the publisher or broadcaster to freely disseminate questionable material, however, afterward, they must be prepared to face the consequences.

The prior restraint concept is modeled after the English monarchy concept <sup>57</sup>, which, divided as it was by religious conflict, agreed that the press

needed to be closely watched. A series of press licensing laws was enacted which then required the obtaining of the approval of material by the censor prior to its publication. Prior restraint is usually a far greater threat to freedom of expression than subsequent punishment.

### Prior Restraint in the United States

Most of the legal controls on the mass media in modern America are subsequent punishments, not prior restraints. Much of the struggle for freedom of expression in the seventeenth and eighteenth centuries was a battle against prior restraint, and that battle was largely won at the time that the First Amendment was ratified. As William Blackstone said:

"The liberty of the press is indeed essential to the nature of a free state; but this consists in laying no previous restraints upon publications, and not in freedom from censure for criminal matter when published. Every free man has an undoubted right to lay what sentiments he pleases before the public; to forbid this, is to destroy the freedom of the press; but if he publishes what is improper, mischievous or illegal, he must take the consequences of his own temerity." <sup>58</sup>

Blackstone's view is embodied in the First Amendment, an Amendment which forbids prior restraint, as prior restraint does not allow freedom of expression. Nevertheless, prior censorship occasionally occurs in America today. These instances of prior restraint typically involve conflicts between the right to disseminate and other important societal needs. Often the conflict is between freedom of expression and the government's claim that a certain story, if disseminated, will do irreparable harm to national security; this type of conflict does not involve or affect advertising.

Prior restraint is generally improper in the United States, as concluded from the Supreme Court's decision in the following cases: *Near v. Minnesota* (1931), *New York Times Co. v. U.S.*, and *U.S. v. Washington Post* (the

Pentagon Papers case). However, the Supreme Court cautioned that the prohibition against prior restraint was not absolute and could be waived in exceptional circumstances.

### Prior Restraint in Thailand

Similar to the First Amendment of the United States, the Constitutional Law of Thailand guarantees the freedom of speech and of the press, except in special or certain circumstances. However, prior restraint, injunction, and censorship occur far more frequently in Thailand than in the United States. This is because the Thai Administration believes in the English monarchy theory, which assumes that the press needs to be closely monitored. Also, the media-government relationship in Thailand is categorized as following "authoritarian theory", under which all the media are controlled by government and are used to inform people of what the authorities want them to know.

In Thailand, the circumstances in which freedom of speech or of the press are restricted, are when they involve the threatening of national security, obscenity, religion, libel, or sedition.

### Comparison

Although the First Amendment to the Constitution of the United States and the Constitutional Law of Thailand are similar in terms of guaranteeing the right of free expression except in certain circumstances, differences are found in the enforcement system. Most of the legal controls on the mass media in the United States incorporate subsequent punishment, while those of Thailand are primarily prior restraint. Also, controls in Thailand cover obscenity and religion, both of which are not controlled to the same extent as by the government in the United States.

## **ADVERTISING IN THE UNITED STATES AND THAILAND**

### **Advertising in the United States**

The United States advertising expenditures in 1983 accounted for 56 percent of the world advertising expenditures.<sup>59</sup> From this figure, the importance of the advertising industry in this country is readily seen. In addition, there has been an increase in advertising expenditures use of advertising every year since 1983. For example, advertising expenditures increased from \$87,820 million (U.S. dollars) in 1984 to \$94,750 million (U.S. dollars) in 1985, which represents a change of approximately +7.3 percent. From 1985 to 1986, advertising expenditures increased approximately 7.8 percent, to \$102,140 million (U.S. dollars).<sup>60</sup>

### **Advertising in Thailand**

The decade of the '80s marks the coming of age of the advertising industry in Thailand. Advertising expenditure have continued to grow. Figures supplied by monitoring agency Media Data Resources (MDR), for the first four months of 1988, show that advertising expenditures grew by an astounding 38.7%, compared with 7.8% for the same period of 1987.<sup>61</sup>

### **Comparison**

Total advertising expenditures in 1986 in the United States were \$102,140 million (U.S. dollars), compared with only \$215.12 million (U.S. dollars) for Thailand.<sup>62</sup> This considerably higher advertising expenditure (almost 475 times as much) reflects the greater advertising exposure found in the United States. Greater advertising exposure has resulted in a greater number of advertising criticisms--more from the American people than the Thai. Per capita advertising expenditures were about \$424 in the United States and less than \$5 in Thailand, as shown in Table 3. Advertising as a percent of



gross national product (GNP) was 2.43 for the United States and 0.51 for Thailand. The significantly higher level of total advertising expenditures, per capita advertising expenditures, and advertising as a percent of GNP that is found in the in the United States, indicates that the advertising industry is much more stable than that in Thailand. Additionally, the expenditures are an indication of the relative importance of advertising for each of the two countries; advertising in the United States is considered much more important than it is in Thailand. In both the United States and Thailand, a large proportion of advertising is directed to consumers: advertising by retailers and manufacturers. Only a small proportion of advertising is industrial, or business-to-business, advertising. <sup>63and64</sup>

**Table 3**  
**Selected Advertising Statistics, 1986**  
(U.S. dollars)

	United States	Thailand
Advertising as percent of GNP	2.43%	0.51%
Per capita advertising	\$424.07	\$4.10
Per capita advertising in print media	\$134.93	\$1.30
Per capita television advertising	\$93.77	\$1.99
Per capita radio advertising	\$28.85	\$0.80

Source: World Advertising Expenditures (New York: Starch INRA Hooper in cooperation with the International Advertising Association, 1987, p.7,9,13,15,17).

## **ADVERTISERS**

Both countries have what are referred to as large, medium, and small advertisers. Large advertisers in Thailand normally are big international companies; many of them are companies from the United States: Colgate

Palmolive Co., PepsiCo Inc., Coca-Cola Co., and Unilever NV, among others. American and Thai large advertisers usually place their advertising through an agency, although some have house agencies.

The top spending advertisers in both countries are manufacturers and retailers. According to Advertising Age, the top 10 advertisers in the U.S. in 1987, by category, were: (1) automotive, (2) food, (3) business and consumer services, (4) retail, (5) entertainment, (6) travel and hotels, (7) toiletries & cosmetics, (8) beer, wine and liquor, (9) drug & remedies, and (10) snacks & soft drinks.<sup>65</sup> The top 10 advertisers in Thailand in 1987, by category, as reported by Media Focus Co., Ltd., were: (1) milk & milk products, (2) housing projects, (3) pharmaceutical products, (4) beverage-alcoholic, (5) department stores & trade centers, (6) toothpaste & toothbrushes, (7) detergent, (8) building materials, (9) soaps, and (10) cosmetics-skin care.<sup>66</sup>

## **ADVERTISING AGENCIES**

### **Advertising Agencies in the United States**

There are more than 8,000 advertising agencies scattered throughout the United States. These agencies vary in size, ranging from those consisting of several thousand employees--such as Young & Rubicam, Ted Bates Worldwide, and J. Walter Thompson Co.--to those with fewer than 100--such as MCA Advertising Ltd. Many of the large advertising agencies are located in large metropolitan areas such as New York, Chicago, Detroit, Los Angeles, San Francisco, and Philadelphia. In addition to locating in these large metropolitan areas, many of them are in principal cities throughout the world. Advertising agencies are normally compensated in one of three ways: commissions, percentage charges on materials and services purchased for clients, or fees.

### Advertising Agencies in Thailand

There are more than 90 advertising agencies in Thailand--both local and international agencies. One hundred percent of them are located in Bangkok, the capital of Thailand. Large advertising agencies in Thailand consist of about 200 employees--such as Ogilvy & Mather, Lintas : Bangkok, Leo Burnett, and Prakit/FCB. Some small agencies consist of fewer than ten employees. An agency's gross income is roughly 18 percent of their client's net advertising expenditures, about the same as in the United States. This yields relatively low returns; the bulk of an advertising agency's income is derived from commissions received from media expenditures, which have relatively low return rates.<sup>67</sup> Leading agencies, in terms of revenues, performance, and clientele, include SSC&B Lintas Thailand, Ogilvy & Mather, DDB Needham, Leo Burnett Co, McCann-Erickson (Thailand), Prakit/FCB, J. Walter Thompson Co., Amex & Grey Advertising, HDM/DYR, and Saatchi&Saatchi. Attracted by the healthy Thai economy and the region's economic growth, international agencies in the United States and in Europe have been readjusting their positions in Thailand. In March of 1988, for example, DYR Ltd. became HDM/DYR when Havas, Dentsu & Marsteller (HDM) bought 49 percent of the local joint venture Dentsu Young & Rubicam. British-based Saatchi&Saatchi PLC absorbed the local Ted Bates Ltd. Leo Burnett Co. took over all the operations and staff of Diethelm Advertising.<sup>68</sup> International agencies differ in their equity holdings: They are referred to as majority owned (51-100%), minority owned (1-50%), no equity-affiliation or association, or not applicable-locally owned <sup>69</sup> (see Table 4).

**Table 4**  
**Foreign Agency Income Report (Thailand)**  
 ( Exchange rates: 0.042800/0.045300 baht )

Agency	City	Owner-Ship	Gross Income	% Chg.	Billing	% Chg.	Workforce 1987	1986
SSC&B:Lintas	BKK	MJ	6030	12.0	40222	5.5	181	159
Ogilvy & Mather	BKK	MJ	3444	4.2	23689	12.0	137	135
DDB Needham	BKK	MN	2232	319.6	10995	209.9	30	33
Leo Burnette	BKK	MJ	2161	20.8	11984	23.0	115	106
Far East Ad.	BKK	MN	2109	17.8	14065	17.8	145	136
McCann-Erickson	BKK	MJ	1953	9.1	13024	9.1	83	90
Prakt/FCB	BKK	MN	1458	53.3	9728	53.4	123	91
JWT Co	BKK	MJ	1428	18.7	8098	18.7	60	48
Amex&Grey Ad.	BKK	MN	945	45.2	6301	45.1	56	56
Chuo Senko Ad.	BKK	NA	917	NA	4422	NA	NA	NA
Ball Partnership	BKK	MJ	629	6.1	4195	(9.8)	32	NA
DMB&B	BKK	MN	342	NA	2283	NA	63	NA
Ogilvy&Mather Direct	BKK	MJ	283	119.6	1887	119.6	12	10
Saatchi&Saatchi	BKK	MJ	261	NA	1626	NA	43	NA
Thai Image Ad	BKK	MN	105	16.7	698	16.3	NA	NA

Source :Advertising Age,May 9,1988, p. 72

MJ - majority owned,51% to 100%

MN - minority owned, 1% to 50%

NA - not applicable or locally owned or in the process of changing the equity situation.

### Comparison of Advertising Agencies in the U.S. and Thailand

The number of advertising agencies in the U.S. is almost 100 times that in Thailand. While the advertising agencies in the U.S. are spread somewhat more evenly throughout the country, those of Thailand are centered only in the capital, Bangkok, which is the commerce center of the country.

The relative size of the advertising industry of the two nations differs substantially. Many advertising agencies in the United States are much bigger than those in Thailand. The number of employees in one firm in the United

States, J. Walter Thompson, is greater than the total number of employees in every advertising firm in Thailand. These numbers indicate that the advertising industry in the United States is much more important than that in Thailand.

## **ADVERTISING MEDIA**

### **Advertising Media in the United States**

According to Miracle and Nevett:

In the United States all advertising media are privately owned business enterprises, with broadcast media deriving virtually 100 percent of their revenues from advertising. Newspapers and magazines derive the majority of their revenues from advertising, with a small but significant proportion coming from subscription or newsstand sales.<sup>70</sup>

**Television** - Currently, the U.S. television industry is composed of about 1,500 television stations, of which approximately 1,170 are commercial.<sup>71</sup> The remainder are noncommercial (public) stations. Most commercial television stations are affiliated with one of the three national commercial television networks : The National Broadcasting Company (NBC), Columbia Broadcasting System (CBS), or American Broadcasting Company (ABC). By 1990, it is projected that there will be 300 independent stations, which will be unaffiliated with any of the three national commercial television networks--this figure is up from 200 in 1985.<sup>72</sup>

**Radio**- In 1985 there were approximately 4,940 commercial AM stations and about 5,500 FM stations.<sup>73</sup> The five wired national radio networks are: National Broadcasting Company (NBC), Mutual Broadcasting System (MBS), Columbia Broadcasting System (CBS), National Black Network (NBN), and American Broadcasting Company (ABC).

**Newspapers** - There are about 1,740 daily newspapers in the United States, with a combined circulation of over 63 million readers. In addition, some 7,700

weeklies serve rural and metropolitan suburban readers throughout the country. <sup>74</sup>

Magazines - There are many categories of magazines in the U.S. According to many media reference guides, magazines in the U.S. can be categorized into four types: general and news magazines, special interest magazines, business publications, and farm publications. Revenues from advertising provide at least half of the revenue for many magazines. <sup>75</sup>

#### Advertising Media in Thailand

The \$122 million (U.S. dollars) in expenditures by the advertising industry in Thailand for the first half of 1988 was distributed as follows: television, 61.86 percent; newspapers, 27.47 percent; magazines, 9.07 percent; movie theaters, 0.07 percent; and outdoor and transportation, 1.53 percent. <sup>76</sup>

Television - Television frequencies in Thailand are government-owned, and are assigned to various government agencies: Channels 5 and 7 to the Royal Thai Army; Channels 3 and 9 to the Mass Communication Organization of Thailand; and Channel 11 to the Public Relations Department. <sup>77</sup> These television stations are located in Bangkok and telecast an average of more than 100 hours per week. The nine provincial stations are located in the following cities: Khon Kaen , Nakhon Rachasima, Haadyai, Surat Thani, Songkhla, Phuket, Lampang, Chiang Mai, and Rayong; these stations serve the people in their respective areas on a much more limited basis. Advertising provides nearly all revenue for operation of all television stations in Thailand.

Radio - Thailand has 196 radio-broadcasting stations (1984) scattered throughout the country. Three FM stations and more than 50 AM transmitting terminals serve metropolitan Bangkok. Two Bangkok stations operate with FM stereo multiplex systems. All areas of the country can be reached by radio

advertising, although not all stations carry commercials.

**Newspapers** - There are about 30 national and more than 200 provincial newspapers. Like magazines, newspapers derive the majority of their revenues from advertising, with a small but significant proportion from subscription or per copy sales at the cover price.

**Magazines** - There are about 130 magazines in Thailand, and they may be categorized into several distinct categories: women's, men's, business, traveling, music, entertainment, home&furniture, sports, cars, and motorcycles, among others. Magazines derive the majority of their revenues from advertising, with a small but significant proportion from subscription or per copy sales at the cover price.

### **Comparison**

Differences can clearly be seen, in terms of advertising media and the availability of media, between the United States and Thailand. First, there is a great difference in the number of media vehicles. In Thailand, there are only a few television and radio stations, newspapers, and magazines, etc., while there is an abundance of them in the United States. Second, differences can also be found in terms of the media sophistication as well as technology. In the U.S., the media are much more sophisticated and advanced than those in Thailand. Finally, there is a greater choice of media classes in the United States than there is in Thailand.

Despite the many differences, there are similarities between the advertising media found in the two countries. Revenues from advertising are the lifeblood of both U.S. and Thai media. In addition, there has been an increased use of the specialized media in both countries.

**Comparison of Media Expenditures****Table 5****Media Expenditures, 1985**

(in millions of U.S. dollars)

Medium	United States		Thailand	
	Amount spent	Percent of Total	Amount spent	Percent of Total
Newspaper	\$25,170	26.56%	\$ 43.0	20.90%
Consumer and trade magazines	\$ 5,155	5.44%	\$19.0	9.10%
Outdoor and transportation	\$ 945	1.00%	-	-
Radio	\$ 6,490	6.85%	\$ 39.7	19.00%
Television	\$20,770	21.92%	\$106.5	51.00%
Direct advertising	\$15,500	16.36%	-	-
Miscellaneous	\$21,977	21.87%	-	-
Total	\$94,750	100.00%	\$209	100.00%

Source: World Advertising Expenditures (New York: Starch INRA Hooper in Cooperation with the International Advertising Association, 1986).

\* Includes cinema, exhibitions, demonstrations, information centers, display and point of sale advertising, and miscellaneous sales promotion, as well as direct advertising .

- Not reported.

Table 5 illustrates the relative importance of the media as advertising vehicles, for 1985. In the United States, newspapers were the primary medium used (26.56%), followed by television (21.92%), miscellaneous (21.87%), direct mail (16.36%), radio (6.85%), and consumer and trade magazines (5.44%). In Thailand, more than half of the media expenditures were allocated in television (51%), followed by newspapers (20.90%), radio (19%), and consumer and trade magazines (9.1%).

Differences can be found in the media allocation between the United States and Thailand. The figures for percent of total advertising expenditures, as shown in Table 5, indicate that print media were used more in the United



States than in Thailand. Conversely, broadcast media, when expressed in percentage of total advertising expenditures, were much more heavily favored in Thailand than they were in the United States. This results from the fact that the literacy rate in Thailand is much lower than that of the United States. As mentioned previously in this study, although the literacy rate in Thailand was 88 percent in 1988, the enrollment in secondary education was only 28.5 percent. In comparison, the literacy rate in the United States was 97 percent in 1988, and the enrollment in secondary education was 95 percent. Consequently, in Thailand, broadcast media are a more effective advertising media than print media. "Television is an effective medium in that Thai consumers tend to be more responsive to graphic display than written text." <sup>78</sup>

Television advertising attracts more than 50 percent of the total advertising expenditures in Thailand, and about 22 percent for that in the United States. Radio advertising attracts 19 percent of all Thai advertising expenditures, but only about seven percent in the United States. With seventy percent of the Thai advertising expenditures allocated to broadcast media, criticisms of television and radio commercials are enormous; this criticism has resulted in stricter rules and regulations on broadcast advertisements--more strict than those of other forms of media in Thailand.

## **CONCLUSION**

Although the United States and Thailand are significantly different in many ways, advertising is recognized as a major tool that companies use to direct persuasive communications to target buyers and publics. In both the U.S. and Thailand, freedom of speech and freedom of the press are guaranteed. Freedom of expression in the U.S. is guaranteed by the First Amendment to the Constitution; in Thailand, it is guaranteed by the Constitutional Law.

A fundamental difference between the system of government employed in the United States and that in Thailand, is illustrated by the United States Supreme Court's interpretation of constitutional prohibition. The Supreme Court has affirmed that a publisher or broadcaster is free to disseminate questionable material--but must be prepared to face the consequences afterward. In addition, the Supreme Court has banished any system of "prior restraint" in all but extreme cases. In Thailand, in the past the Thai autocratic ruler has stifled dissent by requiring government approval through licensing or prepublication review of all broadcasts.

In terms of advertising agencies, those found in both of the countries are similar to each other in both basic services and functions. Although television, radio, newspapers, magazines and outdoor advertising are major media used in both countries, the percentage of media allocation mentioned earlier reflects the somewhat greater orientation of the United States toward print media, but that of Thailand toward broadcast media. However, in terms of media availability, there are more media choices in the United States than in Thailand.

To understand more clearly the similarities and differences of advertising between the United States and Thailand, the next part of this thesis will focus on advertising regulations and the advertising regulatory agencies.

### **PART III**

## **ADVERTISING LAWS AND REGULATIONS**

### **INTRODUCTION**

The advertising laws in any country usually differ--if only slightly--from those of other countries. Presently, in Thailand, control of advertising practices is by the government. In the United States, however, the control of advertising is by a combination of government law and self-regulation.

The United States is one of the world's most developed pluralistic countries in terms of culture, economy, legal system, politics, and technology. Advertising regulation is also highly developed; it is substantially more complex, and has become more thoroughly developed, and over a longer period of time, than the system in Thailand.

The particular mix of the forces that form the advertising laws and regulations of the United States and Thailand differ in numerous ways. Nevertheless, the enactment of advertising laws and regulations in both countries is based on the same objectives: to control unethical advertising practices and advertising which has deleterious effects, to protect people who cannot protect themselves, and to improve the quantity and quality of information available to consumers.

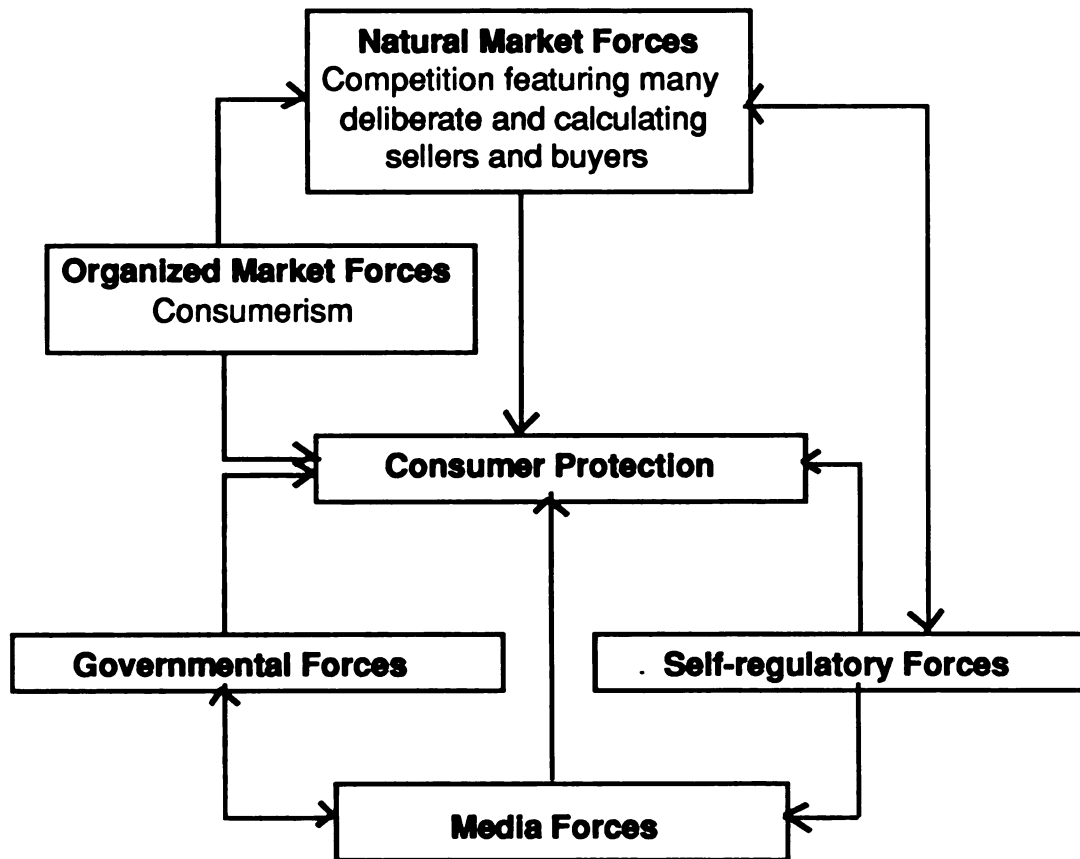
In addition, an important similarity in the advertising laws and regulations of the two countries is found: they lack clear-cut definitions. For

example, while it is clear that in both countries deception in advertising can be regulated, there is no precise listing of criteria for the enforcement of a finding of deception, nor clear guidelines for its determination. The next section compares the advertising controls in the United States and Thailand.

### **CONTROLS ON ADVERTISING**

There are numerous types of controls on advertising; these are found in not only the areas of the government and the self-regulatory mechanisms. Controls designed to regulate the foregoing problems come in many forms--direct and indirect, and formal and informal.

According to Rotzoll, Haefner and Sandage, there are five forces that regulate the institution of advertising: natural market forces, organized market forces (consumerism), self-regulatory forces, governmental forces, and media forces <sup>79</sup> (see Figure 1). In this section, organized market forces (consumerism), self-regulatory forces, governmental forces, and media forces in both the U.S. and Thailand will be studied and compared.

**Figure 1 : The Force of Regulation**

Source : Kim B. Rotzall, James E. Haefner and Charles H. Sandage (1986),  
" Advertising in Contemporary Society " p.122

### **Controls on Advertising in the United States**

At the present time, the government control of advertising practices in the United States has been supplemented by mechanisms which have been devised by the advertising industry to regulate voluntary advertising compliance within the advertising community. As Stanley E. Cohen points out:

In other countries regulation has been achieved primarily through codes set up by commercial and industrial associations. But even the advocates of regulation in the United States are discovering that a system of government regulation has its limitations, especially its tendency to be ponderous and inflexible and its inability to reach beyond established principles of law into sensitive areas of taste. So the United States has begun to develop systems of self-regulation which supplement-and sustain-the government's role.<sup>80</sup>

### **Control on Advertising in Thailand**

As mentioned in a previous section, Thailand believes in the authoritarian theory of the media-government relationship, and therefore, controls on advertising rely almost entirely on law. The government regulatory agencies have much authority over the control of advertising.

In the next section, forces that regulate the institution of advertising will be compared, beginning with consumer forces, self-regulation forces, government forces and media forces.

## **I. CONTROL BY CONSUMERS**

According to Aaker, consumerism can be defined as follows:

Consumerism is an evolving set of activities of government, business, independent organizations, and concerned consumers that are designed to protect the rights of consumers. It is an evolving, dynamic movement with an enlarging scope and changing spokesmen and issues. It is action oriented and, therefore, more than an analysis of problems. <sup>81</sup>

### **Control by Consumer in the United States**

The consumer movement in the United States has been one of the major forces influencing the legislation of advertising rules and regulations. Consumerists lobby government officials and put pressure on business executives to pay more attention to consumer rights, women's rights, senior citizen rights, minority rights, and so on. Business is aware of the growing concerns of consumers; Greyser and Diamond studied consumer attitudes and concluded the following:

From the responses to the comprehensive...questionnaire, we see a picture of broad recognition and acceptance of consumerism by managers as a permanent part of the business landscape. Although some of this acceptance is grudging, a strong majority of executives consider consumerism a positive force in the marketplace.... There is surprising sympathy for some of the more restrictive ideas about advertising that have been put forward by consumerists... Executives agree that "consumerism will lead to major modifications in advertising content." <sup>82</sup>

As a result of consumerists', dissatisfaction with business practices, new laws and more enforcement have combined to put more restraints on marketers.

The most important of the consumer associations are the Consumer Federation of America and the National Consumer League. In addition, there are many private as well as nonprofit testing organizations, such as Consumers' Research and Consumers' Union. Also, there are independent organizations--laboratories--which test products, mainly for safety, and publish lists of products that are found acceptable.

Overall, these organizations' purpose has been to collect and provide consumer information, to protect the consumer from misleading advertising, and to bring about legislation for reforms.

#### Control by Consumer in Thailand

As in the United States, consumerism in Thailand is one of the available forces influencing advertising. According to Section 4 of the Consumer Protection Act of 1979, the consumer has the following rights of protection:

- (1) the right to receive correct and sufficient information and description as to the quality of goods or services;
- (2) the right to enjoy freedom in the choice of goods or services;
- (3) the right to expect safety in the use of goods or services;
- (4) the right to have the injury considered and compensated in accordance with the laws on such matters or with the provision of this Act. <sup>83</sup>

However, Thai consumerism does not have as wide-based consumer support as that in the United States. Most of the consumerists in Thailand are people who are highly educated, such as professors, college students, and linguists. These consumerists do not have as much influence as those in the United States. They only express their opinions on advertising and propose



them to government officers in the relevant agencies; the officers then judge the legitimacy of the consumer complaints.

In addition to highly educated consumerists, housewives are also a potent lobbying group--they are attempting to correct abuses in advertising particularly advertising directed to children.

### Comparison

Consumerism in both the United States and Thailand has had a significant impact on the advertising industry. Consumerists in both countries seek to ban the advertising of certain products and to affect the nature and direction of certain types of advertising. A similarity found in both the United States and Thailand is that if consumers are more educated, they are more sophisticated customers.

A difference between consumerism in the United States and Thailand is that the consumerists in the former are much more active and are better organized than those of the latter. Moreover, they are more active in seeking to place greater restraints on advertising.

## II. SELF-REGULATORY FORCES

### Self-Regulatory Forces in the United States

Legal restrictions on advertising practices in the United States have changed gradually from relying almost entirely on law to relying more on self-regulation. Self-regulation has developed rapidly since the early 1970s

and functions to receive and act upon consumer complaints, and to work with both government and industry to maintain high standards of truth and accuracy in advertising. Even though early self-regulation efforts incorporated codes of ethics with little enforcement or punitive power, these efforts have been an influential part of the consumer protection movement since the early 1970s. As a result, the regulation of advertising by the federal government reached its zenith at that time. According to John Lichtenberger:

With the declining involvement of FTC in various aspects of ad compliance, there has been a parallel increase in importance in three major areas: (1) ad industry self-regulation, (2) private lawsuits, and in particular suits involving Section 43 (a) of the Lanham Act, and (3) somewhat greater state regulation of deceptive advertising.<sup>84</sup>

While government control changed toward a less vigorous policing of the marketplace, self-regulation changed toward a more authoritative handling of the voluntary regulations of advertising. This turn toward self-regulation is partially motivated by a desire to avoid additional government intervention in the advertising industry. The advertising industry has taken self-regulation quite seriously in the 1980s.<sup>85</sup>

The self-regulatory mechanisms have, over the years, performed a necessary and important function in the control of advertising practices. The self-regulatory control of advertising practices is comprised of individual media, industry associations, advertising agency associations, advertiser associations, and media associations; it also relies on self-discipline by advertisers

and agencies <sup>86</sup> (see Table 6). A detailed discussion of self-regulation of the media is found in section IV of this study.

The most important of the advertising industry's key self-regulatory organizations are the National Advertising Division (NAD), and the National Advertising Review Board (NARB) of the Council of Better Business Bureaus (CBBB). The NAD and NARB act on consumer and industry complaints regarding truth and accuracy in national advertising. In addition, there is the Children's Advertising Review Unit (CARU) of the NAD which encourages truth and accuracy in children's advertising. For more information, see Miracle and Nevett (1987). <sup>87</sup>

#### Self-Regulation Force in Thailand

There is no self-regulatory mechanism used in the monitoring of advertising in Thailand. Advertising rules and regulations are almost solely controlled by government agencies. However, there is a private organization that functions similar to that of a self-regulatory mechanism: the Advertising Association of Thailand (AAT). The AAT is not considered a self-regulatory mechanism, per se, because of the reasons for its establishment. A true self-regulatory mechanism is established to set guidelines and controls for the industry; the AAT was established primarily for social reasons and as an avenue for communication with government authorities. It was founded in 1966 and has its own code of ethics, which serve as voluntary guidelines for the advertising industry in Thailand. The AAT's main objective is to convince its

**Table 6****Industry Groups with Advertising Self-Regulation Programs**

Group	Year created	Code Revised
<b>Advertising Associations</b>		
1. American Advertising Federation	1965	1979
2. American Association of Advertising Agencies	1924	1962
3. Association of National Advertisers	1972	Transferred code to CARU in 1974
4. Business Professional Advertising Association	1975	1980
<b>Industry Groups</b>		
5. Council of Better Business Bureaus	1912	1984
Household furniture	1978	-
Automobiles and trucks	1978	-
Carpet and rugs	1978	-
Home Improvement	1975	1977
Charitable solicitations	1974	1977
6. Children's Advertising Review Unit of the NAD / NARB	1974	1984
7. National Advertising Division / National Advertising Review Board	1971	-
<b>Media Associations</b>		
8. American Business Press	1910	1971
9. Direct Mail Market Association	1960	1978
10. Direct Selling Association	1970	1979
11. National Broadcasters <sup>a</sup>		
Radio	1937	Disbanded in 1982
Television	1952	Disbanded in 1982
12. Outdoor Advertising Association of America		
Trade Associations	1950	1972
13. American Wine Association <sup>b</sup>	1949	1978
14. Wine Institute <sup>b</sup>	1949	1978
15. Distilled Spirits Association	1934	1973
16. United State Brewers Association	1955	Revision in process
17. Pharmaceutical Manufacturers Association	1958	1967
18. Proprietary Association	1934	1975
19. Bank Marketing Association	1976	-
20. Motion Picture Association of America	1930	1979
21. National Swimming Pool Institute	1970	1978
22. Toy Manufacturers Association	1962	1975

Source : LaBarbara, Priscilla (1980 ), " Analyzing and Advancing the State of the Art of Advertising Self-Regulation," Journal of Advertising 9 (4): 27-38; updated by Miracle, Gordon E.(1985), "Advertising Regulation in Japan and the USA: An Introductory Comparison," Waseda Business and Economic Studies, No. 21, p. 59-60

a Since the advertising self-regulatory activities of the NAB were disbanded, the three major broadcast networks have individually assumed primary responsibility for self-regulation of commercials.

b These groups share the same code.

individual members to create advertising that is based on truth and honesty. However, the enforcement of its code of ethics does not include punitive power; the only penalty for violating the code of ethics is the expulsion of the member from the association. The AAT's efforts are relatively ineffective; however, all advertisements are closely scrutinized by government regulatory agencies, regardless of whether or not they are in violation of the AAT code of ethics.

Even though the AAT is a private organization, it works and coordinates with the government regulatory agencies. Members of the AAT Executive Committee are regularly given positions on government-appointed committees such as the Consumer Protection Board, the Food and Drug Administration and the Broadcasting Directing Board. According to Chiem Limsodsai, the president of the AAT:

The Association has continued on behalf of our members and of the advertising industry to work with government organizations in regard to rules, regulations and policy. Through weekly and monthly meetings, the AAT's Executive Board has been liaising with and acting as consultant to the various government bodies concerned, aiming for the progress of the industry and of the country. <sup>88</sup>

### Comparison

A major difference is found in the effectiveness of the self-regulation mechanisms that exist in the United States and Thailand. In the U.S., control of advertising practices is dependent, in part, upon self-regulation; that of Thailand has relied almost entirely on the law. This difference may largely be due to the media-government relationships found in the two countries. As was

mentioned in Part II, the United States has incorporated libertarian theory, while Thailand adheres to authoritarian theory.

In the U.S., the advertising industry has evolved a variety of self-regulatory mechanisms to manage the voluntary regulation of advertising; examples of voluntary regulation systems include industry associations, advertising agency associations, and advertiser associations; in addition, NAD/NARB is a very effective voluntary regulatory system. In Thailand, there is only one organization that functions similar to a self-regulatory mechanism, the AAT--which is not as well organized as the many self-regulatory mechanisms found in the United States.

It has been shown that self-regulation is quicker in terms of problem management, and less costly, than government regulation. It is also one of the most basic means of consumer protection under a capitalistic, economic system. As a result, many Thai professionals in the advertising field predict that there will be self-regulation in Thailand in the near future.

### **III. GOVERNMENTAL FORCES**

It is apparent that both consumer-control and industry self-control of advertising are important and desirable--however, they have not been completely effective. Advertising control still requires intervention by the government. In a study of "Self-Regulation in Advertising," the Advertising Advisory Committee of the United States pointed out that government control

and self-regulation are not mutually exclusive. The report also stated that "self-regulation cannot and must not be expected to assume the role of government in the control of advertising." <sup>89</sup>

In this section, a study and comparison of the government forces in advertising, for both the United States and Thailand, will be presented for the federal level. It will also include a discussion of the major federal advertising regulatory agencies that are involved in consumer protection against false advertising. The three Federal regulatory agencies in the United States are the Federal Trade Commission (FTC), the Federal Communications Commission (FCC), and the Food and Drug Administration (FDA). The three Federal regulatory agencies in Thailand are the Consumer Protection Board (CPB), the Broadcasting Directing Board (BDB) and the Food and Drug Administration (FDA). These agencies, in both countries, have a direct interest in consumer protection from advertising; other regulatory agencies usually work through these Federal agencies to halt advertising abuses.

In the United States, there are many more federal authorities in addition to the FTC, FCC, and FDA. In 1977, there are 21 federal authorities responsible for advertising regulation, but their responsibilities are limited to the advertising of particular products or services, or to certain types of media <sup>90</sup> (see Table 7 ).

**Table 7**  
**Control Over Advertising Practices By the U.S. Federal Authorities**

Federal Authority	Area of Responsibility over Advertising Practices
<b>Independent Regulatory Commissions</b>	
Federal Trade Commission	All media, all products and services except for meat packing, banking, and common carriers
Federal Communications Commission	Broadcast media
Securities and Exchange Commission	Securities
Civil Aeronautics Board	Airlines
Interstate Commerce Commission	Carriers
Federal Power Commission	Public Utilities
<b>Divisions of Executive Departments</b>	
Post Office	Mail
Department of Health, Education and Welfare : Food and Drug Administration	Prescription drugs and labeling of foods, drugs, cosmetics, and devices
Treasury Department : Internal Revenue Service	Alcohol
Department of Agriculture : Grain Division	Seed
Department of Agriculture : Bureau of Animal Husbandry	Meat packing
Department of Commerce : Bureau of Standards	Commercial standards of various products
Department of Defense	Military products
Department of Interior	Lands within jurisdiction, and Indian arts and crafts
Department of Justice	American flag
Treasury Department	Money, coins, bonds, etc.
Department of Labor	Labor unions



**Others**

Custom Bureau	Some imported products
Narcotics Bureau	Narcotics
Patent Office	Patent agents
Farm Credit Administration	Federal farm loans

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Source : Dorothy Cohen (1972), "Advertising," John Wiley & Sons, Inc., p. 184

**The FTC and the CPB**

To protect the public from false and misleading advertising, both the United States and Thailand have their own regulatory agencies for monitoring major advertisers, and to act against practices they consider improper. The primary agent of the federal government for regulation of advertising in the United States is known as the Federal Trade Commission, while that in Thailand is known as the Consumer Protection Board.

**The Federal Trade Commission**

The Federal Trade Commission is the most important regulatory agency for advertising, and is primarily responsible for the creation and enforcement of advertising rules and regulations. The FTC, an independent federal agency, was created by the Federal Trade Commission Act of 1914. The FTC consists of five commissioners who are appointed by the President, with the approval of the Senate. Section 5 (b) of the Federal Trade Commission Act empowers the Commission to issue orders requiring any "person, partnership or corporation" to "cease and desist" from "using any unfair method of competition or unfair or deceptive act or practice in commerce."<sup>91</sup> The 1914 Act says:

Unfair methods of competition in commerce are hereby declared unlawful; the Commission is hereby empowered and directed to prevent persons, partnerships, or corporations from using unfair methods of competition in commerce.<sup>92</sup>

Additionally, the role of the FTC in guarding consumers as well as competitors was given express Congressional sanction by the Wheeler Lea Act of 1938. This Act amended Section 5 of the FTC Act to include the statement that "any unfair or deceptive acts or practices in commerce would be deemed unlawful, regardless of the fact that injury to competition was not present."<sup>93</sup>

### The FTC Activities

The FTC is organized into three principal operating bureaus that focus on the areas of economics, consumer protection, and competition.<sup>94</sup> The FTC's underlying duties and responsibilities are to prevent the free enterprise system from being stifled or by monopoly or anticompetitive practices, and to protect consumers from unfair or deceptive trade practices.<sup>95</sup>

Consumer protection acts enforced by the FTC include the Magnuson-Moss Warranty Act, which limits the ability of sellers to disclaim implied warranties; the Federal Truth in Lending Act, which regulates the use of credit information in advertising; and the Fair Packaging and Labeling Acts. In addition, the FTC is responsible for the preparation of consumer information releases, brochures, and reports.

### The FTC Operation

Most of the time, the FTC investigates complaints from letters written by consumers or by competitors of the offending advertiser; in addition, it also develops case ideas from its own staff. Whatever the source of a complaint, the first step of an enforcement action is to notify an advertiser that it (the FTC) considers their advertisement deceptive or misleading. Deceptive and misleading advertising is investigated on the "majority standard" established by the FTC.

According to the majority standard, the Commission "will find deception if there is a representation, omission, or practice that is likely to mislead the consumer acting reasonably in the circumstances, to the consumer's detriment."<sup>96</sup>

The following is a list of options that are available to the Commission upon investigation of a complaint:

1. Guides or advisory opinions which attempt to outline in advance what advertisers may say about a product.
2. Voluntary agreements by advertisers to terminate a deceptive advertisement.
3. Consent orders or written agreements signed by advertisers promising to terminate a deceptive advertisement.
4. Cease and desist orders to advertisers to terminate a particular advertising claim, for which failure to comply can result in severe penalty.
5. Substantiation of advertisements in which the advertiser must prove all claims made in an advertisement.
6. Corrective advertising in which an advertiser must admit in future advertisements that past advertisements have been incorrect. (This remedy has not been used in recent years)
7. Injunctive power to immediately halt advertising campaigns which could cause harm to consumers.

8. Trade regulation rules which can be issued to regulate advertising throughout an entire industry.<sup>97</sup>

### **The Consumer Protection Board (CPB)**

The Consumer Protection Board of Thailand is the most important regulatory agency for advertisers, and is primarily responsible for the creation and enforcement of advertising rules and regulations. The Consumer Protection Board has the power to regulate all advertising which is deceptive, misleading, or offensive, and found in any medium. The CPB has no authority to censor the program content. If an advertiser is uncertain about an advertisement, they can propose draft advertisements that are then subject to approval by the CPB, and pay a fee for a review.

The Consumer Protection Board, a dependent federal agency under the Office of the Secretary of the Prime Minister, was created by the Consumer Protection Act of 1979.

In addition to the Consumer Protection Board, there are two ad hoc committees that have descended from the Consumer Protection Act of 1979: the Committee on Advertisement and the Committee on Labels.

Moreover, there are subcommittees of both the Committee on Advertisement and the Committee on Labels in every province, and they have the provincial governor as the chairperson. Each subcommittee (one in each province) acts as a representative of the Consumer Protection Board. It has full authority to protect its own people.

### The CPB Activities

The Consumer Protection Act of 1979 pertains to honesty in advertising. This act established that an advertisement may not contain a statement which is unfair to consumers or which may cause an adverse effect on the society as a whole. The following statements are regarded as those which are unfair to consumers or may cause adverse effect to the society as a whole:

1. any statement which is false or exaggerated;
2. any statement which will cause misunderstanding in the essential elements concerning goods or services, notwithstanding it is based on or refers to any technical report, statistics or anything which is false or exaggerated;
3. any statement which is directly or indirectly encouraging the commission of an unlawful or immoral act, or which adversely affects the national culture;
4. any statement which will cause disunity or adversely affects the unity among the public;
5. other statements as prescribed in the Ministerial Regulation. <sup>98</sup>

Section 20 of the Consumer Protection Act states that the office of the Consumer Protection Board shall have the following powers and duties:

1. to receive complaints from consumers who suffer hardship or injury resulting from the acts of the businessman for further submission to the Board;
2. to follow up and scrutinize actions of the businessman who may do any things infringing the consumer's rights, and to arrange for testing or verifying any goods or services as it thinks proper for the protection of the consumer's rights;
3. to encourage or conduct the study and research on problems concerning the consumer protection with other academic institutions and other agencies;
4. to promote and encourage the providing of education for consumers at all levels on safety and harm from the goods or services;

5. to propagate technical information and provide educational information to consumers in order to instill the consumption habit which promotes health;
6. to cooperate with the government offices or state agencies which have the power and duty to control, promote or prescribe the standard of goods or services;
7. to do any other acts as entrusted by the Board or the ad hoc committees. <sup>99</sup>

### The CPB Operation

If the Committee on Advertisement is of the opinion that an advertisement violates any CPB-established rule, the Committee on Advertisement shall have the power to issue one or several of the following orders to the violator:

1. to alter the statement or method of advertisement;
2. to prohibit the use of certain statements as appeared in the advertisement;
3. to prohibit the advertisement or the use of such method for advertisement;
4. to correct by advertisement the possible misunderstanding of the consumers in accordance with the rules and procedure prescribed by the Committee on Advertisement;
5. to substantiate the advertisements in which the advertiser must prove all claims made in an advertisement. <sup>100</sup>

### Comparison between the FTC and the CPB

#### Similarities

1. Government regulatory agency

Both the FTC and the CPB are government agencies charged with regulating advertising found in every medium. They are the most important regulatory agencies, in each of their respective countries, that are responsible for the creation and enforcement of advertising rules and regulations.

## **2. Sources of complaints**

At the FTC or the CPB, complaints ordinarily come from competitors, the public, or one of the agency's own monitors.

## **3. Remedies**

The FTC and the CPB have similar remedies which are applied to attempt to regulate deceptive or untruthful advertising: consent orders, substantiation, cease-and-desist orders, and corrective advertising.

## **4. Censorship**

Both of the agencies are responsible for the scrutiny of advertisements which have already been disseminated. They have no authority to censor program content.

## **Differences**

Overall, the FTC and the CPB are similar to each other. However, the FTC is an independent Federal agency, and is not subordinate to a government department, while the CPB is a dependent agency, and is controlled by the Office of the Secretary of the Prime Minister--a government department. Also, the power of the CPB appears to be greater than the power of the FTC, as evidence by item 5, 6 and 7 on pages 64 and 65.

## **The FCC and the BDB**

Because of television's power to inform, entertain, and sell goods and ideas, it has been the catalyst for continuing debates about how it should be

used, who should use it, and how it should be regulated in the public interest. Some people want more regulation of broadcasting; others contend that radio and television are already overregulated. In terms of broadcast regulation, both the United States and Thailand have governmental regulatory agencies directly responsible for broadcast communication: the Federal Communications Commission (U.S.) and the Broadcasting Directing Board (Thailand).

Both the Federal Communications Commission and the Broadcasting Directing Board are federal agencies that regulate the broadcast media; however, they differ substantially from each other in terms of the authority given to prevent fraudulent advertising. The FCC does little to regulate false and misleading advertising. Instead, fraudulent advertising is regulated by other regulatory agencies, and in particular by the Federal Trade Commission. The BDB has full authority to censor and regulate broadcast advertising.

#### The Federal Communications Commission (FCC)

The Communications Act of 1934 created the Federal Communications Commission (FCC). The FCC, an independent Federal agency which is not controlled by a government department, consists of seven Commissioners appointed by the President, with the approval of the Senate. One of the Commissioners is designated chairman by the President.<sup>101</sup> The Commission is primarily responsible for two activities: the assignment of broadcast frequencies to various licensees, and making sure that these licensees operate stations in the public interest.



### The FCC Function

Even though Congress empowered the Federal Communications Commission with the responsibility of regulating radio and television transmission, this agency has played a relatively minor role in the area of preventing false and misleading advertising in broadcasting. This is because of the duality of the provisions of the Communications Act. One section of the Act prohibits the FCC from having the power of censoring on program content over radio communications or signals transmitted by any radio station, while another section states that advertisements be made in the public interests. The Act reads as follows:

Nothing in this chapter [a discussion of Section 326 of the Federal Communications Act] shall be understood or construed to give the Commission the power of censorship over the radio communications or signals transmitted by any radio station, and no regulation or condition shall be promulgated or fixed by the commission which shall interfere with the right of free speech by means of radio communication. <sup>102</sup>

Thus, the FCC is restrained from enforcing regulations regarding advertising abuses on the air; it has to rely primarily on the powers of the Federal Trade Commission (FTC) for the enforcement of regulations dealing with false and misleading advertising.

The agreement [the FTC-FCC in Liaison Agreement on Ads] provides that the FTC will exercise primary jurisdiction over all matters regulating unfair or deceptive advertising in all media, including the broadcast media. The FCC will continue to take into account pertinent considerations in the area of false and misleading advertising in determining whether broadcast applications for license or renewal of license shall be granted. <sup>103</sup>

Therefore, overall, the Federal Communications Commission has been relatively ineffective in preventing false and misleading advertising in broadcast media. The power of the Commission to license, as it presently exists, is an insignificant means of prevention of deceptive advertising.

#### The Broadcasting Directing Board

The Radio and Television Act of 1975 created the Broadcasting Directing Board (BDB). The BDB is the Thai regulatory agency charged with controlling any government-owned or government enterprise-owned broadcast station. The BDB utilizes rules and regulations that apply equally to all stations; these rules include programming requirements, and govern the construction or relocation of broadcast stations. The BDB is a dependent federal agency under the Public Relations Department, and consists of sixteen government-appointed commissioners. The Prime Minister or his delegate is designated as Chairman.<sup>104</sup>

In its regulatory activities, the BDB is made up of two divisions: (1) the BDB Committees and Subcommittees, and (2) the BDB Bureau. The Commissioners share responsibilities for the eleven Committees and Subcommittees of the BDB.<sup>105</sup> They conduct formal hearings and issue interlocutory decrees. The BDB Bureau is overseen by the Public Relations Department of the government. The Bureau is responsible for managing conferences, records and statistics; monitoring and controlling wire and transmission; and censoring advertising in broadcast media.

### **The BDB's Major Activities**

Basically, the BDB's major activities are similar to those of the Federal Communications Commission: to allocate and assign bands of frequencies; to issue or renew licenses; to make periodic inspections of equipment; to issue requirements in techniques and programs; and to monitor station operations.

However, the BDB has been empowered with the right to exercise much more restrictive authority than the Federal Communications Commission to prevent fraudulent advertising from being broadcast on radio and television. While the FCC is prohibited from censoring material, the BDB has full authority to censor advertisements over radio and television communications. An advertisement, for any product that is to be advertised through radio and television, must have approval of the BDB prior to dissemination. Food, drugs, medical devices, and cosmetics are scrutinized not only by the FDA (of Thailand), but also by the BDB. Even if they are accepted by the FDA in terms of storyboards, the BDB will still examine them.

### **The BDB's Censorship Procedure**

Since advertising is highly susceptible to differing interpretations because of its complexity, lack of clear outcome, etc. , it is not always clear beforehand whether a particular advertisement will turn out to be controversial. It is costly, in terms of both money and time, for an advertiser to invest a large amount of money in an advertising production and then not have that advertisement approved by the BDB for broadcast. It is for this reason that

the BDB established a two-step censorship procedure.<sup>106</sup>

The first step is known as pre-censorship; in this step, the BDB Committees scrutinize the story board to approve both the copy and pictures. Any word or picture that is found inappropriate must be changed. If the committees find an advertisement to be suspect, they will contact the advertiser in question. Material may be requested of the advertiser to substantiate claims made in the advertisement, or, the Committees may request that certain changes be made on the story board. The advertiser, after making the required revisions, must submit the revised advertisement to the pre-censorship Committees for re-evaluation. If the situation has been amended to the satisfaction of the Committees, approval will be granted.

The finished advertisement must be scrutinized prior to actual dissemination through broadcast media. The second step of the two-step censorship procedure involves a comparison of the content of the finished advertisement with that of the advertisement that received approval by the pre-censorship Committees. Nearly all advertisements that obtained pre-censorship approval are eventually accepted by these Committees.

#### Comparison between the FCC and the BDB

##### Similarities

Both the FCC and the BDB are government agencies in charge of regulating broadcast communications. In addition, the principal tasks of both are similar: to issue or renew broadcast licenses; allocate and assign bands

of frequencies; issue requirements in techniques and programs; and to monitor station operations.

### **Differences**

#### **1. Status**

The FCC is an independent federal agency that is not a part of any government department, while the BDB is an dependent agency that is under the Public Relations Department--a Federal agency of Thailand.

#### **2. Authority**

In terms of preventing fraudulent advertising in broadcast media, the BDB has more authority than the FCC. The FCC is restrained from censoring the content of advertising to be disseminated through broadcast media, while the BDB has full authority to censor program content.

### **The Food and Drug Administration**

Both the United States and Thailand have a federal agency known as the Food and Drug Administration. In each country, it was created in order to regulate and control labeling accompanying food, drugs, cosmetics, and potentially hazardous consumer products.

#### **The FDA of the United States**

The Food and Drug Administration is a federal regulatory agency, under the Department of Health and Human Services. It was formed with the passage of the Pure Food and Drug Act of 1906 and was strengthened in

1938 through the Federal Food, Drug, and Cosmetic Act. The Federal Food, Drug, and Cosmetic Act of 1938 provides for the principal control over manufacturing, branding, package labeling, and ingredient listing for food and drugs, and also for the safety and purity of foods and cosmetics. In addition to the creation of the FDA, an important consequence of the Pure Food and Drug Act of 1906 is that it indirectly affects advertising. As Michael L. Rothschild said:

It (FDA) isn't directly involved with advertising but does deal with packaging; indirectly there is an advertising involvement when the FTC looks to the FDA for advice in the latter's area of expertise. The FDA has had a major impact on the overall marketing of food, cosmetics, and drugs but a limited impact on advertising, per se. <sup>107</sup>

Even though the FDA has limited power against false and misleading advertising, it does have the authority to seize food and drugs for suspected advertising abuses that are potentially harmful to consumers. The FDA and the FTC have a common objective--to protect consumers from misrepresentations. While the FTC is concerned with false and misleading advertising, the FDA is concerned primarily with false and misleading labeling.

Under the Federal Food, Drug, and Cosmetic Act of 1938, misbranding or false labeling is subject to fine, imprisonment, or both; and the products involved are subject to confiscation.

### The FDA of Thailand

Like the Food and Drug Administration of the United States, the FDA of Thailand is a Federal regulatory agency related to advertising, and is under

the Ministry of Health. The FDA was given the power to regulate and control the labeling accompanying food, drugs, cosmetics, and potentially hazardous consumer products. Authority is derived from the Federal Food and Drug Act of 1967. This Act was designed to insure that the labeling and packaging of products is truthful, nondeceptive, and informative. The Food and Drug Act of 1979 states that before disseminating any advertisement of food, drugs, cosmetics, or potentially hazardous consumer products, the advertiser must propose the content, sound, or pictures of the advertised product to the FDA for approval. Violation of this Act is subject to sanctions including fine, imprisonment, or both.

#### Comparison of the FDA (U.S.) and the FDA (Thailand)

Both agencies are similar to each other in many ways:

1. They are given the power to regulate labels and labeling accompanying foods, drugs, cosmetics and potentially hazardous consumer products to insure that labeling and packaging is truthful, nondeceptive, and informative.
2. With respect to violations, punishment by the FDA in both countries includes fine, imprisonment, or both.
3. There is an interplay between the Food and Drug Administration of both countries and the agency that is responsible for the regulation of all advertisements: the FDA and FTC in the United States, and the FDA and CPB in Thailand.

#### **IV. Media Forces**

In the United States, the media have been one of the major forces influencing the legislation of advertising rules and regulations. They attempt to control advertising through their codes in order to serve the public interest. In addition, they are motivated by a fear of offending their audiences or injuring their reputations, or by other considerations. They control the advertisements in two ways: (1) they exclude advertising for certain products, and (2) they screen advertising and require that it meets certain specifications if it is to be accepted.<sup>108</sup> Self-regulation by individual media includes codes or guidelines applied to advertising by most newspapers and magazines, as well as by television networks. Each network's standards usually differ from other network's standards; this results in a situation in which a commercial that is acceptable to one network may be unacceptable to another. However, many areas of similarity are found among the three networks' standards.

Unlike the United States, where the media have exercised considerable control over advertising, the advertising disseminated through each medium in Thailand is controlled by government forces. In Thailand, the government policy requires that there be standardized rules to control all advertisements. Broadcast advertisements are regulated by the BDB's Radio and Television Act of 1975; printed advertisements must be in accordance with the Printing Act of 1945. In addition, television stations may refuse to accept any advertisement that conflicts with their standards. For example, some television stations



refuse to disseminate advertisements of condoms or sanitary napkins. The next section will compare important advertising laws of the United States and Thailand.

### **ADVERTISING TO CHILDREN**

For many years, advertising directed to children has been one of the most important and sensitive issues to face advertising managers in both the United States and Thailand. Many activists are involved in children's advertising--particularly television commercials. These activists are people in government agencies, consumer spokespersons, and those in academia; all share a common goal of attempting to provide information about the impact of advertising on children as an audience.

Children are exposed to a large number of television commercials and advertisements in the media; therefore, advertisers should be particularly careful when their advertising claims are directed to them. Knowledge about language and television usually protects adults from actually being misled--but children have not fully acquired this knowledge. An advertisement that would not mislead an adult may mislead a child. Therefore, advertising regulatory agencies in the U.S. and Thailand recognize advertising directed to children as an important issue.

### **Control Over Advertising Directed Toward Children**

In the United States, there is a key self-regulatory mechanism known as the Children's Advertising Review Unit (CARU). CARU is part of the National

Advertising Division of the Council of Better Business Bureaus, and was created to encourage truth and accuracy in children's advertising. Its guidelines cover all media, including print, broadcast, and cable television. According to the CARU, it serves by:

rendering practical decisions on questionable children's advertisements and seeking their correction; providing guidance to advertisers through guidelines and precedents as well as through seminars and informal dialogues on desirable as well as undesirable practices in children's advertising; encouraging the development of new research on issues which are presently unclear; and providing help to the public, and an opportunity for all viewpoints to be heard.<sup>109</sup>

The other key mechanism is the television network standards and guidelines for children's advertising that were established individually by ABC, NBC, and CBS.

All three networks have very similar concerns with child-directed ads. For example, they all consider as unacceptable: "exhortative language" ; "exaggeration and distortion" of product attributes (e.g., toys); "frightening" commercials; ads that use peer pressure to sell; use of the words "only" or "just" in reference to price; commercials for nonprescription medications and/or vitamins; and commercials using celebrities or authority figures as endorsers. However, there exists differences in approach among the networks in some major areas.<sup>110</sup>

Advertising directed to children is regulated not only by the FTC, but also by an important group known as Action for Children's Television (ACT); ACT is composed primarily of concerned parents and teachers.

Unlike the United States, in Thailand there is no particular regulatory mechanism responsible for advertising directed toward children. Concerned

Thai citizens individually have expressed their concerns about advertising to children; this has been a major cause of the advancement of advertising regulations for children's advertising. However, to date only a few regulations specifically related to this subject have been proposed. Almost all of the advertising rules for children are affected by the general restrictions that apply to all advertising. The key mechanism to the control over children's advertising is the same as that of general advertising--the Broadcasting Directing Board. Advertising of food must be approved by the Food and Drug Administration before being disseminated to children. In addition, there are standards and guidelines presented by Subcommittees of the Committee on Cultural Conservation Promotion and Propagation, and the National Administrative and Coordinate Committee for Youth; both are divisions of the Ministry of Education--a government agency.

#### Standards and Guidelines

The standards and guidelines for the children's advertising in the United States and Thailand will be compared utilizing the results of a study performed by J.J. Boddewyn and the International Advertising Association Inc.: "Advertising to Children: Regulation and Self-Regulation in 40 Countries,". This survey indicates that:

1. "While there are fairly extensive and detailed voluntary guidelines on advertising to children in the United States, there are only a few special rules and guidelines on children's advertising in Thailand." <sup>111</sup>

2. "Similarity can be found between the U.S. and Thailand in that alcoholic, tobacco and medicinal products cannot be advertised to children at all."<sup>112</sup>

3. "In the United States, there are many specific product restrictions applied to children's advertising. These specific product restrictions include non-war toys, war toys, pre-sweetened cereals, sweets and candies, subscriptions to children's magazines, comic books, etc., eating places and videogames. In Thailand, only advertisements of videogames are prohibited."<sup>113</sup>

4. "The distinct difference between the U.S. and Thailand can be seen in terms of the approval of advertising. While advertising directed toward children in Thailand has to be approved in advance by the government agency, that of the U.S. has no preclearance. For example, there is a preclearance by a special government agency (FDA) in Thailand on food and vitamins while in the U.S., the Children's Advertising Review Unit (CARU), of the Council of Better Business Bureaus, provides pre-advertising advice and handles complaints."<sup>114</sup> This difference is due in large part to the media-government relationship of these two countries; this was discussed in Part II.

5. Special restrictions pertaining to children's advertising in the United States and Thailand are summarized in Table 8.

**Table 8****Can Advertising to Children Do the Following?**

<b>Practice</b>	<b>U.S.</b>	<b>Thailand</b>
Offer premiums	Yes	Yes
Offer gifts	Yes	Yes
Offer participation in competitions	Yes	Yes
Invite to order by mail/phone	Yes	Yes
Compare brands	Yes	Yes
Use well - known personalities, characters, puppets, heroes	Yes	No
Use children as endorsers	Yes	Yes
Use children as presenters or commentators when not knowledgeable about products	No	Yes
Have no adults present in children ads	Yes	Yes
Direct requests to children to purchase or use	No	Yes
Direct requests by or to the children to induce or lead others to buy	No	Yes
Indicate approximate price of toys	No	No
Indicate absence of necessary parts	Yes	No

Source : J.J. Boddewyn and the International Advertising Association Inc., "Advertising to Children : Regulation and Self - Regulation in 40 Countries," p. 21- 24

6. "In addition, the clear identification of advertisements and the grouping of commercials during children's programming is required in both the United States and Thailand. There must be some pause or visual/oral announcement preceding the commercials(e.g., "We shall return to this program after the following messages" and " We now resume our program")."<sup>115</sup>

7. "In Thailand, there are timing and content restrictions applying to commercials which may interest children but are not directed to them, such as alcoholic beverages. These commercials are restricted to late viewing hours and can be shown only after 10:00 p.m." <sup>116</sup>

8. The print and direct mail media are less important in reaching children. Therefore, both the U.S.and Thai regulatory agencies related to advertising directed to children apply general advertising regulations and voluntary guidelines to these media.

### **Conclusion**

In response to questions raised about the problem of the advertising directed to children, both the United States and Thailand enact strict rules over such advertisements. In the United States, the existent standards and guidelines of the media , government, and industry are more detailed than those of Thailand. However, the rules in both the United States and Thailand were created to control or seek voluntary compliance from all advertisers and agencies with products or services that are advertised primarily to children, and to review their advertisements to help assure that they are truthful and accurate, as well as non-exploitative in manner, style, and tone.

## **DECENCY AND SEXISM IN ADVERTISING**

In recent years there has been an increased use of sexual themes and erotic stimuli in advertising, both in the United States and in Thailand. It almost goes without saying that today's consumers are exposed to more sex in advertising than ever before. This trend towards the increasing depiction of sexually-oriented themes in advertising is evident even in the print and broadcast media. However, no matter what medium conveys such indecent and sexy advertisements, this is an important problem because these advertisements can be received by both target and non-target consumers. Some reach an inappropriate audience such as children.

As a result, there are criticisms and the demands for restrictions in both the United States and Thailand. Details of the advertising regulations of decency and sexism will be compared in the next section.

### **Key Factors**

Boddewyn categorized factors that influence the restrictions on indecent and sexy advertising into five groups: religion and other value systems; the law; the activism of religious and feminist groups; media control; and advertising self-regulation.<sup>117</sup> The amount of influence that each particular group has on restrictions varies between the two countries. The restrictions on the decency and sexism of advertising in the U.S. are usually derived from feminist groups; these groups are increasingly objecting to the depreciation of their sex by advertisements that imply sex inequalities, insult their intelligence, or depict

them in an offending manner. To a lesser extent, advertising self-regulation is effective in curbing excesses in the matter of decency and sexism in the U.S.<sup>118</sup>

Religion and culture are crucial in defining what is considered decent or sexist. If an advertisement involves behavior that is considered immoral or unfitting by a majority of the people, it will not be viewed favorably. Buddhism influences most of the Thai people; the mores prescribed by Buddhism influence Thai culture. In societies, the law will usually parallel the moral standards with various statutes dealing with public indecency.<sup>119</sup>

### **Social Norms**

The regulation of decency and sexism in advertising will be compared for the U.S. and Thailand; the results of the following study: "Decency and Sexism in Advertising: An International Survey of their Regulation & Self-Regulation," done by J.J. Boddewyn, will aid in the analysis.<sup>120</sup>

1. "While decency and sexism in advertising is a major issue in Thailand, it is a minor issue in the United States."<sup>121</sup>

2. One similarity that can be found between these two countries is that often it is the treatment rather than the product itself that is criticized. However, differences can also be found in the restriction of products in the way that the same products may be advertised in one country but not in the other country.

- "Female ( non-prescription, over-the-counter ) contraceptives are prohibited in the United States in some media such as television, radio and outdoor advertising, but they are permitted in Thailand, with more thorough scrutiny than ordinary products."<sup>122</sup>



- "Like the female contraceptives, male contraceptives are forbidden to be advertised in the United States in some media. On the other hand, they are allowed to be advertised in Thailand." <sup>123</sup>

- "Complaints are frequent about advertisements of feminine-hygiene products ( sanitary napkins, tampons, douches) in both the United States and Thailand. Even though these products are permitted to advertise, restrictions are stricter than for other products. " <sup>124</sup> "In the United States not only the rules are stricter, but also there are timing restrictions (e.g., in late evenings only)." <sup>125</sup>

- "Both the United States and Thailand permit the advertisement of male-hygiene products such as anti-itching powder." <sup>126</sup>

- Deodorants can be advertised in both the United States and Thailand.

3. "While there are many voluntary guidelines about decency and sexism which are strictly applied in the United States, there are only a few restrictions in Thailand." <sup>127</sup>

4. "The government regulations about decency and sexism in Thailand are enacted to ban "sexy" magazines (such as Playboy) but they are allowed in the United States." <sup>128</sup>

5. Similarity can be found between the United States and Thailand in that television and radio are regulated more precisely; this is because commercials can easily be seen by both target and non-target groups (such as children). In addition, government regulations and voluntary guidelines are

more leniently applied to direct mail and special-audience publications because they are more selective in their audience-reaching.

6. "Restrictions in an advertisement using a woman in a lewd and salacious way in terms of dress, pose, language, etc. are stricter in Thailand."<sup>129</sup>

### Conclusion

In both the United States and Thailand, decency and sexism are two major issues related to advertising. While there are many specific restrictions concerning the issue of decency, there are only a few specific rules concerning the issue of sexism. However, the scrutiny by the public, of this kind of advertising, is extremely rigid in Thailand because of the very strict religious rules and social taboos of Buddhism.

### COMPARATIVE ADVERTISING

In recent years, advertisements that make direct reference to competition have become quite popular in many countries, but there are still other countries that refuse to use this kind of advertising. There are those who argue that such comparisons are unethical or immoral, but also those who contend that such comparative advertising can provide consumers with useful information and aid them in making a rational choice between competitive products or services.

The United States favors comparative advertising, while Thailand has an anticomparative advertising attitude.

### **Comparative Advertising Standards**

The standards or guidelines for comparative advertising usually include government laws and regulations, self-regulatory standards, and media guidelines.

### **Laws and Regulations**

In the United States, there is no prohibitive legislation directly relating to comparative advertising; however, several bodies of law are indirectly applicable. No matter whether referring to common law, state and federal statutes, trademark laws, or the Federal Trade Commission Act--comparative advertising is allowed, if the advertisements are truthful and not misleading.<sup>130</sup> The law in Thailand does not directly prohibit comparison advertising. However, the Thai government has done nothing to encourage comparative advertising; they believe that the use of comparative advertising would likely lead to disparagement and deception. The next section contributes to the comparison between the U.S. and Thai bodies of laws related to comparative advertising : tort law and trademark laws.

#### **1. Tort law**

There is a difference in tort law between the United States and Thailand. In the U.S., the common law country, truthful denigration is tolerated except in extreme cases of bad faith. <sup>131</sup> In Thailand, the civil law nation, the use of truthful denigration is not accepted. The Radio and Television Act of 1978, created by the Broadcasting Directing Board of Thailand, specifies that

advertisements disseminated through radio and television must not insult, despise, or disparage any person, or product, or service.

## **2. Trademark Laws**

Section 43 (a) of the 1946 Lanham Act ( a trademark statute ) of the United States was created to protect, both consumers and persons engaged in commerce, against the deceptive and misleading use of trademarks--as well as against other forms of unfair competition. It applies particularly to misrepresentations of one's own products that amount to some appropriation of a competitor's goodwill, reputation, and the commercial values embodied in his trademarks.

The FTC encourages it (comparative advertising)-to compare products by name and trademark, so long as the comparative advertising does not make false representations or create a reasonable likelihood that purchasers will be confused as to the source, identity, or sponsorship of the advertisers' product.<sup>132</sup>

Conversely, trademark laws in Thailand prohibit any public use of another's trade name. In Thailand, the brand names of a firm's products are registered as trademarks--thus constituting a piece of property and part of the company's goodwill--which cannot be used by others for commercial purposes without the permission of the owner.

## **The Self-Regulatory Standards and the Media Guidelines**

In the United States, major self-regulatory mechanisms concerning comparative advertising consist primarily of the Council of Better Business Bureaus's National Advertising Division (NAD), the National Advertising

Review Board (NARB), and the broadcast media networks. These self-regulatory mechanisms have rigorously tightened their screening and adjudication process guidelines.<sup>133</sup> Additionally, there are the children's advertising guidelines issued by the Children's Advertising Review Unit, which discourage the use of comparisons in advertisements directed to children because it may be hard for children to understand comparative advertising.

There are no self-regulatory standards or media guidelines in Thailand; all rules and regulations of advertising are enacted by government agencies.

### **CONCLUSION**

All media in the United States accept comparative advertisements--except, in most cases, to those advertisements directed to children. While there has been an increased use of comparative advertising in the United States, this technique is still not at all practiced in Thailand--though it is allowed. In the U.S., it is believed that comparative advertising, if used truthfully and fairly, provides consumers with useful information. In Thailand, it is believed that the use of comparative advertising will likely lead to disparagement and deception. The difference in these beliefs is due in large part to the legal system and business cultures of the two countries. As a result, the countries put varying emphases on the pros and cons of comparative advertising.

However, because of the benefits of such advertisements--for example, they provide clearer brand perception by pointing out meaningful differences to consumers; they stimulate product improvement through increased

competitiveness in the marketplace; and they provide higher advertising effectiveness for the advertiser and business by creating increased attention, etc.--it is possible that the use of comparative advertising may be applied in Thailand in the coming future.

### **SWEEPSTAKES AND CONTESTS**

Sweepstakes and contests have an almost universal appeal, and their use as a sales promotion technique has proven to be quite popular over the years, both in the United States <sup>134</sup> and in Thailand. <sup>135</sup>

There are legal regulations that govern the running of contests and sweepstakes in both countries. In the United States, there are numerous rules and regulations related to this issue, ranging from network standards to state and federal laws. Federal enforcement authorities include the Federal Trade Commission (FTC), the U.S. Postal Service (USPS), the Bureau of Alcohol, Tobacco and Firearms (ATF), and the Federal Communications Commission (FCC). <sup>136</sup> There are several restrictions concerning contests and sweepstakes in Thailand; they include the Gambling Law, and the Consumer Protection Declaration. The next section contributes to the comparison of these regulations in detail.

## **Control Over Sweepstakes and Contests Advertising**

### **The United States**

As mentioned earlier, the United States has federal as well as state laws governing contests and sweepstakes. Generally, whether a sweepstakes or contest is classified as an illegal lottery depends on how the following three elements are involved: consideration, chance, and prize. In a legitimate contest, winners are selected on the basis of skill, and not by chance. In a legitimate sweepstakes, there is no consideration required to enter. However, there is great divergence among the states as to the definition of consideration.

One of the most important federal authorities involved in the regulation of sweepstakes and contests is the FTC. It issues cease-and-desist orders against (illegal) lotteries, which contests and sweepstakes can sometimes resemble. Another key authority is the U.S. Postal Service. According to 39 U.S.C. Section 3005, the USPS is authorized to issue cease-and-desist orders, and orders to stop the delivery of mail, to persons who are running an illegal lottery or who are obtaining money or property by means of false representations.<sup>137</sup> The FCC is another important federal mechanism which has a lottery law; it forbids the broadcasting of any advertisement or information about a lottery or lottery results.<sup>138</sup>

Besides federal laws governing sweepstakes and contests, each of the states has its own regulations. The distinct difference between the federal and the state laws is that the federal lottery laws do not require the winner(s) of a game or sweepstakes to make a purchase before they claim their prize.<sup>139</sup>

Like other major issues in advertising, the use of sweepstakes and contests promotions in conjunction with advertising is restricted by the networks. All three major television networks have their own rules for monitoring this kind of advertising. All three have similar on-air contest disclosure requirements that state that the following information must be disclosed in a clear and conspicuous manner: the scheduled termination date of the game, the geographic area in which the game will be promoted, the total number of retail outlets participating in the game, the exact number of prizes available in each category, and the odds of winning each such prize.<sup>140</sup>

#### Control over Sweepstakes and Contest Advertising

##### Thailand

In Thailand, there are two major pieces of legislation regarding the control of sweepstakes and contest promotions. One is the Gambling Act of 1935, and the other is the Consumer Protection Declaration of 1979.

Section 8 of the Gambling Act requires that the proposed sweepstakes or contest advertisement be reviewed by government officers, preliminary to dissemination.<sup>141</sup> The government officers in the province of Bangkok are officers of the Gambling Division of the Metropolitan Police Bureau (MPB). The government officers in other provinces are officers of the local police stations; the local police stations do not have separate Gambling Divisions, though the officers perform the same duties as those in the MPB. The punishment for violating the Gambling Act can be a fine, imprisonment, or both.



The Consumer Protection Declaration of 1979 requires that when such promotions are used, the information must be disclosed in a clear and conspicuous manner. The information required by the Consumer Protection Board includes:

1. The exact number of the prizes to be awarded.
2. The value of the prizes to be awarded.
3. The scheduled commencement and termination date of the game.
4. The geographic area covered by the game.

In addition, such promotions have to be consistent to the requirements of the Gambling Act mentioned earlier.<sup>142</sup>

### **Comparison**

An important similarity in the advertising regulations of the two countries is found in terms of the basic purpose of their requirements. The restrictions in both countries are created in order to prohibit unfair methods of competition and awarding of prizes. Also, in advertisements for promotions, information must be disclosed in a clear manner. The specific information required in both countries is similar. In addition, similarity is found in terms of the punishment for violation of the regulations; they range from a fine to a jail sentence. Finally, before a proposed contest can air, an advertiser, in either country, must submit the information that is required to the appropriate agency for approval.

A consequence of the difference in regulations between these two countries is that it is far more easy for advertisers to practice sweepstakes or

contest promotions in Thailand than in the United States. To promote a sweepstakes or contest in the U.S., advertisers must research not only the applicable federal and state laws, but also the network standards. A major reason for the lack of such extensive regulation in Thailand may be due to the size of Thailand as compared to the U.S. Thailand is dramatically smaller than the United States, and there is therefore no need to have such extensive regulation as found in the United States.

### **ALCOHOLIC BEVERAGE ADVERTISING**

In both the United States and Thailand, public disapproval of alcoholic beverages has increased considerably in recent years.<sup>143,144</sup> According to the Business Week/Harris Poll done in 1985, 57% of Americans want beer and wine advertisements banned from radio and television.<sup>145</sup> As many public groups, in both countries, are recognizing that alcoholic beverage advertising is a problematic area, there is an important question frequently posed regarding whether all advertising of alcoholic beverages should be prohibited. This kind of thinking stems from social problems such as drunk driving and alcoholism. Many advertisers attempt to equate drinking with fun or status; there is growing concern about the impressions or effects that these advertisements will have on children. At the present time, not all alcoholic beverage advertising is banned in both countries.

## Control Over Alcoholic Beverage Advertising

### United States

As with other important advertising issues, alcoholic beverage advertising is restricted by [ federal regulation, state controls, and network standards. The federal enforcement authorities include the Federal Trade Commission; and the Bureau of Alcohol, Tobacco, and Firearms.

FCC rules and regulations do not prohibit the broadcasting of alcoholic beverage advertising; however, the FTC has jurisdiction over this kind of advertising, and uses a case-by-case approach to determine whether particular advertisements are to be prohibited. Advertising of malt and wine beverages, and of distilled spirits, is regulated by the following self-regulatory mechanisms: the Brewing Industry; the Wine Institute; and the Distilled Spirits Council of the United States, Inc. The Brewing Industry and Wine Institute do not have rules that prohibit the advertising of malt and wine beverages. However, the Distilled Spirits Council prohibits the advertising of distilled spirits on broadcast media, including closed circuit television. The ATF has broad powers that can be exercised against deceptive and misleading advertising of liquor. It requires the inclusion of certain types of information on labels: the name and address of the advertiser, the designation of the type of the beverage, and the alcoholic content of the beverage. In addition, the ATF prohibits a number of statements, including false and misleading statements. They also prohibit disparaging of competitor's products; obscenity; misleading

references to tests; misleading guarantees; inconsistency with labels; misuse of the term "bonded"; promise of curative and therapeutic effect; confusion of brands; the use of flags, seals, coats of arms, and other insignia; and misleading information about age and origin. <sup>146</sup>

In the case of state controls, the Twenty-First Amendment delegated the major responsibility for liquor control to the states. As a result, all states have their own laws governing the advertising of alcoholic beverages on billboards, in print media, and on airwaves.

In addition to federal and state laws, there are also network guidelines. The advertising of beer and wine is permitted on all three networks, but is subject to federal and local laws. Commercials of distilled spirits, however, are prohibited. Generally, all three networks have similar requirements. For example, both NBC and ABC forbid advertisements featuring on-camera consumption of wine or beer. According to John Lichtenberger:

ABC and NBC have similar sets of guidelines; one minor difference is that ABC prohibits even the incidental display of cocktail props. CBS has a policy against direct or implied references to excessive consumption of beer and wine. <sup>147</sup>

Moreover, there are also advertising guidelines of the Brewing Industry, Wine Institute, and the Distilled Spirits Council of the United States, Inc.

### Control over Alcoholic Beverage Advertising

#### Thailand

In Thailand, alcoholic beverage advertising is thoroughly controlled and regulated by a government agency. However, there is no regulatory agency

that is directly responsible for the regulation of alcoholic beverage advertising. Instead, the Broadcasting Directing Board (BDB), one of the most important federal regulatory agencies, enacts the standards to control alcoholic beverage advertising. The BDB categorizes alcoholic beverages into two groups, on the basis of percent alcohol content. One is alcoholic beverages containing less than fifteen percent alcohol; this includes beer and wine. The other group includes those alcoholic beverages containing more than fifteen percent alcohol, such as whiskey and brandy. The advertising of beer and wine is permitted on all radio and television networks. The advertising of hard liquor is also permitted, however with a timing restriction: hard liquor commercials are restricted to late viewing hours, after 10:00 p.m. Additionally, although the advertising of these alcoholic beverages is acceptable, there are many possible restraints which are evaluated by the BDB, using a case-by-case approach to determine whether additional restrictions will be formulated. The BDB specifically forbids on-camera consumption of any kind of alcoholic beverage. Advertising of alcoholic beverages is permitted on billboards and in circulars.

### Comparison

Similarity is found in the way that advertising of beer and wine is acceptable in both countries--however, at times, additional requirements are put into place. On-camera consumption of alcoholic beverages is forbidden in both the United States and Thailand. In addition, in practice, the liquor industry is so conscious of its public relations problems and the danger of more legal control

that it is less likely than most (other industries) to indulge in advertising excesses; the liquor industry knows that public pressure may be aroused to ban all advertising of alcoholic beverages.

There are a few differences in the advertising regulations of Thailand and the U.S. There are many regulations that relate to alcoholic beverage advertising in the U.S.; these include those at the federal and state level, and also network requirements. The only requirements in Thailand are federally imposed. Advertising of distilled spirits, such as whiskey, brandy, vodka, gin, etc., is forbidden on U.S. radio and broadcast networks. In contrast, hard liquor commercials are acceptable on airwaves in Thailand, but include a timing restriction.

### POLITICAL ADVERTISING

Although political candidates have used promotional techniques for years, such techniques usually involved only campaign buttons, leaflets, slogans, songs, or posters. It was not until recently that many political candidates turned to use television spots. Tremendous sums of money are spent by political candidates for television advertisements. Since television advertising has a great power to persuade, a variety of criticisms regarding the content of political advertisements have been raised. These criticisms include that of deceptive or misleading statements, and unfair statements about the opponents. Another problem related to political advertising deals with its high

cost--this may discourage financially poor but able candidates. In addition, many people complain that advertising stresses the personality of the candidate rather than the issues. Hence, a candidate with a pleasing personality has an advantage over one without. Collectively, these critiques have led to a call for rules and regulations to control political advertising.

### Political Advertising in the United States

In recent years, the American political candidates have increased their use of political advertising tremendously. Many millions of dollars have been spent on advertising, mostly in television. As Steven Roberts wrote:

In American politics today the medium is television, and that medium is dominated by an elite of highly paid but unelected consultants.<sup>148</sup>

While there has been an increased use of television advertising, its use has been seriously questioned. According to Merritt, many millions of dollars were spent on so-called negative advertising--advertising which identifies a competitor for the purpose of imputing inferiority. Negative advertisements have provoked substantial criticism. Martin Mayer said:

The most common objection to the use of advertising to magnify political issues is that advertising oversimplifies. A good part of the techniques of advertising has the single purpose of simplification, of finding from the welter of causes which make people buy a product the one or two or three which can be refined down to "reason" and then blown up to a slogan. Applied to branded products, the technique at its worst can do little harm to society as a whole, because product purchases are trivial matters and because people do not buy even the most heavily advertised product a second time unless it has given satisfaction. Applied to political issues, however, the

technique must partially misinform, create undesirable emotions, and destroy the realities, which, in theory, underlie the decision of the electorate.<sup>149</sup>

### **Minor Restrictions Over the Political Advertising in the United States**

Unlike most advertising, political advertising is not governed by the Federal Trade Commission or any other federal agency. "Political advertising enjoys such broad First Amendment protections that these ads are not reviewable by the Federal Trade Commission or, for that matter, by anyone else."<sup>150</sup> Instead, minor restrictions have been established by the Federal Election Commission (FEC).

The Federal Election Commission, created by the Federal Election Campaign Act of 1971 (FECA), is responsible for regulating political advertising. FECA states that any political advertisement must clearly designate the political candidate, authorized political committee, agent, or other person who sponsored the advertisements. Additionally, campaign advertisements and other writings published by a political committee, or by a person that is not authorized by a candidate to publish the material, must also carry notice of the authorization and nonauthorization, respectively. Broadcasters are required to allow reasonable access or allow political candidates to buy reasonable amounts of time for federal elective office. According to John Lichtenberger, sections of this Act affect political advertising as follows:



Sections of this Act, for example, discuss the disclosures a candidate should make in his or her ads, the time availability of the media, the contribution of services by an ad agency to a candidate, and many other areas.<sup>151</sup>

Another key regulatory mechanism to control political advertising is the American Association of Advertising Agencies (AAAA). The AAAA has its own booklet that outlines the function of advertising agencies in political campaigns; the booklet is called "Code of Ethics for Political Campaign Advertising" and emphasizes a "Code of Fair Campaign Practices".

#### Political Advertising in Thailand

Political advertising in Thailand is restricted under the Radio and Television Act for the Election Campaign of 1979. The Election Commission was created by Section 14 of this Act, and was made a division of the Public Relations Department. It has the power to regulate and reject any political message which does not meet its standards. Sections of this Act discuss the time availability of the media, the advertising expenditure the political candidate has to pay, and the preclearance process. Any political candidate who wants to advertise him/herself must give a proposal of the draft advertising to the Election Commission.

Moreover, any advertisement of the election campaign of the political candidate or authorized political committee must be consistent to the Election Campaign Law. This law forbids the use of indecent statements, character defamation, libel, or any statement that may affect national security.

### Comparison

The rules and regulations of political advertising in the United States and Thailand are similar in some respects. Both countries permit political advertising, but with certain requirements. In addition, both countries have a special commission to control the advertising of election campaigns: the Federal Election Commission of the U.S., and the Election Commission of Thailand. Federal Act of both the United States and Thailand forbid the use of libel and slander. Although there are many who seriously question the use of advertising by political candidates, there is little jurisdiction on these grounds for eliminating all political advertising in both countries.

The Radio and Television Act for the Election Campaign of 1979 allows the Election Commission of Thailand to censor any political message before disseminating through any media. In the United States, there are voluntary self-regulatory guidelines for political advertising, namely those of the AAAA. In Thailand, there are only federal regulatory guidelines.

### CIGARETTE ADVERTISING

There is evidence that cigarette smoking is dangerous; cigarettes are one of the major causes of lung cancer. According to Jean Cobb, almost 1,000 Americans die each day from smoking-related illnesses.<sup>152</sup> As a result, many health groups oppose cigarette smoking and, as they believe that cigarette advertising results in an increase demand in cigarette consumption, are calling

for a ban of cigarette advertising. In addition, there are many consumerists who think that cigarette advertising, by incessantly associating smoking with attractive role models, induces teenagers to smoke.

These events occur not only in the United States, but also in Thailand. Consequently, both the U.S. and Thai regulatory authorities have enacted rules to control cigarette advertising.

In 1971, all broadcast advertising of cigarettes was banned by U.S. federal law. All radio and television cigarette advertising in Thailand was completely banned in 1985. As a result, cigarette companies in both the United States and Thailand have become heavy users of newspaper, magazine, and outdoor display advertising. In both the United States and Thailand, health warnings are required on cigarette packages such that all cigarette packages must be imprinted with the following: "Caution : Cigarette Smoking May Be Hazardous to Your Health".

In addition, recently there has been a call for the banning of all cigarette advertising and promotions--including newspaper, magazine, and billboard advertisements--in both countries.

### **PROFESSIONAL ADVERTISING**

In recent years, there has been an increase in the use of professional advertising by attorneys, doctors, dentists, pharmacists and other professionals in the United States.<sup>153</sup> However, very little advertising of professionals is

used in Thailand. Restrictions on advertising by professionals exist in both the United States and Thailand.

In the United States, the FTC, state licensing authorities, and the American Bar Association (ABA) have power to control professional advertising. A federal statute empowers the FTC to prevent unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce.<sup>154</sup> The FTC strongly encourages truthful professional advertisements. The ABA has its own self-regulatory guidelines, known as the Model Rules of Professional Conduct. Using false or deceptive advertising or false or deceptive trade names is prohibited by this "Model Code". According to John Lichtenberger:

While the ABA Code is clearly a key document, it is the various state bar associations - frequently acting in concert with the states' highest courts - that have direct authority over attorney conduct.<sup>155</sup>

In Thailand, there exist two Acts concerning professional advertising: the Medical Professionals Act of 1936, and the On Behalf of Attorneys Rules of 1939. The Medical Professionals Act prohibits any doctor, dentist, or pharmacist from advertising him/herself in any form of media. Violation of this Act results in a fine, imprisonment, or both. While advertising of medical professionals is completely forbidden, that of attorneys is permitted. The On Behalf of Attorneys Rules states that attorneys may advertise only in print media, and that any statement in an attorney's advertisement must not be

false or deceptive. However, no other professional advertising is restricted in Thailand.

### **LABELING**

Labeling is one of the major issues concerning marketers in the United States as well as in Thailand--particularly the labeling of food, drugs and cosmetic products. Labeling can be subject to the legal requirements applied to advertising because statements made on packages, labels, or products are considered advertising. Labeling requirements of the two countries are similar to each other.

#### **Control Over Labeling**

In the United States, two major federal regulatory agencies are responsible for the regulation of labeling. One is the Federal Trade Commission, which takes primary responsibility for the regulation of false advertising. "... the Federal Trade Commission regulates the labeling of textile products (under the Textile Fiber Products Identification Act), wool products (under the Wool Products Labeling Act), and fur products (under the Fur Products Labeling Act)".<sup>156</sup>

The other federal authority is the Food and Drug Administration. The Administration takes the initiative in the prevention of misbranding and false labeling of food, drugs for humans and other animals, and for cosmetic products and medical devices. The Federal Food, Drug, and Cosmetic Act

(FDC Act) and the Fair Packaging and Labeling Act (FPL Act) are laws affecting labeling and are enforced by the FDA.<sup>157</sup>

The FDC Act requires truthful, non-deceptive and informative labeling and packaging. It forbids distribution in the United States, or importation, of products that are adulterated or "misbranded." "Misbranding" results if any statement, design, or picture on a label accompanying the product is false or misleading, or does not include all required information on the label."<sup>158</sup> The FPL Act applies to all consumer products and requires that these contain accurate information about the quantity of the contents of a product, in order to help consumers make comparisons.

In addition to these two major Acts, there are special rules for products such as candles, vacuum cleaner replacement bags, and film.

In Thailand, there are also two major federal regulatory authorities governing the labeling of the products. The Committee on Labels, a Committee of the Consumer Protection Board (CPB), is similar to the Federal Trade Commission of the United States. The other federal regulatory authority in Thailand is the Food and Drug Administration. The Committee on Labels enforces the Consumer Protection against Labeling Act. According to this Act, the label shall be of the following descriptions:

- (1) it shall contain truthful statements and have no other statements which may induce misunderstanding as to the material facts concerning such goods;
- (2) it shall contain necessary statements without which the consumers would misunderstand the material facts concerning such goods.<sup>159</sup>

The FDA enforces four major Acts: the Food Act, the Drug Act, the Cosmetics Act, and the Potentially Hazardous Consumer Products Act. Generally, all of these labeling Acts require a description of the product (food, drugs, cosmetics, and potentially hazardous products, respectively) to be in a prominent and conspicuous location. In addition, all of them require truthful, non-deceptive, and informative labeling; they also regulate the placement of the information on labels.

In general, labeling requirements in the United States and Thailand are similar to each other. They both require truthful, non-deceptive, and informative content on labels.

### **OUTDOOR ADVERTISING**

Today outdoor advertising is a major medium in both the United States and Thailand. This is because of its cost--which is usually lower than that of television, radio, or newspapers--and its high reach and frequency levels.

In both the United States and Thailand, there exists criticism from special interest groups and legislative bodies regarding outdoor advertising. These groups believe that misplaced outdoor advertising billboards make an area unattractive. Consequently, rules and regulations regarding outdoor advertising practices in the U.S., as well as in Thailand, are promulgated in order to maintain town ordinance and preserve natural beauty.

In the United States, there is one self-regulatory mechanism dealing with outdoor advertising: the Outdoor Advertising Association of America (OAAA). According to Anthony F. McGann and J. Thomas Russell, the OAAA's regulatory program is stronger than that of any other medium.<sup>160</sup> Besides the OAAA, there is also a major federal regulatory authority: the Federal Highway Administration. The Federal Highway Administration established Act, the Highway Beautification Act, which was passed by Congress in 1965 to preserve natural beauty and promote safety on the nation's federally-funded highways by controlling outdoor advertising in areas adjacent to those highways.<sup>161</sup> The Act empowers the Federal Highway Administration to regulate and control both outdoor advertising and junkyards. This Act discusses area placement of advertisements, noncompliance penalties, and sign-removing compensation. In addition to the rules of these two authorities, the outdoor industry must also deal with local and state legislation--which sometimes contradicts federal regulations.<sup>162</sup>

No special regulatory authority has been created in Thailand. Instead, there exists one major federal Act: the Town Ordinance Act of 1960. Since this Act is federal legislation, the possibility of contradiction between local and state regulations with federal regulations does not exist. The Town Ordinance Act forbids any unlawful or immoral content and/or picture in the advertisement. It also discusses time limit constraints, advertising fees, penalties, and sign-removing compensation.<sup>163</sup> In terms of requirements, the



**Town Ordinance Act of Thailand is somewhat similar to the Highway Beautification Act of the U.S.**

**Limitation on Topic Coverage**

Ten major topics on advertising controls have been discussed in Part III: advertising to children, decency and sexism in advertising, comparative advertising, sweepstakes and contests, alcoholic beverage advertising, political advertising, cigarette advertising, professional advertising, labeling and outdoor advertising. There are still other issues which have not been covered, but are nonetheless important. Advertising of warranties; endorsements and testimonials; and promotions based on price, have not been compared because to date, these topics do not exist in Thailand.

In addition, such topics as libel and slander or deceptive advertising have been excluded from the discussion; the reason for this is because, in Thailand, they are written in such general, vague, or imprecise terminology.

## **CONCLUSIONS**

The comparison between the United States and Thailand in this study has enabled us to identify similarities and differences--as well as general factors that cause these similarities and differences--in their advertising rules and regulations.

One factor that affects the differences in the advertising rules and regulations in the United States and Thailand is the difference in size of these two countries. The United States is almost eighteen times larger than Thailand; in addition, there is a wide diversity of cultural and social activities in the United States. Also, the large industrial and commercial centers are scattered throughout the country; this results in the decentralization of the media and therefore of advertising. This, in turn, results in the fragmentation of advertising controls, and subsequently a stratification. This result is a regulatory system with divisions that vary in level of authority.

In contrast, as Thailand is only a small developing country, the legislative and commercial centers are located only in the capital. All advertising agencies are situated only in Bangkok--where the clients and media are located. It is for this reason that advertising restrictions in Thailand are established and enforced by a centralized system. The centralized system is responsible for the regulation of both national and local advertising of products and services. In the United States, which is one of the most developed democratic countries, there is a strong incentive for the advertising industry to attempt to regulate

itself in its own self-interest. Consequently, the control of advertising practices in the United States has relied, to some extent, on the mechanisms which have been devised by the advertising industry to voluntarily regulate advertising compliance within the advertising community. This has resulted in numerous methods of self-control of advertising; codes and standards of individual media, industry associations, advertising agency associations, advertiser associations, and media associations, as well as self-discipline by individual advertisers and agencies. Quite different from this, Thai advertising rules and regulations have relied very heavily on government control.

A second factor that affects the differences in advertising rules and regulations between the United States and Thailand is their differences in systems of government. The United States has a federal system of government. Extensive powers are reserved by the states, such that each of the 50 constituent states and the District of Columbia exercises a measure of internal self-regulation. This results in the protection of consumer rights at the state and local level. Almost all states have enacted some kind of consumer protection law to regulate the vast majority of deceptive advertising that occurs in local media. The states must formulate these regulations as the Federal government cannot successfully monitor local media. In Thailand, advertising restrictions are enforced by a centralized system. This is result of not only the centralized location of the media but also the bureaucratic structure and authoritative values of the political system. National as well as local advertising is controlled

by government regulatory agencies such as the CPB, BDB, and the FDA. The rules that are established as national regulations also regulate advertising at the local level.

Another factor influencing differing rules and regulations is the media-government relationship in each of the two countries. In Thailand, the media-government relationship is structured by authoritarian theory, but that of the United States is structured by libertarian theory. Hence, the Thai federal government plays a far greater role in advertising control than the government of the United States. The degree of government intervention in Thailand is also much stronger than that in the United States. In terms of government intervention, the regulatory actions of U.S. government agencies is declining, self-regulatory agencies are becoming more involved. In Thailand, government intervention in advertising regulations continues to increase.

Another factor to affect the differences in the advertising rules and regulations has been the difference in the criticisms on advertising. The United States government emphasizes economic criticisms, while the Thai government focuses on social criticisms. Therefore, much U.S. legislation and many U.S. policies were created to protect against the concentration of economic power by a few private businesses. Thai legislation and policies, on the other hand, were made initially to protect consumers from certain acts or practices rather than to protect competition.

A significant difference in the regulations of the two countries is their policies regarding censorship. In the United States, the monitoring of advertisement is primarily in the form of subsequent punishment. That of Thailand, on the other hand, is prior restraint. In Thailand, every commercial must be censored before disseminating by a special regulatory authority. The media-government relationship, which was discussed previously, has influenced the policy of both countries with respect to this issue.

Mainly, the scope of the United States and Thai systems of advertising regulation is significantly different; however, advertising policies of the countries are similar. For example, the citizens of the United States and of Thailand both voice criticisms of similar controversial topics of advertising: advertising directed to children, decency and sexism in advertising, alcohol and cigarette advertising, etc. The legal requirement, the role of government regulatory agencies, and the other forces involved with advertising regulation, differ between the United States and Thailand. Overall, the ultimate objectives of the regulatory agencies of the United States and Thailand are to promote honest and truthful advertising.

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