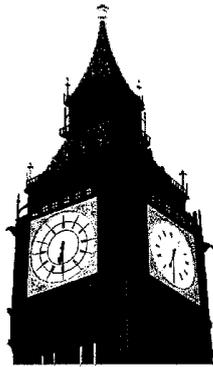


The Debating Group



A Parliamentary forum for Media and Marketing Debate

Does a century of marketing legislation restrict everyone whilst protecting nobody?

According to Alan Stevens, in this age of technology things change so much that regulations are out of date before they can be applied. He was proposing the motion ‘A century of marketing legislation restricts everyone whilst protecting nobody’ at the Debating Group debate at the House of Commons on 24th January 2011. The debate was sponsored by The Chartered Institute of Marketing and chaired by Lord Desai.

Alan Stevens, The Media Coach and President of the Global Speakers Federation, presented several personal anecdotes to illustrate some of the absurdities of regulation, including the banning of a poster for Barratt’s Sweets cigarettes in 1958, because it depicted a child (himself) ‘smoking’. He went on more seriously to cite a 2006 CIM survey which showed that 61% of marketers believed that marketing was over-regulated and 94 % believed that the situation was going to get worse. There were 21 new regulations or amendments affecting marketing in 2005 alone.

Alan Stevens questioned the effectiveness of marketing regulations. For instance eggs were regulated by the EEC in 1973, but in 1988 Edwina Currie created a sensation by suggesting that the majority of eggs were infected by salmonella. He also criticised the labelling on packets of nuts which warned that they contained nuts. He maintained that some of the most stupid regulations were in the Olympic Bill which banned the words Olympic, London, summer and 2012 in any promotional literature and advertisements. It is illegal to say ‘Come to London in 2012’. However, he suggested that rogue traders will always see a way out of regulations.

He concluded by pointing out that if marketing regulations or warning labels had been in force in the Garden of Eden we would not exist. He hypothesised a warning from Adam to Eve, ‘Before you take a bite, may I point out that this apple should not be linked to seduction, sexual activity or in any way enhancing my attractiveness’.

Level playing field

Opposing the motion, **Robert Opie, Director of the Museum of Brands,** pointed out that a century of marketing legislation does in fact restrict everyone – it creates a level playing field. But legislation also protects a lot of people. We need laws to protect society. They protect all those who have put in the time and investment in being creative, otherwise chancers and rip-off merchants will be encouraged. If creativity is damned, there would be chaos; without rules and regulations the commercial world would fall into chaos and anarchy. Protection is achieved by controls and restrictions on marketing and retailing of particular products and services such as prescription medicines, cigarettes, alcohol, guns, drugs and selling to children. And we want fairness.

Talking about level playing fields, Robert Opie cited the Football Association which was formed in 1863 to create rules enabling teams to play on equal terms. They are continually updated. Marketing legislation goes way back to the granting by the sovereign of 'letters patent' in 1331; in 1714 these had to be in writing. Marketing legislation has been around for a long time, but it needs continual updating and amending as the world continues to evolve, to provide a framework of rules that the commercial world can work with. If you don't have rule of law anyone can attack us and brands can be counterfeited. Consumers are protected by consumer protection laws covering areas such as hallmarking, pricing laws, weights and measures and Trade Descriptions. Businesses have fair competition such as Trade Mark Laws and investors, innovators and entrepreneurs are protected by IP Laws; Standardisation, Competition and Harmonisation. And they have, continually to be updated to adapt to changes in society.

It is commonsense that marketing legislation restricts everyone. Robert Opie concluded, "Where I take issue with the motion is that legislation protects nobody. Legislation has to protect people".

Regulations, not rules

Seconding the motion, **Jeremy Jacobs, Award-winning Speaker and Presenter**, questioned the commonsense of having warnings against nuts on packets of nuts. The slogan 'A Mars a day helps you work, rest and play' was not strictly true, but Mars remained on the market. He also suggested that the size of today's Mars Bar is probably smaller than it was in the '80s, and people were paying a disproportionately higher price. "Where", he asked, "is the protection?" He went on to cite purchases made on the Internet which were not satisfactory. He maintained that goods were still being sold which were not fit for purpose.

Jeremy Jacobs cited the cost of binge drinking – £2.7 million for doctors to look after people who can't look after themselves. Drink is allowed to be sold cheaply. There is no protection. He concluded, "We have regulations, but no rules".

Innovations

Seconding the opposition, **Brinsley Dresden, Partner, Lewis Silkin LLP**, discussed some of the innovations over the last 100 years and the need for new marketing laws to support them. He looked at the themes which have emerged since 1911– the growth of self-regulation; comparative advertising; developments in media such as the radio, TV and Internet; political developments i.e. European integration and the move from being at the centre of an Empire to being a member of the European Union, as well as socio-economic changes such as global warming and the role of women and minorities in society.

Self-regulation started in 1962, but it has now morphed into co-regulation. The ASA exists on a legal platform to restrict misleading advertising and it has had a huge success in this country. Self-regulation has the ability to be flexible. The New CAP Code of 2010 will be extended to Digital Media in March 2011 and will cover online and social media. ASA decisions in areas of social change i.e., the portrayal of women and ethnic minorities have been very important. Although these are governed by the CAP Code they have teeth because they are underpinned by law.

Comparative advertising is a good thing – it drives competition and innovation. It was not possible under the TM Act 1938. But it was introduced by the TM Act 1994, implementing European law. The Comparative Advertising Directive allows a level playing field across Europe – it had not been previously allowed in Germany.

The UK is no longer at the heart of an Empire. It is now part of a club of 27 and has to play by the rules of that market. UK consumers have more choice and UK businesses have more markets. We are still in a transitional period and some areas have not been harmonised e.g. sales promotion law.

TV and radio created the need for new rules e.g. separation of editorials and commercials under the 1954 Television Act. More recently there have been regulations covering the Internet. Consumer Protection Regulations to deal with things like Fake Blogs and Tweets have been in the news.

As far as socio-economic issues are concerned regulations have been introduced to encourage genuine innovation and corporate social responsibility e.g. European laws on petrol consumption in ads as well as general green laws, and in the area of health, smoking bans.

Brinsley Dresden concluded, “You don’t legalise burglary just because you can’t catch every burglar, just like you can’t prevent every marketing scam. Some problems cannot be solved by marketing laws alone e.g. alcohol abuse, but marketing laws and self-regulatory systems are part of the solution, not part of the problem. The marketing laws of the last century protect consumers, businesses and society. They promote innovation and new technology, as well as European integration and globalisation.

Discussion from the floor

The following contributions were made from the floor:

For the motion

- During a century of marketing legislation, new legislation has often been duplicate or ‘double-banker’ legislation, therefore it does not protect. There is a case for getting rid of legislation which is a burden for businesses.
- Regulations can mean that choice is very hard – in the case of cars, many cars look the same because of the regulations.
- Whilst the motion might be couched in inflammatory terms, don’t we need some protection against the barking mad rules?
- There is a case for getting rid of nonsense legislation – more people are now smoking on the streets, because they can’t smoke in pubs and restaurants.
- Legislation stops creativity.
- The big players can bulldoze through legislation.

Against the motion

- The principles of regulations such as Consumer Protection Legislation are to protect people.
- The contributor was in favour of the self-regulatory system. The ASA is fast and flexible. Rogue traders will always move on to pastures new.
- Because of environmental laws, innovation has been encouraged e.g. electronic cars.
- Legislation has protected the consumer. In future this will be increasingly difficult because of social media.
- In the case of car regulations we now have safer and cleaner cars.
- Marketing people need to work round restrictions. It doesn’t mean you can’t be creative.
- Legislation helps creativity and protects R & D.
- Olympic legislation can change at any time.
- In March 2011 social media will be restricted under the CAP Code.
- The Data Protection Directive is very good protection. It will deal with Social Media. There will be new rules on Tweeting. Legislation can move forward and deal with current issues.
- The Data Protection Laws do protect. People who have grown up in totalitarian states have different views about these regulations than we do. One of the key principles is to protect children.

Summing up

Summing up for the opposition, **Robert Opie** commented on how few anomalies there are in marketing legislation. The carrot and stick seem to work i.e., self-regulation backed up by law. No rules and no laws encourage chaos. We need fairness coupled with commonsense.

Summing up for the motion, **Alan Stevens** cited several personal anecdotes to illustrate that people were not protected by regulations. He referred to Michael Ryan's belief that banning of ads by ASA had given Ryanair free publicity and therefore competitive advantage.

Alan Stevens believed that the Telephone Preference Service was no protection at all because he still received unsolicited calls. As for the Copyright Law, all the books he had written had been stolen and reprinted through the Internet, but he found that sales had increased as a result. He is now quite happy to give a lot of information away, provided his name is spelled correctly.

People are running their own Data Protection – deciding for themselves how much they wish to reveal. Alan Stevens concluded, "Brilliant creative marketing can be stifled by regulation. Throw off the shackles of regulation and vote for creativity."

The result

The motion was defeated.

Next debate

The next debate will take place on **Monday 21st March 2011** sponsored by the Institute of Promotional Marketing. For more details contact Doreen Blythe, Debating Group Secretary, on 020 8202 5854, e-mail: doreen.blythe22@btinternet.com.