CHAPTER 6

Influences on marketing

OVERVIEW

6.1 Introduction
6.2 Factors influencing customer choice
6.3 Consumer laws
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6.1 Introduction

Marketing is a key business function that impacts on business success. To successfully manage the marketing function, managers must deal with a range of influences that impact on marketing. These influences are shown in figure 6.1.

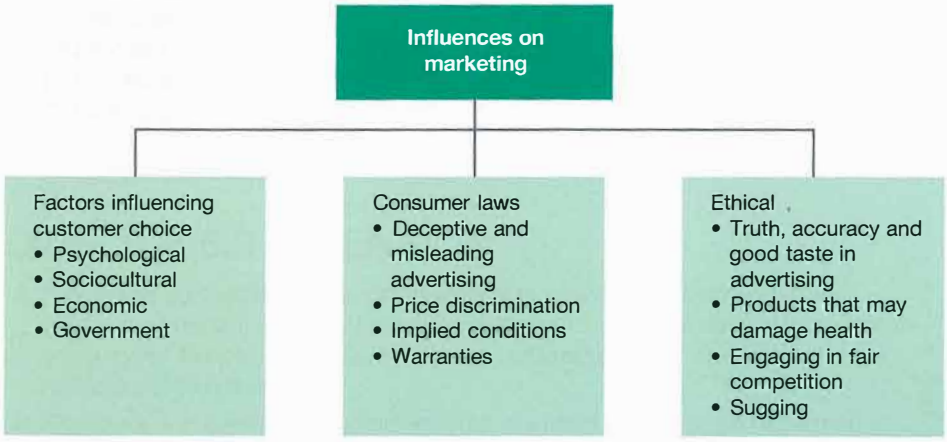


FIGURE 6.1 Influences on marketing

6.2 Factors influencing customer choice

BizWORD

Customer choice (buying behaviour) *refers to the decisions and actions of customers when they search for, evaluate, select and purchase goods and services.*

Marketers closely examine the behaviour of customers (consumers) to understand what motivates an individual to purchase a particular product — **customer choice (buying behaviour)**. They want to know why the customer selects one product and rejects another. As well, businesses try to influence customer choice by modifying their marketing strategies to appeal to the customer's motives.

While market research asks questions such as 'Who are our customers?', 'What do they buy?', 'When do they buy?' and 'How often do they buy?', customer behaviour asks 'Why do they buy?'.

If businesses are aware of the factors that influence customer choice, they can predict customer trends and how they may react to particular marketing strategies.

Consumer buying behaviour — different types of products

Over the years marketers have suggested numerous theories to explain what it is that persuades individuals to buy certain products. One of the most common ways of examining consumer buying behaviour is in terms of how consumers make decisions.

A consumer's buying behaviour will differ when they purchase different types of products. For low-priced, regularly purchased products, such as bread or ice-creams, a consumer generally buys out of habit, involving very little research or decision-making effort. A consumer will use some decision-making effort for purchases made occasionally, or when more information is needed about the product, such as when purchasing clothing or footwear. When buying an expensive, unfamiliar product or a product that is seldom purchased, such as a motor vehicle or home, the consumer will use comprehensive decision making.

One of the main reasons for the difference in the level of involvement in the buying process is due to the level of perceived risk. As the level of perceived risk increases, consumer involvement levels are likely to rise. Ultimately, however, the decision-making process that almost everyone uses when making a purchase can be summed up in the following simple formula:

Consumer choice = capacity to pay + attitude towards the brand

SNAPSHOT QUESTIONS

1. **Demonstrate** how consumers' buying behaviour will differ when they purchase different types of products.
2. **Explain** the relationship between consumer involvement and the level of perceived risk. Support your answer with a relevant example.

SNAPSHOT



'As the level of perceived risk increases, consumer involvement levels are likely to rise.'

Have you ever stopped to consider what influences your buying decisions? Why do you purchase certain products and not others? Over the years, marketers have suggested numerous theories to explain what it is that persuades individuals to buy products. One of the most common ways is by examining the four main factors which influence customer choice (see figure 6.2).

BizFACT

Successful marketing begins with understanding why and how customers behave as they do.



FIGURE 6.2 The four main factors influencing customer choice

6.2.1 Psychological influences

BizWORD

Psychological factors *are influences within an individual that affect his or her buying behaviour.*

Psychological factors are influences within an individual that affect his or her buying behaviour. Five main psychological factors influence customer choice. These are perception, motives, attitudes, personality and self-image, and learning.

Even though these psychological factors operate internally, they are also very much affected by sociocultural forces outside the individual.

Perception

BizWORD

Perception *is the process through which people select, organise and interpret information to create meaning.*

What an individual perceives may be very different from reality; people see and hear the same things differently. For example, one person sees a Ferrari motor vehicle as a sign of achievement; another sees it as ostentatious. This is the result of perception. **Perception** is the process through which people select, organise and interpret information to create meaning. Usually there is a range of perceptions across different individuals.

As individuals we often act on our perceptions of reality rather than reality itself. Consequently, marketing managers are extremely aware that they must create a positive or favourable perception about their product in the mind of the customer. Customers will not normally purchase a product that they perceive as inferior. The perception customers have of a product is often the result of some type of advertising that attempted to create a certain 'image' of the product — images such as trendy, luxurious, classy, fun and rebellious. In reality, the product may not necessarily have such qualities. It may be more to do with how consumers perceive the product.

Motives

BizWORD

A **motive** *is an individual's reason for doing something.*

A **motive** is an individual's reason for doing something. The main motives that influence customer choice include comfort, health, safety, ambition, taste, pleasure, fear, amusement, cleanliness and the approval of others. As with the customer's perception of the product, advertising also attempts to influence an individual's motives (for instance, the desire to emulate a sporting hero). That is, advertising attempts to motivate the customer to buy the product.

Attitudes

BizWORD

An **attitude** *is a person's overall feeling about an object or activity.*

An **attitude** is a person's overall feeling about an object or activity. Customer attitudes to a business and its products generally influence the success or failure of the business's marketing strategy. Negative attitudes to a business or its products often force the business to change its strategies.

Personality and self-image

BizWORD

An individual's **personality** *is the collection of all the behaviours and characteristics that make up that person.*

BizWORD

An individual's **self-image** *relates to how a person views himself or herself.*

An individual's **personality** is the collection of all the behaviours and characteristics that make up that person. To some extent, personality will influence the types and brands of product a person buys. For example, the style of car, clothing or jewellery that a person buys may reflect their personality.

Coupled with personality is an individual's **self-image**: how a person views himself or herself. Self-image is a major determinant of what products we buy. We all have an image of who we are, and we reinforce this image through our purchases. The tendency to believe 'you are what you buy' is widespread among certain types of individuals, especially young people. Marketers will make the most of an individual's desire to express their identity through what they buy by highlighting the image value of their products. This is why celebrities and sportspeople are regularly used to endorse a product; people want their self-image to be a reflection of those who they regard as important and influential (see figure 6.3).



FIGURE 6.3 Celebrities and sportspeople are often used to endorse products because people aspire to be like them. If a consumer idolises a certain celebrity who supports a particular brand or is seen in advertisements promoting a new product, that consumer will associate it with their success, beauty and skill and will subconsciously believe that using that product will give them the same traits they admire.

Learning

Customers have direct experience of many new products. When they do, they are also learning. Consequently, much of customer behaviour is learned. **Learning** refers to changes in an individual's behaviour caused by information and experiences. For example, learning occurred the first time a customer tasted Coca-Cola! Learning may also be based on indirect experiences. If a customer sees an advertisement for Coca-Cola that shows other people enjoying a new flavour, the customer might assume that they would like it also.

To market products successfully, a business must assist customers to learn about them. Therefore, successful marketing strategies may assist customer learning that encourages **brand loyalty** (see the following Snapshot).

BizWORD

Learning *refers to changes in an individual's behaviour caused by information and experiences.*

BizWORD

Brand loyalty *occurs when a favourable attitude towards a single brand results in repeat sales over time.*

SNAPSHOT

Brand loyalty — a learned behaviour



According to Yasmin Saghafi, marketing manager for Tricon Consultancy, marketers can successfully use positive learned experiences to build brand loyalty. 'Behaviour that results in a satisfying or pleasing outcome will tend to be repeated', she says. 'For example, when a customer buys a packet of Tim Tam biscuits and likes them, he or she is more likely to buy Tim Tam biscuits again.' Yasmin explains that this type of experience (learning) relates to habit formation and that there is a close link between habits and brand loyalty. 'Actually, the customer will keep buying the brand because of the positive reinforcement of previous actions.'

Yasmin outlines that customers will continue purchasing a particular brand until it no longer provides satisfaction, at which point they will either switch to another brand or, in the case of Tim Tams, stop eating chocolate biscuits altogether. 'Brand loyalty cannot be taken for granted,' she reinforces. 'Customers have become less brand loyal than they once were because brands have become increasingly similar, thereby making it easier for customers to switch among brands.'

SNAPSHOT QUESTIONS

1. **Define** the term 'brand loyalty'.
2. **Explain** the relationship between positive learned experiences, habits and brand loyalty.
3. **Identify** a brand that you are loyal to and **account** for your loyalty.
4. **Recall** why customers have become less brand loyal than they once were.
5. **Determine** why marketers need to understand how learning influences brand loyalty.

> '. . . marketers can successfully use positive learned experiences to build brand loyalty.'

BizWORD

Sociocultural influences *are forces exerted by other people and groups that affect an individual's buying behaviour.*

6.2.2 Sociocultural influences

Whereas psychological influences are internal forces, **sociocultural influences** are forces exerted by other people and groups that affect customer behaviour. There

are four main sociocultural factors. They are social class, culture and subculture, family and roles, and reference (peer) group.

Social class

In our society, the factors generally used to determine a person's **social class** — often referred to as **socioeconomic status** — are education, occupation and income. Social class influences the type, quality and quantity of products a customer buys. People from a high socioeconomic status background, for example, are usually willing to buy products that are perceived to be prestigious. Higher income earners may purchase luxury cars that symbolise their status, and are more likely to shop in upmarket retail stores.

BizWORD

Social class *or* **socioeconomic status** *refers to a person's relative rank in society, based on his or her education, income or occupation.*



FIGURE 6.4 Marketers realise that socioeconomic status plays a significant role in customer behaviour. These days, many women are prepared to spend more on a handbag than on a holiday or even a car! Why are luxurious handbags so desirable? It's partly because they've become symbolic of a woman's status and earning power.

Culture and subculture

Culture is all the learned values, beliefs, behaviours and traditions shared by a society. Culture influences buying behaviour because it infiltrates all that we do in our everyday life. It determines what people wear, what and how they eat, and where and how they live. For example, in response to the greater desire for nutritious and healthy foods, many low-fat, sugar-free and fibre-enriched processed food products are now marketed.

BizFACT

A research company, Brainchild, found that 30 per cent of the 600 children it surveyed said their parents asked them for advice when choosing the family car.

Family and roles

All of us occupy different roles within the family and groups within the wider community. These roles influence buying behaviour. For example, although women's roles are changing, market research shows that most women still make buying decisions related to healthcare products, food and laundry supplies. Studies have shown that teens are a household's chief influencer and their opinion on purchases is often sought by parents worldwide. The main categories in which teens wield the most influence are clothes, shoes, music, books, food and beverages, household goods, travel and spending on family excursions. Around three-quarters of teens said they influenced how their parents spent on these categories.

BizWORD

A **reference** *or* **peer group** *is a group of people with whom a person closely identifies, adopting their attitudes, values and beliefs.*

Reference (peer) groups

A **reference** or **peer group** is a group of people with whom a person closely identifies, adopting their attitudes, values and beliefs. A customer's buying behaviour may change to match the rest of the group's beliefs and attitudes. For example, if a close friend tells you of a bad experience at a particular shop, you will probably change your buying

behaviour based on this information. Alternatively, if your peer group wears distinctive clothing, you probably make clothing purchases based on this influence.

6.2.3 Economic influences

Economic forces have an enormous impact on both businesses and customers. They influence a business's capacity to compete and a customer's willingness and ability to spend. Economies do not always experience constant growth. Rather, the level of economic activity fluctuates from boom to recession. Each of these two distinct phases influences the marketing environment in the following ways (see figure 6.5).

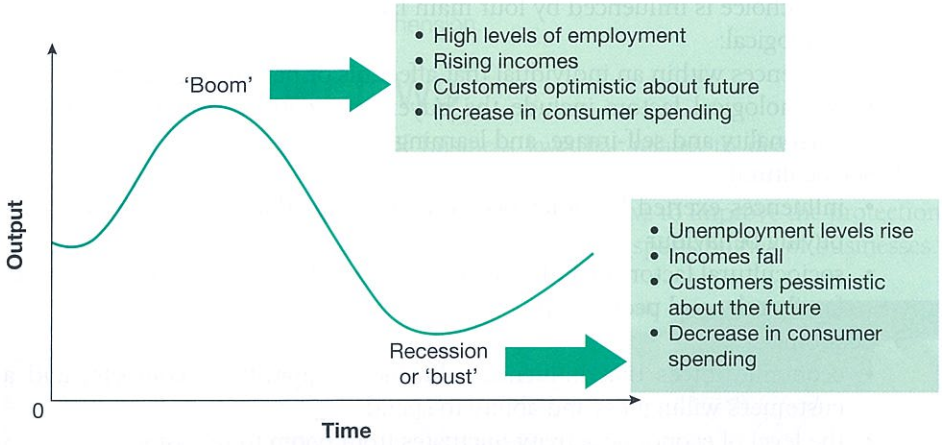


FIGURE 6.5 Economic influences on customer choice

Boom

A boom is a period of low unemployment and rising incomes. Businesses and customers are optimistic about the future. Businesses increase their production lines, and attempt to increase their market share by intensifying their promotional efforts. Customers are willing to spend because they feel secure about their jobs and source of income.

The marketing potential during such a phase is large, with sales responding to all forms of promotion.

Recession

A recession sees unemployment reach high levels and incomes fall dramatically. Customers and businesses lack confidence in the economy and if this phase lasts for a long time, a mood of deep pessimism persists. Customer and business spending reach very low levels. Such caution and pessimism result in customers reducing their spending. Customers become more price-conscious. They look for value and products that are functional and long-lasting. Marketing plans should, therefore, stress the value and usefulness of a product. As well, marketing plans during this time should concentrate on maintaining existing market share. Survival becomes the main business goal.

BizFACT

In the period after the global financial crisis of 2008–09, average levels of savings in Australia rose to 10 per cent per household. People became more cautious about spending money. Marketing becomes a lot harder in these circumstances.

6.2.4 Government influences

Governments use a number of economic policy measures to influence the level of economic activity. Depending on the prevailing economic conditions, the government will put in place policies that expand or contract the level of economic activity. These policies directly or indirectly influence business activity and customers' spending habits, and therefore will influence the marketing plan.

The influence of government regulations has a more direct and immediate impact on the marketing plans of a business. Regulatory forces consist of laws (statutes)

BizFACT

In 2017, Prime Minister Malcolm Turnbull announced the government's intention to ban gambling advertising before 8.30 pm during live sporting events. This was intended to address problem gambling and to make watching sport more family-friendly. While this was welcomed by many parents, it faced a strong backlash from many sporting codes and networks who would stand to lose a lot of revenue.

studyon

Syllabus area 2
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Concept 1

Factors influencing customer choice
Summary screen and practice questions

and regulatory bodies that can influence business behaviour. Such regulatory forces exert a significant influence over the marketing activities of businesses because the breaking of these laws or regulations may result in financial penalties.

A number of laws, such as the *Competition and Consumer Act 2010* (Cwlth) (formerly the *Trade Practices Act 1974*), *Sale of Goods Act 1923* (NSW) and the *Fair Trading Act 1987* (NSW), have been passed that influence marketing decisions.

SUMMARY

- Marketers closely examine the behaviour of customers (consumers) to understand what influences customer choice.
- Customer choice is influenced by four main factors.
  1. Psychological:
     - influences within an individual that affect his or her buying behaviour
     - psychological factors include the buyer's perceptions, motives, attitudes, personality and self-image, and learning.
  2. Sociocultural:
     - influences exerted by other people and groups that affect an individual's buying behaviour
     - sociocultural factors include the buyer's social class, culture and subculture, family role, and peer groups.
  3. Economic:
     - economic forces that influence a business's capacity to compete, and a customer's willingness and ability to spend
     - the level of economic activity fluctuates from boom to recession.
  4. Government:
     - policies that directly or indirectly influence business activity and customers' spending habits
     - laws such as the *Competition and Consumer Act 2010* (Cwlth), *Sale of Goods Act 1923* (NSW) and the *Fair Trading Act 1987* (NSW) that influence marketing decisions.

EXERCISE 6.1 REVISION

1 **Define** the term 'customer choice'.
2 Of the five psychological influences that affect customer choice, select which you think is the most important. **Justify** your answer.
3 **How** does an individual's perception of a product influence their buying behaviour?
4 **How** and why do marketing managers attempt to alter consumer perception?
5 'The tendency to believe "you are what you buy" is widespread among certain types of individuals, especially young people.' **Interpret** what is meant by this statement.
6 **How** might an understanding of customers' learning processes affect a marketing plan? Use an example to support your answer.
7 **Distinguish** between the sociocultural and psychological factors that influence customer choice.
8 **Demonstrate** in what ways social class affects a customer's choice.
9 **Describe** a subculture to which you belong. **Identify** purchases that are unique to your subculture.
10 **Explain** how family roles such as carer or provider affect customer choice.
11 **Identify** some of your own reference groups. **Outline** how reference groups influence customer choice.
12 Collect a number of print advertisements from a magazine. **Identify** the psychological and/or sociocultural influence to which each advertisement is appealing.
13 **Summarise** the impact that economic conditions may have on business, consumers and the marketing plan.

14 **How** do government policies and regulations influence the marketing environment?
15 **Outline** some of the services of NSW Fair Trading.

EXERCISE 6.1 EXTENSION

1 'Through knowledge of customer buying behaviour, marketing managers can learn to manipulate customers to purchase their products.' **Assess** the validity of this statement.
2 'Perception is reality; what we think is true about a product does not matter.' **Critically analyse** this statement.
3 Suppose research at Apple reveals that potential customers are apprehensive about buying an iPad for home use. **Determine** what strategies you might recommend to Apple to reduce customer apprehension.

on Resources

Weblink: NSW Fair Trading 1

6.3 Consumer laws

Since the 1960s, the broad area of business law that relates to dealings between consumers and businesses has been subject to radical and fairly continuous change. Governments, both federal and state, have introduced laws to improve the protection and rights of consumers, and to clarify the rights and responsibilities of businesses.



FIGURE 6.6 The ACL sets out consumer rights that are called consumer guarantees. These include your rights to a repair, replacement or refund as well as compensation for damages and loss and being able to cancel a faulty service. If a business sells a customer a product that fails to meet one or more of the consumer guarantees, the customer is entitled to a remedy — either a repair, replacement or refund and compensation for any consequential loss — depending on the circumstances.

6.3.1 The Australian Consumer Law

In 2011, a single, national consumer law — the Australian Consumer Law (ACL) — was introduced, which replaced 17 existing national, state and territory consumer laws (see figure 6.7). The ACL applies in the same way to all Australian consumers and businesses regardless of where the business operates or where consumers shop. At the same time, the name of the *Trade Practices Act 1974* was changed to the *Competition and Consumer Act 2010*.

Marketers do not have to be skilled lawyers, but they should be familiar with the laws that regulate their activities. Ignorance of the law is no defence. Marketers must also ensure they are aware of any changes to the laws as those changes apply to their particular business. Their responsibility is to understand and apply laws

BizFACT

The ACL will benefit the Australian community by giving Australian consumers the same rights and protections wherever they are in Australia.

within their businesses where needed. They may need to introduce changes, such as an alternative advertising promotion, a repackaging of a product or a change in the credit policy for customers. Whatever the change, a business must ensure it is up to date with the current laws and that it applies them to all marketing practices.

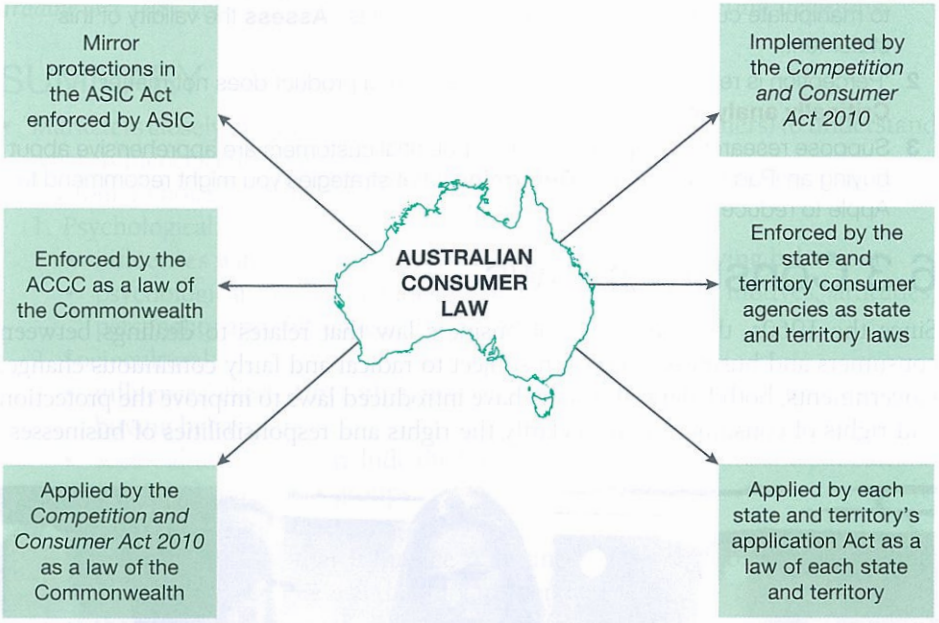


FIGURE 6.7 From 2011, the ACL replaced different national, state and territory laws that set out consumer rights and business obligations when selling goods and services with a single, national set of rules. The ACL is an application law, which will be applied and enforced as a law of each jurisdiction in Australia.

6.3.2 Competition and Consumer Act 2010

The *Competition and Consumer Act 2010* (Cwlth) — formerly the *Trade Practices Act 1974* (Cwlth) — is one of the most important pieces of legislation affecting marketing and business practices in Australia. The Act has two major purposes:

1. to protect consumers against undesirable practices, such as misrepresenting the contents of products, their place of production, and misleading and deceptive advertising
2. to regulate certain trade practices that restrict competition. The government also wants to ensure a number of businesses are operating at any one time in the same market to encourage competition.

The Competition and Consumer Act (CCA) applies to virtually all businesses in Australia, including the commercial activities of government. The CCA is enforced and administered by the Australian Competition and Consumer Commission (ACCC), each state and territory's consumer agency, and the Australian Securities and Investments Commission (ASIC) in respect of financial services.

BizFACT

One of the main roles of the ACCC is to pursue complaints regarding breaches of the Competition and Consumer Act. Some of the ACCC's leading cases from 2016 were against Colgate-Palmolive, Australia and New Zealand Banking Group Limited (ANZ), Macquarie Bank Ltd (Macquarie), Flight Centre, Medibank, Reckitt Benckiser (manufacturer of Nurofen) and Woolworths Ltd.

Breaches of the Act

A breach of any of the consumer protection provisions of the Competition and Consumer Act can result in the ACCC — or the relevant consumer agency — taking civil or criminal proceedings against the business or individual concerned. The CCA allows the courts to impose penalties of up to $1.1 million for companies and $220 000 for individuals for **unconscionable conduct** and other breaches of the Act. In addition, the consumer can sue the business for compensation. When legal fees and the damage to the business's reputation are included, the cost of breaching the CCA can be substantial.

BizWORD

Unconscionable conduct *is any practice by a business that is not reasonable and often illegal.*

The ACCC now has the power to issue an on-the-spot infringement notice (fine) to manufacturers making false claims about their products. The changes mean that the ACCC can fine a company up to $12 600 (or $126 000 for a listed corporation) and an individual up to $2520 for each infringement of the CCA without having to undertake court action.

The ACCC can also now issue 'public warning notices' to warn consumers of suspected illegal activity. Previously, the ACCC had to gather evidence and then seek a temporary court injunction (ban), while the suspected illegal activity continued.

Businesses must ensure that they are up to date with the current laws and that they apply them to all marketing practices. The following are some of the undesirable and misleading practices that are illegal under the Competition and Consumer Act.

6.3.3 Deceptive and misleading advertising

Of all the unfair trading practices, false or misleading advertising can be the most serious because of the influential nature of advertising. Advertisements must not use words that are deceptive or claim that a product has some specific quality when it does not. Such actions convey a false impression of the exact nature of the product. Even though the Competition and Consumer Act makes deceptive or misleading advertising illegal, a number of methods are still used by some businesses. Examples of deceptive and misleading advertising under the Competition and Consumer Act include:

- *fine print*. Important conditions are written in a small-sized print and are therefore difficult to read.
- *before and after advertisements*. Consumers may be misled by 'before' and 'after' advertisements, where the comparison is distorted so that 'before' images are worsened and 'after' images enhanced.
- *tests and surveys*. Some advertisements make unsubstantiated claims; for example, stating '9 out of 10 people' prefer a product when no survey has been conducted.
- *country of origin*. Accuracy in labelling is important; for example, 'made in Australia' and 'product of Australia' have two distinct meanings.
- *packaging*. The size and shape of the package may give a misleading impression of the contents.
- *special offer*. Advertisements may be misleading or deceptive if they imply that a special offer is available for only a limited period, when in fact the offer is continuously available.



FIGURE 6.8 In 2017, the Federal Court fined Virgin $200 000 and Jetstar $545 000 for breaching the ACL. The court found that specific advertised airfares displayed on their websites and mobile sites were false or misleading. Jetstar and Virgin's 'drip pricing' techniques drew consumers into an online purchase process with a headline price, but failed to adequately disclose the additional fees and charges that would apply.

BizFACT

The ACL is currently being reviewed due to the relatively low penalties that have been imposed on companies for breaches. Choice has argued that fines under the ACL are too low to act as a strong deterrent against corporate misbehaviour because they are only a fraction of what a large company can make from misleading their customers. Under legislative changes maximum financial penalties would be increased from $1.1 million to at least $10 million per breach.

BizFACT

In 2016, the Federal Court ordered Snowdale Holdings Pty Ltd to pay a penalty of $750 000 for making false and misleading representations that their eggs were 'free range' after discovering that most of their hens were not able to go outside due to the farming conditions.

BizWORD

Bait and switch advertising *involves advertising a few products at reduced and, therefore, enticing prices to attract customers. When the advertised products quickly run out, customers are directed to higher priced items.*

Dishonest advertising *is when an advertisement uses words that are deceptive or claims that a product has some specific quality when it does not.*

Two of the most common deceptive and misleading advertising techniques are:

- ***bait and switch advertising***. This involves advertising a few products at reduced and, therefore, enticing prices to attract customers. When the advertised products quickly run out, customers are directed to higher priced items.
- ***dishonest advertising***. Advertisements must not use words that are deceptive or claim that a product has some specific quality when it does not. Such actions convey a false impression of the exact nature of the product (see the following Snapshot). As well, price reduction, specials or free-gift offers must all be genuine. Advertisements that could deceive, even though no one may actually be deceived, are also to be avoided.

SNAPSHOT



'. . . fined $6 million for misleading consumers.'

Case study: Nurofen — misleading consumers

In December 2017, the makers of Nurofen were fined $6 million for misleading consumers. The Australian Competition and Consumer Commission (ACCC) took the pharmaceutical giant Reckitt Benckiser, the manufacturer of Nurofen, to court for its Specific Pain products. The ACCC alleged that their packaging and website highlighting back pain, period pain, migraines and tension headaches painkillers, misled consumers into thinking the tablets were each formulated to specifically treat different kinds of pain despite the tablets being chemically identical.

In addition, while Nurofen Specific Pain products were similar to the other standard Nurofen tablets, the ACCC discovered that the retail price for this range was significantly higher than other comparable products and were double the price of Nurofen's standard tablets.

The ACCC alleged that the representations made by the company were false and misleading because the tablets in all four of their Specific Pain range were identical and contained the same active ingredient despite claiming on their packaging to treat different kinds of pain. The active ingredient used in their Specific Pain products treat a wide variety of pain conditions and were not more effective at treating the specific type of pain described on their packaging and website than other Nurofen products.

Reckitt Benckiser must now pay a $6 million dollar fine as well as the ACCC's legal costs. This is the highest corporate penalty awarded for misleading conduct under Australian consumer law. The Federal court imposed this penalty due to the substantial consumer loss suffered and the need for deterrence. The ACCC was satisfied with the outcome given the longstanding and widespread nature of the conduct as well as the significant sales and profits that were generated from these products.

SNAPSHOT QUESTIONS

1. **Why** was Reckitt Benckiser fined?
2. **Assess** the impact this decision will have on the company, shareholders, customers and competitors.

BizWORD

Price discrimination *is the setting of different prices for a product in separate markets.*

6.3.4 Price discrimination

Price discrimination is the setting of different prices for a product in separate markets. The difference in price is possible because:

- the markets are geographically separated, for example city and country prices
- there is product differentiation within the one market, for example different electricity prices for domestic and business users.

The Competition and Consumer Act prohibits price discrimination if the discrimination could substantially reduce competition. This prohibition also applies to discounts given, credits, rebates, services and payment arrangements. This means that a business cannot give favoured treatment to some customers while denying it to others. Price discrimination is legal in some circumstances, however; for example, if differences exist in the cost of getting the product to different markets and if there are slight differences in the product itself.

Case study: Uber — price discrimination

Uber is changing the way it calculates fares, moving to a system that charges what customers are "willing to pay", based on factors like whether you are travelling to a wealthy suburb. But while this change has been met with mild outrage, it is actually a very common practice called "price discrimination".

Price discrimination is a firm's attempt to capture the difference between the value a consumer puts on a product and how much they actually pay. Firms do this by charging different prices to different consumers and exploiting differences in willingness to pay.

While this sounds like it comes at the expense of consumers, economic theory shows that society as a whole can benefit if certain conditions are met. For example, if Uber's new pricing means it can enter new markets or reduce customer waiting times, price discrimination could increase society's overall welfare.

Price discrimination takes many forms, such as Coca-Cola's infamous vending machines that increase soft drink prices as the outside temperature increases, or charging more for pink razors.

Cheap movie tickets on Tuesdays are another example of price discrimination, as are the different priced tickets at the theatre and concerts. Pharmaceutical companies charge different prices in different countries, and car dealers negotiate and give out discounts.

The airline industry is often regarded as the champion of price discrimination. It price discriminates on almost every aspect of a fare - from the time a booking is made to the type of seat booked, and, of course, the actual route flown.

The only surprise is that Uber hasn't implemented such a system before now. Its success has, in large part, been driven by a business model that so cleverly mimics a free-functioning market, notably with its "surge pricing".

What is price discrimination?

Price discrimination is the practice of charging different "types" of consumers different prices for the same product or service.

Broadly, "type" might be based on an observable characteristic (age, gender or residency status for example) or some unobservable characteristic that is revealed through the consumer's actions or preferences (coupon discounts, early bird specials, happy hour deals and so on).

Regardless of the mechanism, the objective is to exploit the different "willingness to pay" (WTP) between consumers and thereby increase profits. WTP describes the maximum amount a consumer *would* pay for a particular product or service. Given consumers differ in incomes and other circumstances, this presents an opportunity that firms may exploit through price discrimination.

Economists generally refer to three types of price discrimination – first degree, second degree, and third degree.

First degree generates the most profit. It involves each consumer paying the maximum price they are willing to pay and the firm extracting all of their WTP.

With the exception of some internet auctions, pure first degree price discrimination isn't very common. But we can see versions of it where consumers pay a fixed fee in addition to ongoing fees (such as residential water pricing), and where a single price covers both access and (limited) consumption (such as internet services with data limits). If properly designed, these alternative pricing systems mimic first degree price discrimination by capturing the maximum profit available.

Second degree price discrimination involves providing discounts for bulk purchases. While generally not achieving the same level of profits as first degree, the profits from second degree price discrimination still dominate over simple uniform pricing (where one price is charged to all consumers).

This type of pricing doesn't require a consumer to necessarily be identified by an observable characteristic, rather they reveal their "type" through their purchases. For example, a consumer who buys a 24-pack of soft drink cans at the supermarket generally receives a discount (per can) over the shopper who buys a single can.

SNAPSHOT



'. . . the objective is to exploit the different "willingness to pay" (WTP) between consumers . . .'

Third degree price discrimination involves selling the same good or service to different segments of a market, based on willingness to pay. This is implemented using some identifiable consumer attribute, such as geography or age. An example would be train operators charging different prices to adults and students.

Price discrimination based on geography

It is this third type of price discrimination that Uber is adopting. Although some customers will object to paying different amounts for the same distance travelled, Uber is certainly not the first company to exploit a geographic dimension when it comes to pricing decisions.

Many other businesses similarly base pricing decisions on location and (implicitly) the WTP of consumers in the markets they serve. For example, cafes, restaurants and bars operating in popular tourist destinations often charge substantially more than similar venues in neighbourhood locations. Although this may, to some extent, reflect higher costs, that typically doesn't explain the entire difference.

The subtle point is what economists refer to as "net prices", which occur only when price differences for different versions of the same good are not reflected in different costs.

So is Uber's plan to charge prices according to the customers' locations something that should cause users to take to the streets in mass protest, or at the very least raise concerns of regulators? Probably not. After all, it isn't as if Uber is itself a monopoly. There are always taxis as an alternative. But, of course, the taxi industry has always been partial to a little price discrimination itself. It just isn't as good at it.

Source: Jordie McKenzie 'The economics behind Uber's new pricing model', *The Conversation*, 25 May 2017

SNAPSHOT QUESTIONS

1. **Describe** price discrimination.
2. **Outline** the three types of price discrimination.
3. **Explain** why Uber will be engaging in price discrimination.

BizWORD

Implied conditions *are the unspoken and unwritten terms of a contract.*

BizWORD

Consumer guarantees *provide consumers with rights to certain remedies from retailers and manufacturers where goods purchased fail to comply with the consumer guarantee provisions in the ACL.*

BizWORD

Acceptable quality *means that products must be safe, lasting and with no faults, look acceptable and do all the things someone would normally expect them to do.*

6.3.5 Implied conditions — consumer guarantees

Implied conditions are the unspoken and unwritten terms of a contract. These conditions are assumed to exist regardless of whether they were especially mentioned or written into a contract.

With the introduction of the *Competition and Consumer Act 2010*, new national **consumer guarantees** were introduced, which replaced the previous statutory implied conditions and warranties of the Trade Practices Act. The consumer guarantees provide consumers with rights to certain remedies from retailers and manufacturers where goods purchased fail to comply with the consumer guarantee provisions in the ACL.

Under the ACL, when you buy products and services they come with automatic guarantees that they will work and do what you asked for. If you buy something that isn't right, you have consumer rights.

The following consumer guarantees on products and services apply.

- Products must be of **acceptable quality**, that is:
  - safe, lasting, with no faults
  - look acceptable
  - do all the things someone would normally expect them to do.

Acceptable quality takes into account what would normally be expected for the type of product and cost.

- Products must also:
  - match descriptions made by the salesperson, on packaging and labels, and in promotions or advertising
  - match any demonstration model or sample you asked for
  - be fit for the purpose the business told you it would be fit for and for any purpose that you made known to the business before purchasing

- not carry any hidden debts or extra charges
- meet any extra promises made about performance, condition and quality, such as lifetime guarantees and money back offers
- have spare parts and repair facilities available for a reasonable time after purchase unless you were told otherwise.

- Services must be:
  - provided with acceptable care and skill or technical knowledge and taking all necessary steps to avoid loss and damage
  - fit for the purpose or give the results that you and the business had agreed to
  - delivered within a reasonable time when there is no agreed end date.

Consumers can claim a remedy from the retailer if the products do not meet any one or more of the consumer guarantees. The retailer cannot refuse to help you by sending you to the manufacturer or importer.

Consumers can claim a remedy from the supplier if the services do not meet any of the consumer guarantees in relation to services. Remedies include cancelling a service and in some cases compensation for damages and loss.



FIGURE 6.9 Women's activewear company Lululemon was fined $32 400 for alleged false and misleading representations about consumer guarantee rights. The company made representations on their website that all sale items were 'yours for keeps, so no returns and no exchanges'. This statement suggests that consumers are not entitled to a remedy under any circumstances. Under the ACL, people are automatically entitled to a remedy if a product fails to meet a consumer guarantee or develops a fault, even if the product was purchased on sale.

6.3.6 Warranties

All businesses have certain obligations with regard to the products they sell. These obligations are designed to offer a degree of protection to the customer if the good is faulty or if the service is not carried out with due care and skill. One important obligation is to provide a warranty. A **warranty** is a promise made by a business that they will correct any defects in the goods that they produce or in the services that they deliver; that is, it is a promise to repair or replace faulty products. The use of warranties can be a good marketing tool. For example, if your business offers longer warranties than your competitors, then this will give customers the impression that your good is of superior quality.

In recent years, government legislation has made it necessary for businesses to state, clearly and simply, the terms and conditions of the warranty. A warranty assures the customer that the business has confidence in the quality of its product and will repair or replace any faulty items. A warranty can be used as an aggressive marketing tool if it includes superior options to those of a competitive product.

BizWORD

*A **warranty** is a promise made by a business that they will correct any defects in the goods they produce or services they deliver.*



FIGURE 6.10 In 2017, the ACCC initiated proceedings against Apple over allegations they misled consumers about their warranty rights under the ACL. The ACCC alleges that Apple represented to consumers with faulty products that they were not entitled to a free remedy if their device had previously been repaired by a third party (e.g. for a cracked screen), even if the repair was unrelated to the fault. Consumer guarantee rights should not be extinguished simply because a consumer had their goods repaired by a third party.

False or misleading statements concerning the existence, exclusion or certain conditions of the warranty are prohibited under the Competition and Consumer Act. In particular, the legislation clearly outlines the rights of consumers with regard to refunds and exchanges.

Refunds and exchanges (returns)

A business is required by law to offer a refund:

- if the products provided are faulty
- do not match the description or a sample
- fail to do the job they were supposed to do.

There is no obligation to offer a refund if the customer has simply changed their mind, has found the same product at a cheaper price in another store, or damage has occurred after the purchase was made.

It is also important that accurate signs regarding refunds and exchanges are displayed. Signs such as 'no refunds given' or 'no refunds on sale items' are meaningless. The Competition and Consumer Act gives consumers certain rights and remedies. A more accurate sign would read either 'no refunds given if you change your mind' or 'no refunds or exchanges unless your purchase is defective'.

studyon

Syllabus area 2 **Consumer laws**
Topic 2 Summary screen
Concept 2 and practice questions

SUMMARY

- In 2011, a single, national consumer law — the Australian Consumer Law (ACL) — was introduced.
- *The Competition and Consumer Act 2010* protects consumers against undesirable business practices and prohibits various unfair (restrictive) business practices.
- The Competition and Consumer Act is administered and enforced by the Australian Competition and Consumer Commission (ACCC) and relevant state and territory consumer agencies.
- Breaches of the Competition and Consumer Act can result in the ACCC taking civil proceedings against the business or individual engaged in unconscionable conduct.
- The main restrictive trade practices are:
  - deceptive and misleading advertising — creating a false impression in an attempt to influence customers

  - price discrimination — the setting of different prices for a product in separate markets.
- The Australian Consumer Law introduced a single set of statutory consumer guarantees that replaced the previous system of implied conditions and warranties.
- Implied conditions are unspoken and/or unwritten terms of a contract.
- Consumer guarantees provide consumers with rights to certain remedies from retailers and manufacturers where goods purchased fail to comply with the consumer guarantee provisions in the ACL.
- A warranty is a promise to repair or replace faulty products.
- A business is required by law to offer a refund if the products provided:
  - are faulty
  - do not match the description or a sample
  - fail to do the job they were supposed to do.

EXERCISE 6.2 REVISION

1 **Why** should marketers be familiar with consumer laws?

2 **State** the two main aims of the Competition and Consumer Act.

3 **Recall** the federal government authority that administers and enforces the Competition and Consumer Act.

4 **Define** the term 'unconscionable conduct'.

5 **Summarise** the penalties that can be applied for breaches of the Competition and Consumer Act.

6 **Discuss** the advantages of the ACCC being able to issue on-the-spot infringement notices and public warning notices.

7 **Explain** why it is important for a marketer to comply with the consumer protection provisions of the Competition and Consumer Act.

8 In small groups:
(a) **discuss** whether the fines for business owners who breach the Competition and Consumer Act are adequate.
(b) **propose** some alternative punishments.
Select a spokesperson to present your responses to the rest of the class.

9 Select what you consider to be the two most serious examples of deceptive and misleading advertising. **Justify** your selection.

10 In each of the following examples, **state** whether there has been a breach of the Competition and Consumer Act. If so, **describe** the type of breach found.
(a) A company advertises a particular brand of television and states that it is at a cheaper price than a competitor. This statement is false.
(b) A company advertises jumpers and claims that they are made in Australia, when in fact they are made in Hong Kong.
(c) A company offers its customers a 10 per cent discount if they provide the names and addresses of five potential customers for the company.
(d) A company advertises that the special deal is for one week only, when in fact it plans to extend it to two months.
(e) A company advertises a motor vehicle as having low mileage, when in fact it has travelled 200 000 kilometres.

11 **State** under what circumstances price discrimination is considered a breach of the Competition and Consumer Act.

12 (a) **Define** the term 'consumer guarantees'.
(b) **Identify** the features a product must possess to be considered of acceptable quality.

13 **Distinguish** between a warranty and a refund.

14 **Identify** under what circumstances a business is required to offer a refund.

15 **Why** are disagreements over warranties and refunds a common source of consumer complaints?

EXERCISE 6.2 EXTENSION

1 Arrange for a representative from the Consumer, Trader and Tenancy Tribunal (CTTT) or the New South Wales Department of Fair Trading to address your class about the role of consumer laws and their impact upon marketing strategies. **Create** a list of interview questions and send them to the representative before the visit. After the visit, **construct** a report and arrange for a copy to be sent to the representative.

2 Go to the **Australian Competition and Consumer Commission (ACCC)** website.
   (a) **Summarise** the role and major activities of the ACCC.
   (b) Select a recent news release that interests you and **evaluate** the response of the ACCC.

3 You have been employed as a business reporter with the local newspaper. Your editor has asked you to **create** a 300-word article about bait and switch advertising scams. The headline of your article is 'Don't get hooked — the bait and switch scam'. To help you commence your investigation, find case studies from NSW Fair Trading. Share your article with other class members.

on Resources

Weblink: Australian Competition and Consumer Commission (ACCC)

Weblink: NSW Fair Trading 2

6.4 Ethical influences

In marketing, as with all business practices, there are ethical and legal dilemmas involved. Although the many laws regulating marketing strategies prescribe legal standards, ethical standards are more difficult to define. Ethical behaviour refers to conduct that goes beyond the legal requirements. While some of the marketing strategies outlined below might be legal, they are still considered wrong or unethical.

6.4.1 Ethical criticisms of marketing

Critics of marketing argue that the industry does not always adopt ethical practices. They believe it often blurs the lines between what is ethically right and wrong. The main ethical criticisms of marketing include the following.

1. *Creation of needs — materialism.* **Materialism** is an individual's desire to constantly acquire possessions. Critics of product promotion feel that most businesses, especially large businesses, use sophisticated and powerful promotional strategies (particularly advertisements) to persuade and manipulate customers to buy whatever the firm wants to sell.
2. *Stereotypical images of males and females.* In most advertisements it tends to be the male who uses the power tools, or who watches sport with his mates. Females, on the other hand, are portrayed preparing meals, cleaning the house or caring for the children.
3. *Use of sex to sell products.* There is often an overuse of sexual themes and connotations to sell products. Unrealistic images are portrayed as attainable. Advertisers use sex appeal to suggest to consumers that the product will increase the attractiveness or charm of the user. Although many people are sceptical of such claims, advertisements that use sex appeal can have subtle and persuasive impacts (see figure 6.11).
4. *Product placement.* The inclusion of advertising in entertainment is a promotion strategy referred to as **product placement**. Generally, the insertion of these products is subtle: an Omega watch on the celebrity's arm or an Apple laptop when a computer is used; while at other times they are prominently displayed. Businesses are keen to use this promotional technique because it allows them to reach savvy, but advertisement-weary, consumers. However, critics of product placement argue that, because of its 'concealed' nature, this type of advertising blurs the line between what is advertising and what is entertainment.

BizWORD

Materialism *is an individual's desire to constantly acquire possessions.*

BizFACT

From 2018, TV advertisements that play on gender stereotypes, or that mock people who fail to conform to them, will not be permitted by the UK's Advertising Standards Authority. There have been calls for Australia to follow suit.

BizFACT

Dell, Samsung, Apple, Ford and Chevrolet got the most value out of product placements in 2016. They each received an advertising value of between US$6–16 million. Ford appeared in more movies than any other brand.

BizWORD

Product placement *is the inclusion of advertising in entertainment.*

5. *Invasion of privacy.* The recent growth in online advertising is raising a number of ethical issues, with the most serious being the tracking of web users and using this information to target them with advertisements. Collection of data in this way may breach consumer privacy. Presently, because most websites infer consent (the consumer agrees to their web searches being tracked unless the person opts out by ticking a box), many consumers are unaware that data is being collected on them. This behavioural data is collected and resold by data exchange companies and then used by businesses for target advertising purposes.

Ultimately, marketing managers should never forget that the business exists because of its customers. By satisfying customers a business may operate profitably. Dishonest or unethical marketing strategies eventually drive customers away.

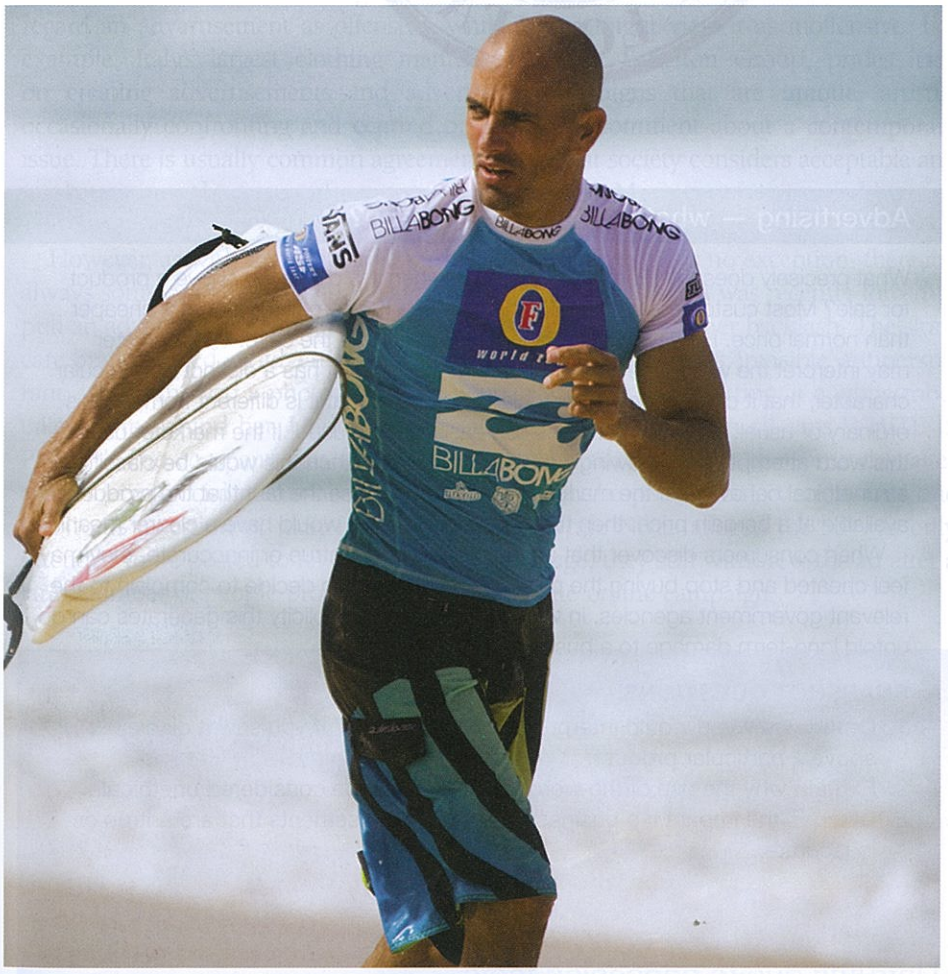


FIGURE 6.11 In 2017, Billabong was criticised for their use of stereotypical images on their website to promote their apparel. The photos of men were of them actually surfing, while the company used sexualised images of women for their female apparel. This sexualisation negatively affects perceptions of women's talent and ability as well as their psyche. It perpetuates the idea that surfing is a male sport and that a woman's place is frolicking around on the beach.

6.4.2 Truth and accuracy in advertising

Advertising can represent real ethical dilemmas. Exaggeration in advertising seems to be the rule of thumb. You need only to watch TV, listen to the radio or read magazines to see examples of over-the-top advertisements. Ethical businesses should ensure their advertising is truthful as they can be held morally responsible for misleading the public by using an untruth in an advertisement. For example, the use of terms such as 'special', 'great value', 'low fat', 'light' and 'once in a lifetime' can be interpreted in many different ways (see figure 6.12 and the following Snapshot).

The main unethical marketing practices include untruths due to concealed facts, exaggerated claims, vague statements and invasion of privacy.

BizFACT

Many consumers overlook the fact that loyalty cards collect information on their individual buying habits. Do you really want your supermarket to know what you drink or how often? Or are you prepared to sacrifice this privacy for the benefits a reward program offers?

BizWORD

Advertising *is a paid, non-personal message communicated through a mass medium.*



FIGURE 6.12 When you look at product labels, you may think 'low fat', 'reduced fat', 'fat free' or 'light' are going to be healthier options, but quite the opposite is true. Just because a product is labelled in this way, doesn't mean that it's lower in calories. In fact, most low fat foods will add sugar, refined carbohydrates and chemicals to make up for the loss in taste. Many companies market their foods in this way to increase sales from people who think they can eat twice as much as before and not worry about gaining weight.

SNAPSHOT



'The marketer may interpret the word "special" to mean that the product has a distinct or particular character . . .'

Advertising — what does 'special' mean?

What precisely does the word 'special' mean when it is displayed above a product for sale? Most customers would take this to mean the item is for sale at a cheaper than normal price. However, this may not necessarily be the case. The marketer may interpret the word 'special' to mean that the product has a distinct or particular character, that it can perform a particular function, or that it is different from what is ordinary or usual. The interpretations can easily be confused. If the marketer uses this word attempting to knowingly mislead customers, then this would be classified as unethical behaviour. If the marketer wants to advertise the fact that the product is available at a bargain price, then the words 'on special' would have a clearer meaning.

When consumers discover that advertisements are untrue or inaccurate, they may feel cheated and stop buying the product. They may also decide to complain to the relevant government agencies, in which case the bad publicity this generates can do untold long-term damage to a business's reputation.

SNAPSHOT QUESTIONS

1. **Outline** how you would interpret the word 'special' if you saw it displayed above a particular product.
2. **Explain** why the use of the word 'special' might be considered unethical.
3. **Discuss** the impact if a business creates advertisements that are untrue or inaccurate.

Untruths due to concealed facts

Many customers are aware that advertising takes liberties with the 'truth'; they do not perceive advertisements to be believable or honest. An advertised product may not make a consumer more successful, glamorous, sexy, happy, healthy or wealthy. However, the unethical practice of concealed facts — pieces of information purposefully omitted from an advertisement — can severely harm the trust customers have in a product or a business.

Exaggerated claims

Exaggerated claims — referred to as **puffery** — cannot be proved. For example, a claim that a certain shampoo or toilet paper is superior to any other on the market cannot be confirmed by consumers. In a recent example, a brand of sparkling mineral water advertised the fact that the bubbles were 'natural' and bottled at source. This was shown to be misleading for the bubbles were added later during the bottling process.

BizWORD

Puffery *is exaggerated praise or flattery, especially when used for promotional purposes, that no reasonable person would take as factual.*

Vague statements

Another type of unethical advertising practice involves the use of vague statements — statements using words so ambiguous that the consumer will assume the advertiser's intended message. These 'weasel' words — deliberately misleading or ambiguous language — are by their nature vague and allow the marketer to deny any intention to mislead or deceive. For example, *helps* is a common weasel word, as in 'helps fight against', 'helps restore' or 'helps to make you feel'. Although some marketers regard such statements as acceptable, others do not.

6.4.3 Good taste in advertising

What is considered to be in 'good taste' is highly subjective. Some consumers may regard an advertisement as offensive, while others might view it as inoffensive. For example, Italy's largest clothing manufacturer, The Benetton Group, prides itself on creating advertisements and advertising campaigns that are unique, artistic, occasionally confronting and centred on passing a comment about a contemporary issue. There is usually common agreement as to what society considers acceptable and marketers must be aware of community sensitivities. Many consumers would regard The Benetton Group advertisements as highly creative and inoffensive.

However, as with many creative pursuits, and advertising is no exception, there are always some marketers wanting to push the boundaries. Nivea was recently forced to pull an advertisement after it was the subject of intense consumer backlash. The skin-care brand shared an advertisement on it's Facebook page for its 'invisible' antiperspirant, which showed a photograph of a woman with dark hair sitting in a white robe, taken from behind her. Underneath the image was the slogan in all caps WHITE IS PURITY. The company was forced to remove the advertisement the same day after a number of social media users complained about the post's racist connotations due to Nivea's assertion of whiteness being 'pure'. While Nivea alleged the ad was only intended to be posted to its Nivea Middle East page, they still withdrew the ad after a large number of people protested and hijacked the online campaign.



Within society, there is recognition of the growing role that mass media is playing in children's lives, and the fact that advertisers and marketers are now targeting children more than ever. One area of marketing to children that has received widespread publicity in Australia in recent years is the sexualisation of children in advertising. According to the Australia Institute, a leading progressive Australian think tank, sexualisation of children in the media 'leads to a range of risks for children'. In their report *Letting Children be Children*, they highlight that premature sexualisation of children can result in increased risk of depression, self-esteem and identity disorders, and premature sexual activity.

BizFACT

Fairfax Media's subsidiary Domain was sued by their main competitor REA Group (who runs Realestate.com.au) over their advertising campaign in 2016, which claimed that Domain was 'the highest rated property app' with the 'best property listings'. The judge in the Federal Court ruled that most of the content did not breach consumer laws and were entirely reasonable claims or just 'advertising puffery'.

BizFACT

In 1976 the Australian Government banned all forms of electronic and print advertising of cigarettes.

FIGURE 6.13 In 2016, one of the most complained about ads was from BCF (Boat Camping Fishing). The ad showed a group of men, women and children enjoying outdoor activities, accompanied by the jingle 'Boating, camping, fishing is BCFing fun'. The ad was not considered to be in good taste and received 248 complaints due to the use of inappropriate language.

SNAPSHOT



"Critics said the ads . . . would put women off going to UltraTune stores"

Case study: UltraTune criticised for 'sexist' rubber catsuit ad campaign

Car service franchise UltraTune has been criticised on social media for the latest in a series of advertisements featuring rubber-clad models, with complaints they show "gratuitous sexualisation".

Critics said the ads, featuring two women dressed in rubber catsuits, would put women off going to UltraTune stores.

But Ultratune executive chairman Sean Buckley told the ABC the ads were a bit of fun that people have taken too seriously.

Both ads feature a voiceover read by a male with a deep voice.

One advertises a competition to win tickets to Wimbledon and has a voiceover saying "Get into rubber and get into Wimbledon" while showing the two models posing with tennis racquets.

The other, for a tyre brand, has a voiceover saying "We're into rubber" and shows the rubber-clad pair posing with an impact wrench and a four-way lug wrench.

A television ad, published on YouTube on January 8, has the tagline "avoid unexpected situations" and shows the same women driving a car that stops on a level crossing.

The car is destroyed by a train, but the women, wearing knee-length dresses, are shown walking away from the burning vehicle.

"They're joking, fun, humorous, have some Hollywood theatrics," Mr Buckley told the ABC.

He said the level crossing ad was designed to highlight dangerous situations that could result if a vehicle was not maintained, and were meant to attract attention.

"I agree we've copped some flak, but the idea we would want to alienate part of our customer base, that's just ridiculous," he said.

"People should lighten up."

One comment on YouTube said although there were very good mechanics at UltraTune, the advertisements may be alienating women.

The post, by Chris Van Wyk, said: "Maybe you should try to appeal to people who traditionally don't work on their cars themselves, maybe, for example, make Ultratune seem appealing to young women who are often apprehensive about going to the mechanic alone as they often feel they are being ripped off or taken advantage of.

"You could show how your businesses are actually safe and respectful places, where women and female customers will be treated as equals rather than as things to be leered at and made fun of."

On Twitter, Coralie Alison from Collective Shout, an organisation campaigning about the objectification and sexualisation of girls in media and advertising, posted a poll asking if the Nexen ad should be binned.

After 24 hours, 79 per cent of 115 votes were for the removal of the ad.

Some Facebook users also accused UltraTune of deleting their posts, and warned other users that the same would happen to them.

Natalie Cargill said she made a post which was no longer visible.

She said she would repeat her deleted post, describing the level crossing ad as having "a very low level of human decency".

Mr Buckley said the only comments removed from Facebook contained directly offensive language including the terms "whores" and "prostitutes", and that "we're not going to put up with insults to staff made by keyboard warriors."

Previous ads cleared by Advertising Standards Board

The company is no stranger to criticism over its advertising.

In 2014, a televised ad showing two women demanding service at an UltraTune dealership while dressed in a rubber catsuit and a rubber dress was investigated by the Advertising Standards Board (ASB).

UltraTune responded to the complaints saying that the ad was filmed in black and white to emphasise that it was deliberately exaggerated and unrealistic in its

nature, that the women are fully clothed, in full control and in a position of power and authority at all times, and that the ad was "tongue in cheek".

Mr Buckley said UltraTune wanted a controversial ad to draw attention to its tyre business after investing heavily in new equipment and securing new suppliers, and "we certainly got that."

The advertisement received 181 complaints, making it the sixth most complained about ad of the year.

Mr Buckley said the use of rubber costumes in the 2014 ad was to draw attention to the tyres, and the same was true of the new ads.

He said the company has grown its tyre sales substantially since the ad was broadcast.

The ASB cleared the ad, saying that the actions of the women were "exaggerated and unrealistic in a humorous way and are only mildly sexually suggestive".

In January 2015 the ASB dismissed complaints against pop-up advertising on the UltraTune website, referring to the 2014 ruling and repeating its findings.

The pop-up ads showed the same women in a range of outfits and including text such as "So what's stopping you?" while advertising tyres, and "You're looking hot and bothered" while advertising airconditioning servicing.

Source: Jonathan Hepburn, 'UltraTune criticised for 'sexist' rubber catsuit ad campaign; company denies alienating female drivers', ABC.net.au, 25 January 2016

SNAPSHOT QUESTIONS

1. **Outline** why UltraTune been criticised?
2. **Explain** the impact these ads have had on UltraTune.
3. **Describe** UltraTune's justification for the ads.
4. **Demonstrate** the difference between legal compliance and ethical responsibility using UltraTune as an example.
5. **Recommend** some ways that people could demonstrate their opposition to UltraTune.
6. Imagine you are a reporter for a current affairs program. **Construct** interview questions you could ask the CEO of UltraTune in relation to their marketing.

6.4.4 Products that may damage health

The marketing of junk food, which is often portrayed as an essential part of a balanced diet, is an area presently being criticised by nutritionists and health advocates, especially as childhood obesity rates approach epidemic proportions (see figure 6.14).

Nutritionists argue that the self-regulatory advertising codes, such as the *Responsible Children's Marketing Initiative* and the *Australian Quick Service Restaurant Industry Initiative for Responsible Advertising and Marketing to Children* (which allow fast-food companies to advertise certain products in children's television programs only if they meet specific nutritional guidelines) aimed at reducing junk-food marketing, are not working. For example, only advertisements screened during designated children's programs or 'designed for children' are covered by the code of nutritional guidelines. It does not, however, cover television programs popular with children, such as *Neighbours* and *Home & Away*, and fast-food companies.

As well as industry established codes, the federal government sets restrictions on children's advertising. In Australia, no advertising is allowed during programs for pre-school children.

Digital advertising of junk food to children

The proliferation of smartphone apps and social-networking sites such as Facebook, Bebo, Twitter and MySpace provide marketers with new and largely unregulated ways of advertising junk food to children. This form of advertising raises new ethical issues (see the following Snapshot).

BizFACT

The ACCC initiated proceedings against Heinz in relation to their Little Kids Shredz products alleging Heinz made false and misleading representations about these products being healthy options for young children despite the fact they contain over 60 per cent sugar. The ACCC alleges that the images on their packages of fresh fruit and vegetables, as well as statements such as '99% fruit and veg' and 'nutritious foods' represent to consumers that the products are of equivalent nutritional value to fruit and vegetables.

BizFACT

Leading health organisations have been lobbying the government to introduce a 20 per cent tax on sugary drinks to tackle obesity, which they believe poses a greater risk to the nation than smoking. They also want unhealthy food advertising on free-to-air television to be banned between 5.30 pm and 9.30 pm when the greatest numbers of children are watching.



FIGURE 6.14 To achieve their aim of slashing sugar by 10 per cent across their best selling products by 2018, Nestlé recently tweaked the ingredients and reduced the sugar content of KitKats, claiming consumers won't be able to taste the difference.

SNAPSHOT



'Children . . . an easy target for marketers.'

BizFACT

One-in-three television advertisements during children's program times in Australia is for food that is high in fats, sugars and salt.

BizFACT

There has been a sharp increase in mobile and smartphone ownership by Australian children. Research released by Telstra in 2015 revealed that 68 per cent of children aged 3 to 17 own a smartphone and spend an average of 21 hours and 48 minutes per week on the devices. More than half of those who own smartphones also own a tablet.

'app'alling marketing

The Parents Jury Fame and Shame Awards are held yearly to name the best and worst examples of food advertising aimed at children. The awards aim to raise awareness of the persuasive and misleading tactics marketers use to target young consumers.

The Shame Award for Pester Power is awarded to food marketing campaigns that use techniques to appeal to children, leading them to nag their parents for unhealthy food. In 2017, Coca-Cola's 'Brotherly Love' television commercial took out this award. This ad features a young boy and his relationship with his cool, Coke-drinking big brother. The ad attracted a number of complaints around issues surrounding marketing sugary drinks to children and condoning bullying.

McDonald's has frequently won the Pester Power award and in 2015 they were named 'the worst of the decade' for being the company that was most often nominated for marketing junk food to kids over the previous 10 years. They are usually nominated for these awards due to the marketing of their Happy Meals.

In 2012, a new award was introduced — the Digital Ninja Award — to address the growing concern about industry use of digital marketing targeted to children and teens. This award is given to a brand that has used digital media in the most obvious way to target children, gaining their attention and driving active participation in the brand, encouraging pester power. Children now have access to multiple forms of social and digital media, which has made them an easy target for marketers.

In 2016, Milo took out the Digital Ninja Award for their MILO Champions activity tracker and app aimed at children aged 6 to 12 years. The activity tracker syncs with the MILO Champions app, tracking activity and nutrition, leading children to believe that MILO is an integral part of healthy living despite being almost 50 per cent sugar. In 2015, McDonald's won this award for their Happy Readers promotion. In 2014, there was a tie between Coca-Cola Amatil's Fanta Flavour Lab, which rewarded children with points for purchases, and McDonald's Emlings app targeted at children aged 4 to 8 years. Prior to that KFC's Snack in the Face app took out the prize in 2013. The inaugural winners in 2012 were Chupa Chups' Lol-a-coaster and Hungry Jack's Makes it Better apps.

SNAPSHOT QUESTIONS

1. **Outline** the role of the Parents Jury Fame and Shame Awards.
2. **Summarise** previous winners of the awards.
3. **Examine** why ethical behaviour is important and the impact these awards have on the recipients.

6.4.5 Engaging in fair competition

Competition in the marketplace is a fact of life. Businesses compete against each other to attract the greatest number of customers. Those businesses that compete successfully will usually increase their sales revenue and profit.



FIGURE 6.15 Telstra was fined $18.5 million for blocking their competitors from installing broadband equipment at their telephone exchanges, which they are legally required to do under their carrier licence. Their competitors need access to Telstra exchanges to install their own broadband infrastructure. Telstra told their competitors there wasn't any room at the exchanges and took unreasonable lengths of time to grant them access, which limited their ability to compete in the broadband market.

The amount of competition in the marketplace can be intense so there is a temptation for some businesses to engage in unfair marketing strategies. For example, businesses should be fair when referring to their competitors in their marketing and their advertisements should not insult or make false assertions towards their competitors.

The *Competition and Consumer Act 2010* requires businesses to compete fairly and contains provisions relating to fair competition. Part IV of the Act aims to deter certain anti-competitive behaviour that limits or prevents competition.

Some examples of anti-competitive conduct that is prohibited include the following.

- *Cartel conduct.* A cartel exists when businesses agree to act together instead of competing against one another. This agreement is designed to increase the profits of the cartel members while putting other companies out of business. For example, it is illegal for competitors to agree to fix, control or maintain prices.
- *Anti-competitive agreements.* Contracts or arrangements containing provisions that substantially lessen competition in a market are prohibited.
- *Misuse of market power.* This prohibits corporations who have a substantial degree of market power from taking advantage of that market power for the purpose of damaging a competitor or to prevent a business from entering into the market.
- *Exclusive dealing.* This occurs when one person or business trades with another and then imposes restrictions on them; for example, where a business will only supply products on the condition that the purchaser agrees to buy goods or services from a particular third party.
- *Resale price maintenance.* Suppliers can recommend that resellers charge a certain price for particular products; however, they cannot stop resellers from charging below that price. It is illegal for suppliers to pressure other businesses to charge their recommended retail price or to stop them from selling goods or services below a specified price.
- *Mergers.* While most mergers are legal and can be very beneficial, they are prohibited if it can be demonstrated that they have the effect of substantially lessening competition in a market.

6.4.6 Sugging

Have you ever been approached by someone in a shopping centre and asked to complete a short survey? Perhaps you have been contacted by telephone and surveyed about a particular product only to discover the person was really trying to sell you something? If so, then you have just been 'sugged'. **Sugging**, **s**elling **u**nder the **g**uise of a **s**urvey, is a sales technique disguised as market research.

BizWORD

Sugging, *selling under the guise of a survey, is a sales technique disguised as market research.*



FIGURE 6.16 The Australian Market & Social Research Society Limited (AMSRS) is a not-for-profit organisation dedicated to increasing the standard of market and social research in Australia. If you are unsure about whether a survey was genuine market research you can visit the AMSRS website to check if the company is a recognised research organisation. They also investigate complaints and can issue sanctions for those companies found to be sugging.

BizFACT

Three questions you could ask to determine if a call is a legitimate survey are:

1. *Are you selling anything?*
2. *Will my participation in this survey result in anyone contacting me to try to sell me anything?*
3. *Will my name and personal information be sold or provided to anyone who will contact me to try to sell me anything?*

BizWORD

Self-regulation *is a system by which a business or industry controls its own activities rather than being publicly regulated by an outside organisation such as the government.*

BizFACT

A complaint about a Bakers Delight advertisement was upheld by the Advertising Standards Board (ASB). The advertisement depicted a four-pack of finger buns covered in M&Ms beneath the wording 'School lunches? Problem solved'. The ASB found that the ad undermined the promotion of healthy balanced diets and breached a section of the AANA Food Code.

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Although this technique is not illegal, it does raise several ethical issues, including invasion of privacy and deception.

Sugging also has long-term negative consequences for market research. The cooperation of consumers is becoming more difficult with response rates to surveys and questionnaires steadily declining. Current indications are that about one-third of individuals now refuse to participate in telephone, online and personal surveys because of suspicion that the survey is really a case of sugging.

6.4.7 A marketing code of ethics

In 2012 a code of ethics was developed for marketers in relation to advertising — the Australian Association of National Advertisers (AANA) Code of Ethics 2012. If consumers feel that an advertisement breaches the code, they can make a complaint to the Advertising Standards Bureau (ASB). The role of the ASB is to ensure that the Code of Ethics is followed. They do this by administering a national system of advertising **self-regulation** through the Advertising Standards Board and the Advertising Claims Board. Both of these boards are part of the dispute resolution mechanism that deals with consumer complaints about most forms of advertising.

Consumers can complain to the ASB who will then consider and assesses any complaints in light of the codes. They then reach a decision by way of simple majority. If a complaint is upheld, then the advertiser is requested to remove or amend the offending advertisement as soon as possible.

Many consumer organisations argue that a self-regulatory system for advertising standards is ineffective because the ASB lacks the authority to enforce the Code of Ethics. The critics believe that advertising standards should be regulated by the government, otherwise there may be a temptation by marketers to ignore industry-established guidelines.

6.4.8 The importance of ethical behaviour

Why is ethical behaviour important? The benefits of ethical behaviour are becoming increasingly evident and include the following.

- Ethical behaviour can lead to significant marketing and business opportunities. Ethical businesses enjoy regular publicity in the media, in journals and on the internet. This creates a positive image of the business.
- Ethical behaviour can attract customers to the business and increase customer loyalty. Customers will reward ethical businesses by purchasing more of their products. An increasing number of consumers are becoming more ethically minded and will actively purchase products or brands that they believe are ethical. This in turn leads to increasing sales and profits.
- It can have a positive effect on employment relations. Productivity, staff retention and absenteeism rates can improve as more employees will want to stay with the business. It will also enable the business to attract the most talented employees.
- It may attract more investors and be more appealing to stakeholders.
- Ethical behaviour can improve a business's reputation.

Customers eventually find out which businesses are acting ethically and which are not. Unethical behaviour, by comparison, will go against the company's image and may damage a business's reputation. Customers may react and boycott certain products if they learn that the business is acting unethically. There have been many examples of businesses who have acted unethically, leading to negative publicity and a refusal by certain customers to purchase products from them. Unethical behaviour may also make the business less appealing to stakeholders.

6.4.9 The importance of government regulation

Why is government regulation important? Government regulations relating to marketing are important as they:

- protect consumers
- protect businesses
- increase consumer trust and confidence in businesses. This results in people buying more products, which is good for the economy
- promote and stimulate competition and fair trade, which benefits consumers, businesses and the community in general
- encourage businesses to do the right thing
- promote competition and creates a more equal playing field.

SUMMARY

- Critics of marketing argue that the industry does not always adopt ethical practices and that it sometimes blurs the lines between what is ethically right and wrong.
- The main ethical criticisms include:
  - creation of needs — materialism
  - stereotypical images of males and females
  - use of sex to sell products
  - product placement
  - invasion of privacy.
- Dishonest or unethical marketing practices ultimately drive customers away.
- False or misleading advertising is not only unethical, it is also illegal.
- Unethical marketing practices relating to truth and accuracy in advertising can range from:
  - untruths due to concealed facts
  - exaggerated claims — puffery
  - vague statements.
- Marketers should ensure that their advertisements are not offensive and are in good taste.
- Marketers have been heavily criticised by consumer and health groups for promoting products that damage health, especially junk food.
- Social-networking sites and smartphone apps are used by marketers to digitally advertise junk food to children.
- Much of this digital advertising is presently unregulated.
- There may be a temptation for marketers to engage in strategies that can limit or prevent competition. The *Competition and Consumer Act 2010* requires businesses to engage in fair competition.
- Sugging — selling under the guise of a survey — is not illegal, but it raises several ethical issues including invasion of privacy and deception.
- The Australian Association of National Advertisers (AANA) Code of Ethics 2012 was developed to regulate marketing.
- The role of the Advertising Standards Bureau is to receive complaints relating to the Code and to ensure that acceptable advertising standards are followed.
- Ethical behaviour and complying with government regulations is important in marketing.

EXERCISE 6.3 REVISION

1 In a recent survey of 350 Australian and overseas marketing managers, 64 per cent responded 'yes' to the question: 'Is it reasonable behaviour to bend the law if you do not actually break it?' **Propose** how you would answer this question.

2 **Define** the term 'materialism'.

3 As a class, **discuss** whether advertising creates unrealistic expectations that many consumers can never attain. Record the main points on the board. Write a paragraph in your notebooks **summarising** the points recorded.

4 **Discuss** whether you think advertising:
(a) leads or reflects the change in gender roles
(b) could be criticised for over-emphasising sex to sell products.

5 **Why** are businesses keen to use product placement?

6 **Justify** whether you consider product placement an ethical or unethical marketing strategy. **Compare** your answer with that of other class members.

7 **Demonstrate** how the following advertising strategies may mislead consumers.
(a) 'Before' and 'after' advertisements
(b) Puffery
(c) 'Weasel' words

8 **Propose** three reasons why the collection of consumer behavioural data, by tracking web users, could be considered unethical.

9 Even though Nivea's advertisement (section 6.4.3) was withdrawn, it created a great deal of attention—which is one of the main purposes of advertising. **Justify** whether you agree or disagree with this statement.

10 (a) Using the format shown in the following table, **examine** five advertisements and record your observations. Choose two advertisements that you think were the most effective. **Justify** your selection.

Name of company	Product	Marketing strategy used	Effectiveness rating 1–5

(b) **Determine** whether any of the advertisements you viewed were unethical. Give reasons for your answer.

11 In small groups, use the brainstorm technique to **critically analyse** the ethical issues involved in:
(a) advertising to young children during morning television programs
(b) using sexual overtones and imagery in advertisements.

12 'Digital advertising to children should remain unregulated and allow the fast-food industry to develop its own set of guidelines.' **Discuss**.

13 **Construct** a concept map **summarising** examples of anti-competitive practices.

14 Find the Australian Association of National Advertisers Code of Ethics.
(a) **Clarify** the objectives of the Code of Ethics.
(b) **Identify** the four AANA Codes.

15 Research the Advertising Standards Bureau online to answer the following questions.
(a) **Outline** the steps involved if a consumer wants to make a complaint about an advertisement they find offensive.
(b) **Examine** a determination made by the Advertising Claims Board and evaluate the outcome.

16 **Why** are ethical behaviour and government regulation important in marketing?

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- **Weblink:** Australian Association of National Advertisers (AANA)
- **Weblink:** Advertising Standards Bureau

on Resources

- **Digital doc:** Chapter summary (doc-24808)
- **Interactivity:** Chapter crossword (int-7159)
- **Interactivity:** Multiple choice quiz (int-7160)

EXERCISE 6.3 EXTENSION

1 **Examine** what advertising standards must be met before an advertisement can be aired on television. **Discuss** why we have advertising standards and **determine** whether there are any areas where advertising certain types of products should be subject to stricter regulation.

2 You have been asked by your manager to place a 'special' sign on a number of items, but the price is not to be lowered. **Assess** whether this is an ethical or unethical practice. As an employee, **determine** what you could do. **Compare** your answer with that of other class members.

3 Research the Australian Competition and Consumer Commission (ACCC) to answer the following questions.
(a) **Outline** what information the ACCC provides about advertising.
(b) **How** does knowledge of this information influence marketing promotion practices?

4 **Discuss** whether a marketing manager should refuse to produce a product that could have harmful side effects, even though consumers are demanding the product. **Compare** your answer with that of other class members.

5 If you were the marketing manager for a food company account, **investigate** which you would prefer: government regulation of food additives or a voluntary industry code. In your answer provide advantages and disadvantages for each alternative.

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Weblink: Australian Competition and Consumer Commission (ACCC)

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