

KILLING THE GOLDEN GOOSE: WILL BLENDED
ADVERTISING AND EDITORIAL CONTENT DIMINISH THE
VALUE OF BOTH?

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ABSTRACT: Native advertising involves disguising ads as editorial content in order to overcome consumer skepticism. This chapter argues native advertising is deceptive and threatens to spread advertising's low credibility to all content, thereby destroying the reason advertisers wanted to mimic editorial content in the first place. The blending of advertising and editorial content threatens to lead to heightened distrust of all media, as consumers discover editorial content is suffused with promotion. In other words, in pursuit of short term gain, native advertising may, in the long run, diminish the credibility of that content it seeks to mimic.

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INTRODUCTION

Native advertising attempts to “deliver paid ads that are so cohesive with page content, assimilated into the design, and consistent with the platform that the viewer simply feels that they belong.”(IAB)¹ Put less euphemistically, native advertising is made to look like editorial content to benefit from the greater credibility of the apparently objective speaker, while not surrendering control of the message. Native advertising is “stealth marketing,”² (Goodman, 2006) which involves integrating ads into content in a way that conceals its status as ads. Critics claim native advertising is deceptive and threatens to undermine journalistic integrity (Levi, 2015).³ Defenders claim any deception is addressed by requiring disclosures and that further regulation is unwarranted.⁴

This chapter argues that native advertising threatens to undermine the credibility of the institutional press at a critical juncture when its survival is under assault.⁵(Baker, 1994). Ironically, native advertising undermines its own effectiveness to the extent it undermines media credibility. If consumers find it difficult to know

what is advertising and what isn't, they are likely to become more distrustful of *all* content.

Native advertising also presents challenges to regulating advertising in general. If it is harder to tell the difference between advertising and non-advertising, it becomes harder to defend regulatory regimes that subject advertising to more regulation than other types of speech.⁶ This is a global problem. Although many countries, such as Sweden and Australia, (Edstrom, 2016; Kenyon, 2016), have much more extensive regulation of advertising, native advertising presents a particularly difficult problem for democratic societies dedicated to freedom of speech.

According to the industry, the best native advertising is read and experienced as news, or editorial content, with the promotional aspect delivered unobtrusively. It is most commonly found on-line, in the digital versions of the traditional press, like the *Washington Post* and the *New York Times*, and in digital-only publications like the *Huffington Post* or *Salon* and can be identified by disclaimers such as “paid post” or “sponsored content,” but those disclaimers tend to be relatively unobtrusive. You may have to be looking for them to discover they are there. “The best content marketing [native advertising] blends news, promotion, and customer engagement so skillfully as to be unclassifiable.”⁷ “[W]hen it [native advertising] is done with ... flair, relevance and journalistic integrity ..., it is a beautiful thing to see.”⁸

The problem is sometimes native advertising is *too* “seamless.” *The Atlantic* discovered this the hard way with a foray into native advertising sponsored by the Church of Scientology.⁹ It carried what looked like an article about Scientology but which actually a paid post. Many readers had apparently not realized the article was

sponsored by the Church and were confused or outraged by the promotional tenor of the article and further incensed when they saw negative comments were being deleted.

¹⁰ According to one observer, the Scientology piece failed because “the *Atlantic* violated the spirit of native advertising by giving a platform to a controversial institution that didn’t jibe with its intellectual tradition. Then it made things worse by censoring some of the negative reaction that filled up the comments stream.”¹¹ This incident illustrates native advertising’s potential to both deceive readers and to poison the well of journalistic credibility. Native advertising is attracting legal attention as well.¹² The Federal Trade Commission recently published guidelines for the practice.¹³ Unfortunately, the general thrust of these Guidelines is limited to disclosure.

THE NATIVE ADVERTISING CONTROVERSY

A. Independence

Native advertising is controversial because it violates a fundamental tenet of editorial integrity – it creates the risk that content will be dictated by the wishes of advertisers and other powerful interests.¹⁴ Although newspapers and magazines have long been supported by advertising, (Baker, 1994), it used to be that there was a separation between the news/editorial side and the advertising side of the business. The separation was always imperfect and breaches in it are not a recent phenomenon. (Kerr, 2004)

What is new is that until recently, most publications at least paid lip service to the idea that advertiser control of content violated journalism ethics. This is no longer a given. Today, according to an article in the *Columbia Journalism Review*, traditional “boundaries between editorial and advertising in journalism newsrooms aren’t what

they used to be. Editors at Time, Inc. now report to managers on the business side.”¹⁵ In an earlier era, that would have been a major breach of the ethic of separation.¹ The reason for the ethic of separation is that something approaching reliable sources of information are critical to the proper functioning of a democracy. But newspapers are under increasing pressure from mergers, the Internet and ad blockers which have disrupted the conventional relationship. That leaves advertisers searching for new models of reaching consumers.

For example, in the above Columbia Journalism Review article, the author discusses an on-line newsletter, run by Purina, called *The Daily Growl*. The author observes that “the Purina operation is, in some ways, closer to a newsroom than journalists would care to admit.”¹⁶ “*The most obvious difference is that the team is explicitly aligned with the interests of the world’s second-largest pet food company.*”¹⁷ But this difference arguably makes a great deal of difference in the content. The issue is not whether the employees of *The Daily Growl* look like reporters, but whether they act like them. It seems unlikely that we can expect *The Daily Growl* to cover exposés of Purina’s labor practices.

Many digital media news sources rely on native advertising for half or more of their content. Some, such as BuzzFeed, claim much more than half of its content is sponsored. In short, native advertising is ubiquitous. It was developed to get around advertising’s two big problems: clutter and low credibility.

¹ However, Helen Gurley Brown is reported to have admitted *Cosmopolitan* never ran stories about the health risks of smoking to women because cigarette companies were major advertisers.

B. Clutter

Much advertising is easily identifiable as such: billboards, print ads, broadcast ads, pop-up and banner ads, point-of-sale displays, celebrity endorsements, etc.¹⁸ “[T]he fields of view that haven’t been claimed for commerce are getting fewer and narrower.”¹⁹ Indeed, there is so much advertising in the environment that it is routinely described by professionals in the field as “clutter.” As Ken Wheaton, a columnist for *Advertising Age* put it, “Given a choice, consumers would rather not have their preferred content interrupted with advertising—even good advertising. They typically endured ads because they had to, or because the alternative cost money.”²⁰ Ads waste their time. So they block them whenever they can.

But where they can’t and consumers are exposed to unmediated advertising what they encounter is a cacophony of ads. So in that environment an advertiser’s chief goal is to “break through the clutter.” Also, native advertising often can “survive the gaze of ad-blocking software”²¹ because it looks like editorial content. But even if they advertisers evade ad-blocking technology and break through the clutter of ads in the environment to capture consumers’ attention, advertisers face another difficulty: will the consumers believe the ad?

C. *Credibility and the Third-Party Technique*

Advertising has a credibility problem.²² “Advertising has no credibility. Advertising is not believable because consumers perceive it to be biased. Advertising is the voice of the seller.”²³ Consumers expect an advertiser’s incentives to sell will likely overwhelm whatever incentives it has to be truthful. Indeed, the likelihood a seller will engage in inflated claims about its product is so well-established there is a

legal principle, called the “puffing doctrine,”²⁴ which denies a buyer compensation for a seller’s falsehoods on which the buyer relied and by which he was harmed but which the court concludes no “reasonable person” should believe.

Confronted with the twin problems of consumers’ sensory and cognitive overload from too much advertising and the low credibility of advertising, marketers have been incredibly inventive in coming up with ways to get their messages to their target audiences more effectively by engaging in activities and communications which do not signal so overtly (or at all) their status as marketing.²⁵ Such marketing can break through the clutter and be given more credibility because it is seen as more credible. “Stealth marketing” encompasses all manner of techniques;²⁶ native advertising is a type of stealth marketing.

As noted above, although there is “no universally agreed upon [definition]”²⁷ of native advertising, what “most advertisers and publishers aspire”²⁸ to do in native advertising is “deliver paid ads that are so cohesive with the page content, assimilated into the design, and consistent with the platform behavior that the viewer simply feels that they [the ads] belong.”²⁹ This sense of “belonging” involves what is known as “the third-party technique” and it is fundamental to public relations practice.

Public relations at its most basic involved sending out a press release about your client’s product in the hopes newspapers would cover the “story.” In most cases, the success of public relations efforts depended on widespread press coverage of the client’s press release. But it could also involve *creating* the “news” through contests, product give-aways, concerts or “protests.” Yet the thread running through these various stunts and gimmicks was the press. The press agent’s efforts will be for naught

if they are not covered by the media. The media is the “third party” that makes these promotional efforts work.

Edward Bernays, commonly referred to as the “Father of Public Relations,” is often credited with having created the third-party technique. The third-party technique involves getting an apparently independent speaker to promote your product. “Instead of assaulting sales resistance by direct attack, he [the propagandist] is interested in removing sales resistance.”³⁰ (Bernays, 1928 at 77). As public relations professionals Al and Laura Ries observe, “Advertising is taken for what it is—a biased message paid for by a company with a selfish interest in what the consumer consumes.”³¹ (Ries & Ries, 2002). In order to “get something going from nothing, *you need the validity that only third-party endorsements can bring.*”³²

The third-party’s perceived independence is what makes the message credible. Of course this credibility advantage would disappear if readers knew that in fact the third-party had been paid to run the story. This is why it is apparent that disclosures are ineffective to combat the deception that native advertising may generate and that, moreover, advertisers cannot mean what they say when they claim to embrace disclosures. Advertisers embrace them because they know they will be ineffective.³³

One shortcoming with relying on third-parties to transmit your message is they may not transmit it in the terms you would like or even at all. If the editor of a news source does not believe your product launch is newsworthy she may not send a team to cover it. If you rely on word-of-mouth through social media you may have problems even where the buzz is favorable, if it is framed in terms that are in conflict with or “off message” with your advertising campaign. Worse still, the buzz may be

unfavorable. If you open up a review site and you don't control the posts, some of the posts may be negative, sometimes very negative. So the ideal promotion is one where a third-party is apparently speaking, but the advertiser completely controls the message. Of course once it becomes well-known that advertisers control much of the content, the distrust that the public feels for advertising will like spread to media generally, thereby obviating the undertaking.

CONCLUSION

Bernays thought “[t]he conscious and intelligent manipulation of the organized habits and opinions of the masses”³⁴ was essential to a democratic society. He believed the opinions of the masses were not so much reasoned, as formed by others into a sort of rubber stamp, “rubber stamps inked with advertising slogans, with editorials, with published scientific data, with the trivialities of the tabloids and the platitudes of history, but quite innocent of original thought.”³⁵ He thought what was needed in order to make the democratic experiment of rule by the masses work was a way for leaders to “mold the mind of the masses that they will throw their newly gained strength in the desired direction... Whatever of social importance is done today... must be done with the help of propaganda. Propaganda is the executive arm of the invisible government.”³⁶ As Bernays envisioned it, this function would be performed by the wise “public relations counsel.”³⁷ It almost goes without saying that most of those public relations counsel are employed by the world's major corporations. We are living in the world Bernays helped to create.

One of the most significant stories about the 20th century is the rise of various promotional industries – public relations, marketing, and advertising. This explains the

popularity of the television show *Mad Men*. The story is not just the story of the growth of a world-wide culturally dominant industry, but of the making of consumer culture, one with its roots in America's past, but one that would also be developing in a new direction as Americans were urged to direct many of their political impulses to consumerism. Being a consumer, they were told, was like being a citizen, only more tangible and immediately satisfying.³⁸

It is dangerous to assume any past time represented halcyon days against which we compare our present difficulties. Nevertheless, it seems obvious the boundaries between promotional and non-promotional content used to be clearer than they are today. The promotional opportunities in today's environment likely exceed even Bernays' wildest dreams. The opportunities to promote one's product are so numerous, so subtle, so ingenious that they seem almost limitless. Native advertising offers the opportunity to have a brand "story" integrated into a news story in the pages of a major news organization, one perhaps even written by their staff to integrate seamlessly into their other content, with only minimal, often ineffective disclosure of it as advertising. It is almost too good to be true.

And it may be too good to be true. There is, as always, a snake in this paradise of promotion. That snake is that the whole purpose of making advertising look like content was so that advertising would enjoy the credibility of editorial content, but in a world where everything is promotion what if instead of advertising *gaining* credibility journalism *loses* it? If that happens there is little to be gained by trying to associate oneself with a "trusted publication." Native advertising threatens to kill the golden goose of editorial content credibility, leaving both advertisers and the public worse off.

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¹ The Interactive Advertising Bureau (IAB) has produced a white paper attempting to define native advertising and to describe what sorts of disclosures constitute “best practices.” See <http://www.iab.com/wp-content/uploads/2015/06/IAB-Native-Advertising-Playbook2.pdf> at 3.

² For a discussion of the many types of stealth marketing see Ellen Goodman, *Stealth Marketing and Editorial Integrity*, 85 TEX. L. REV. 83 (2006).

³ Lili Levi, “A Faustian Pact”? *Native Advertising and the Future of the Press*, 57 AZ. L. REV. 647 (2015).

⁴ *More Effective Native Advertising Is a Solution to Ad Blockers*, ADVERTISING AGE (FEB. 3, 2016).

⁵ C. EDWIN BAKER, ADVERTISING AND A DEMOCRATIC PRESS, (1994).

⁶ Tamara R. Piety, “A Necessary Cost of Freedom”? *The Incoherence of Sorrell v. IMS Health, Inc.* 64 ALA L. REV. 1 (2011).

⁷ Michael Meyer, *The Wolf at the Door: Should Journalism Worry About Content Marketing?*, COLUM. JOURNALISM REV. 24, 27 (Nov./Dec. 2014).

⁸ See *supra* note 4 at 2.

⁹ See *Netflix Goes Native on The Atlantic to Promote ‘House of Cards’: Pays Six-Figure Sum for Lengthy Multimedia Article on First Couples*, ADVERTISING AGE (March 11, 2015).

¹⁰ Lucia Moss, *After Scientology Debacle The Atlantic Tightens Native Ad Guidelines*, ADWEEK (Jan. 30, 2013) <http://www.adweek.com/news/advertising-branding/after-scientology-debacle-atlantic-tightens-native-ad-guidelines-146890>.

¹¹ *Id.*

¹² Lili Levi, *A “Faustian Pact”? Native Advertising and the Future of the Press*, (Feb. 27, 2015) Available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2579341.

¹³ Federal Trade Commission Guidelines. See also *FTC Spells Out Its Guidance for Native Ad 2016 to Be the Year of Native Advertising Cases ?*, ADVERTISING AGE 12, 22 (2015).

¹⁴ Joe Pompeo, *‘Wall Street Journal’ editor Gerard Baker Decries Native Advertising as a ‘Faustian Pact’*, CAPITAL (Sept. 25, 2013) <http://www.capitalnewyork.com/article/media/2013/09/8534047/wall-street-journal-editor-gerard-baker-decries-native-advertising-fau>. See also Meyer, *Wolf at the Door* *supra* note 7.

¹⁵ Meyer, *Wolf at the Door*, *supra* note 7 at 24.

¹⁶ *Id.*

¹⁷ *Id.* (emphasis added).

¹⁸ Such giveaways are particularly prevalent in pharmaceutical sales. See CARL ELLIOTT, *WHITE COAT, BLACK HAT: ADVENTURES ON THE DARK SIDE OF MEDICINE* 59 (2010).

¹⁹ Mathew B. Crawford, *The Cost of Paying Attention*, N.Y. TIMES, SR 5 (March 8, 2015).

²⁰ Ken Wheaton, *So Which Ad-Blocking Parasite Are Your Going to Go After, The Consumer or the Tech Company?*, ADVERTISING AGE, 60 (Sept. 14, 2015). Significantly, Wheaton suggests the best way out of this dilemma is to sue the tech companies. “I can’t quite believe I am saying this, but how about suing the ad blockers out of existence?” *Id.*

²¹ Maureen Morrison & Time Peterson, *The War on Advertising*, ADVERTISING AGE, 10-12, 12 (Sept. 14, 2015).

²² I say “primary problem” from the standpoint of the development of native advertising. There are any number of other problems with advertising. I have discussed them at length in my other work. See

TAMARA R. PIETY, BRANDISHING THE FIRST AMENDMENT: COMMERCIAL EXPRESSION IN AMERICA (2012).

²³ AL RIES & LAURA RIES, THE FALL OF ADVERTISING & THE RISE OF PR 75 (2002).

²⁴ For an excellent overview of the puffing doctrine see David A. Hoffman, *The Best Puffery Article Ever*, 91 IOWA L. REV. 1395 (2006).

²⁵ “Marketing” is an umbrella term for a broad range of promotional activities of which advertising is one type. Most large advertisers coordinate their promotional activities using an approach called “Integrated marketing Communications.” See TERENCE SHIMP, ADVERTISING, PROMOTION AND SUPPLEMENTAL ASPECTS OF INTEGRATED MARKETING COMMUNICATIONS, 6th Ed. 6 (2003). For a more extended discussion of the phenomenon and its significance for the regulation of advertising see Tamara R. Piety, *Free Advertising: The Case for Public Relations as Commercial Speech*, 10 LEWIS & CLARK L. REV. 367 (2006). See also, Ellen Goodman, *Stealth Marketing and Editorial Integrity*, 85 TEX. L. REV. 83 (2006).

²⁶ For a good overview of the subject see Goodman, *Stealth Marketing*, *supra* note 25

²⁷ See *supra* note 1 at 4.

²⁸ *Id.*

²⁹ *Id.* (emphasis in original).

³⁰ EDWARD BERNAYS, PROPAGANDA (1928, 2005) at 77.

³¹ RIES AND RIES, THE FALL OF ADVERTISING, *supra* note 23 at 5.

³² *Id.* at xx (emphasis added).

³³ For a discussion of the ineffectiveness of disclosures see Rebecca Tushnet, *Naming Rights: Attribution & Law*, 2007 UTAH L. REV. 781, 799 n. 53 (2007).

³⁴ *Id.* at 37. This idea was not original to Bernays. As noted in the *Introduction* to the 2005 edition of *Propaganda*, by Mark Crispin Miller, Bernays was deeply influenced by Walter Lippmann. *Id.* at 16-17. See WALTER LIPPMANN, PUBLIC OPINION (1922, 2007) at 34 and *passim*.

³⁵ PROPAGANDA at 48.

³⁶ *Id.* at 47-48.

³⁷ *Id.* at 63.

³⁸ See, e.g., Lizabeth Cohen, A CONSUMER’S REPUBLIC: THE POLITICS OF MASS CONSUMPTION IN POST-WAR AMERICA (2003).

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