

ABAS – Academy of Business Administrative Sciences

2000 International Conference
Prague, Czech Republic, July 10-12, 2000

Ethical and Legal Dimensions in Marketing – the Israeli Approach

When has an advertiser crossed the line between right and wrong? An ethical and legal perspective

by

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Abstract

Legally speaking, marketing legislation demands honest disclosure. Legislators refrain from intervening in fundamental rights as expression, free trade, occupation, and liberty of contract in advertising. The Israeli legislator intervenes to prevent phenomena that are, in its view, dangerous or abusing especially to groups needing protection. Lacking sanction, in public law, against misleading or manipulating not based on false facts, consumers may find remedy in civil actions, relying also on morality and ethic rules.

Ethically, deception and lack of honesty are not necessarily wrong. Deception need not include falsehoods. One needs a finer distinction between forms of deception that are ethical and non-ethical. Moreover, manipulation goes beyond mere deception in persuading the consumer. Ethical rules, as such, go beyond legislative regulations.

Part 1: The Moral Approach to Marketing in Israel

This paper discusses the Israeli approach to marketing. It is a follow-up on a different project we wrote last year on the norms of marketing in which we sought to distinguish between the ethical dimensions and the legal dimensions of marketing. In this paper we try and pinpoint what we call “the Israeli approach” to the issue. Now, if one wants to spell out what is legally required of marketing professionals in Israel, then one has to examine the Israeli legal system in depth, including its basic principles, its laws and its court rulings, and eventually come up with some kind of general conclusion. With morality the issue is in a sense more complex because when considering morality, we lack something equivalent to a legal system that can account for what is morally required in marketing in Israel. What does it mean to talk about the Israeli moral approach to marketing? Is there something like a unique socio-cultural approach to morality?

What is interesting (or at least philosophically interesting) about this question is that it forces us to deal with the notion of *context* at several different levels. From a normative point of view this discussion brings to light one of the more important differences between the ethical dimensions of marketing and the legal dimensions. Both the legal and the moral scholar examine norms. The difference is however that from the legal perspective it makes sense to talk about the Israeli legal approach to marketing, whereas from a moral perspective the question is problematic and it is not clear what we mean by the very notion of an Israeli moral approach to marketing. Legal norms are state-bound, whereas moral norms are not.

What is the normative issue at stake? Marketing activities such as advertising and selling practices are not activities that can be characterized as exhibiting excessive honesty and truthfulness. One does not expect a used car salesman to tell the truth, the whole truth and nothing but the truth about the old car he is trying to sell. Is the car dealer behaving immorally

when persuading a customer to purchase the product while not being totally honest? Is he doing something illegal? Total honesty and disclosure of all the defects in a used car is most likely not the best marketing strategy; it will probably not help sell the car at the best possible price. Being persuasive and not being totally honest are part of what is required of a successful marketing professional. It does not make sense to infer from this that if a person is a successful marketing professional (i.e., is not totally honest) that person cannot therefore be morally respectable. As becomes clear from the start, the question of truthfulness and honesty in marketing is clearly not an all-or-nothing issue, and a careful distinction must be drawn between dishonest marketing activities that are morally and legally permissible from those that are morally legally forbidden. In other words, it would be wrong to claim that truthfulness and honesty are irrelevant to marketing, but it is would be equally inaccurate to state that marketing professionals are expected to adhere to absolute standards of complete and total disclosure and honesty.

In an article that is by now a classic, (Carr, 1968)¹ presents an argument that helps formulate the issue. Carr argues that in the same way that bluffing is an acceptable way of playing poker, and honesty is not expected in a card game, so too in the business world, bluffing is part of the trade. The point of Carr's argument is that the moral distinction in poker between legitimate bluffing, on the one hand, and cheating and lying (immoral bluffing), on the other hand, is context dependent. It depends on the context of the game. Similarly in other activities, basketball players are expected to deceive their opponents in order to gain an advantage in the game; they are not allowed to cheat. Marketing is a unique practice. Values such as honesty and truthfulness have to be assessed within the context of the particular practice involved, i.e., marketing. Different practices embody different values. Values simply do not make sense in abstract.

Deception in general, and specifically in marketing, is not a simple, uniform event. Deception can be analyzed in terms of at least two types of events: On the one hand are acts of deception that interfere with the purpose of the practice and are called cheating. On the other hand are acts of deception that do not interfere with the purpose of the activity and are legitimate. The practices involved in marketing are to be understood within the wider context of the business world and the market. Hence we should ask: what is the purpose of this practice, in order to distinguish between different forms of deception. Obviously, this is a broad question that cannot be covered in the context of this presentation. However, as has been thoroughly discussed in the past, the business of business is not merely about making money. Business is a social activity, specifically the activity of exchanging money, goods and services based on mutual agreement. The idea of "mutual agreement" has built into it the expectation of an honest accounting and fair exchange (Solomon, 1993)². Thus, bluffing and dishonest marketing practices that undermine the notion of fair exchange and mutual agreement are practices that interfere with the purpose of the activity and are therefore classified as cheating.

This is one way of dealing with the notion of context. The notions of honesty and truthfulness have been recontextualized within the context of marketing and the business world. The meaning of honesty or, in contrast, the meaning of deception is understood within the context of the practice. Context is very important. Understanding the context requires close attention to the details of the situation. It is an interpretive task. What might seem in the abstract to be the "same thing", might actually mean, and thus be, something quite different. For example, consider the abstract value, which many would consider an enduring ethical value, of "respect for ones family" or the seemingly universal human goal for "security." Often such values are taken to be non-context dependent. In contrast, we argue that what it actually means to "respect and care for one's family" differs greatly depending on the concrete context under consideration, and, similarly, the sense and content of what an individual actually desires

under the abstract label of "security" can actually vary greatly depending upon personal, social and cultural circumstance. The outcome of this is that without considering the particular context of such statements--unless the concrete details are spelled out and examined--the statements remain at the level of empty platitudes. The contextualist claims that the actual substantive content of these and other values is determined by features of the practice.

All this, however, does not flesh out anything that can be identified as the Israeli moral approach to marketing. There are two other alternatives for examining truth and honesty in marketing within a concrete context and hence for identifying the Israeli moral approach. The first is a sociological recontextualization and the second a psychological recontextualization. Both claim to identify the Israeli moral approach to marketing, and both, we claim, actually fail to identify moral norms and instead discuss the social norms prevalent in Israel.

Let's begin with what we called a sociological recontextualization. Probably the easiest and most straightforward way of starting this lecture is by turning to a sociological description of Israeli society in order to infer from Israel's sociological characterization, to its ethics. Standard sociological research methods would be used. In part at least such a sociological description would focus on three points. First it would explain that Israel is a multicultural society composed of an agglomeration of immigrations from different cultures, east and west, democratic and non-democratic, etc. Second, Israeli society is a consumer society in the Veblen sense of *conspicuous consumption*. It tries in many respects to mimic American society. This not to suggest that consumers are either smart buyers nor that they have power, but rather to suggest that people buy and need to have new and flashy things in order not to lag behind in style and social status. Finally, one cannot overlook the fact that Israel is located in the Middle East and is strongly influenced by Middle Eastern manners and consequently by its norms of business. Consequently, one might then try and infer from these three sociological

characteristics that marketing ethics in Israel is more multi-dimensional in its norms and perhaps rougher than what is familiar to most Europeans and Anglo-Americans.

This approach might be easy and straightforward, but it is also wrong in that it confuses social norms for moral norms and fails to identify the Israeli moral approach to marketing. The ghost of moral relativism haunts normative issues in business ethics. It is a mistake to identify the social norms that prevail in a society with morality. Some social norms are indeed moral, others might be a-moral (i.e., morally neutral) and at times, especially with corrupt and evil societies, a society's social norms can be immoral. Especially now, when the business community is so concerned with globalism, we are in constant need of means for morally evaluating norms of societies and business partners that are very different from our own. Though our own legal norms and our own social norms are often too ethnocentric for assessing distant partners, this does not entail that any kind of social norm that is accepted in a particular society is hence also moral.

A second method for trying to pinpoint the Israeli moral approach to marketing is a psychological method. Suppose we conduct an in-depth psychological evaluation of the position of Israelis, or Israeli marketing professionals, on the issue of truth and honesty in marketing. Could the results of this study be interpreted as the Israeli approach to marketing? Clearly such a study identifies the position of Israelis about marketing. However, the results of this evaluation would still not account for the Israeli moral approach to marketing. One must distinguish between what is believed to be ethical by Israelis, or Israeli marketing professionals, and what is actually ethical in Israel. The idea that *“some or all of the beliefs Israelis, or Israeli marketing professionals, hold with respect to marketing ethics are seriously wrong”* is at least an option we have to consider. We cannot dismiss this possibility of hand by identifying between the marketing norms Israelis believe in and morality. Certain norms and beliefs might be unanimously accepted within a certain community or culture, and yet be

wrong. The fact that a group of people upholds certain norms does not entail that these norms are ethical. Hence, if we want to pinpoint the Israeli approach to marketing ethics, we should be very careful not to confuse the beliefs and norms of Israelis, or any sub group of Israelis, with what is actually ethical in Israel.

The significance of keeping these points of view, these different kinds of norms, distinct is evident if we just keep in mind the fact that marketing activities are not state-bound. We promote and sell goods and services to people and organizations that are not part of our own state-bound social community. Moreover, at times certain norms might be common and accepted in a particular community, even though they are immoral. Hence, in conclusion, one of the important differences between the legal dimension and the ethical dimension of marketing is that from a legal perspective it is not only possible but also necessary to talk about a state-bound approach to marketing, i.e., how a community defines truthfulness and honesty in marketing. From a moral point of view it is not clear what it means to talk about a particular state-bound moral approach to an issue like marketing.

Part 2: The Legal Dimension

Israel does not have a formal written constitution. However, it has certain Basic Laws in which some of the fundamental rights and liberties are anchored. Other fundamental rights may appear in regular laws or may only be recognized as such by the courts, even if they are not specifically prescribed and regulated in a written enactment. Fundamental rights stated by Basic Laws are protected from contradicting liberties or freedoms and overrule them unless specified otherwise by explicit laws.

Freedom of occupation is a statutory fundamental human right in Israel anchored in *Basic Law: Freedom of Occupation*

Preservation of property, as well as protection of life, body and dignity, are recognized as statutory fundamental human rights in *Basic Law: Human Dignity and Liberty*. Both basic laws state that there shall be no violation under these Basic Laws except by a Law fitting the values of the State of Israel, designed for a proper purpose, and to an extent no greater than required, or by regulation enacted by virtue of express authorization in such law (article 8 of *Basic Law: Human Dignity ad Liberty* and article 4 of *Basic Law: Freedom of Occupation*).

Freedom of expression is a fundamental liberty recognized by the judicature as such though it is not anchored in any written legislation.³ However, this freedom like all other liberties is limited by rights and some public interests or public policy. One has also to remember that there should be a distinction between liberty and lawlessness. The *Contracts (General Part) Law, 5733-1973* laid down the principle of Liberty of contract in regard to one's business and commerce. This law states, "The contents of a contract may be whatever is agreed upon by the parties" (section 23). A principle restriction, however, is prescribed in the same law (section 30): "A contract, the making, contents or object of which is or are illegal, immoral or contrary to public policy, is void."

However, "public policy" is a vague term, which is based mainly on morals accepted by the society in which the courts function. The enforcement of human rights and liberties is of major significance to modern jurisprudence. Where legislators are of the opinion that principles should not be left to the court to decide or invent, they prefer to enact them. Such legislation, while limiting the discretion of the courts on the one hand, provides them guidance on the other.

Protection of the consumer, protection against health hazards, and protection of minors are among the areas in which the Israeli legislature decided to intervene and which are deemed proper purposes for "violation" of fundamental rights. The primary laws in this regard are the *Consumer Protection Law, 5741-1981* and certain chapters in the *Civil Wrongs Ordinance*

[*New Version*]. We should also add the *Second Authority for Television and Radio Law, 5750-1990*, which authorized regulations to be issued in regard to ethical matters in advertisements in broadcasting and screening.

Some of these are part of the criminal law, others are part of the private civil law and some belong to both. Criminal law is a segment of public law. It is hard to think that any community can function without it.

Two of the main purposes of the criminal law are preventing various kinds of conduct and continuing education of people and society in proper standards of conduct, which should be observed in order to make decent life possible for all. The punishments imposed are those deserved in retribution for the crime committed, including omissions to act in some cases. Private law, which includes mainly the law of contract, the law of torts, and the law of property, is a body of legal rules which is concerned with the activities of persons in their private relations.

The need to include rules of ethics in penal legislation may be requested by professional organizations. At the first stage, each group of professionals tries to set codes of behavior, with the hope that all members of the group will uphold them. The second stage is forming disciplinary tribunal or committee, granting them the power and authority to take measures against those members who do not follow the rules, and even to expel them from that organization. It may happen that at a certain stage professionals, who are not members of such a group, behave in a way which contradicts the code. Unfair competition or staining the entire profession may follow. At this stage the help of the law is sought. The ethical professionals demand that the penal legislation include those rules of ethics and make them binding upon all people who carry out business in the same trade or profession. Here we may find regulations based on or originated as rules of ethics, and even may be defined and named as such, but from

the legal perspective they have become pure binding penal regulations. They ceased to be rules of ethics. They have become legal rules.

Legal “rules of ethics” will thus remain in force until they are formally repealed, and will be applied as such by the judicature. Another alternative that is sometimes used is to give a quasi-legal status to the rules, by introducing in the law the possibility of disciplinary measures declaring infamous conduct punishable. By doing that, the rules of ethics as set by organized groups of professionals will be binding on all. Whereas the first and second tiers are forms of legal system that regulate externally the activity of the profession, the third is a form of internal regulation, which may be better adapted to the business world.

The Consumer Protection Law, 5741-1981 is an example of the use of both alternatives – the civil and the criminal - by the Israeli legislature, and the introduction of rules of ethics as part of the penal legislation. One of the purposes of this law is to prevent misleading acts, defining them both civil wrongs and criminal offences. A breach of that duty may be considered criminal and the state may start criminal proceedings against the dealer, but said breach is also considered a civil tort that may give legal grounds and cause for civil action by the consumer against the dealer.

The list, however, includes only factual matters. The Law does not go beyond the demand of full disclosure of facts.

The *Consumer Protection Law* was amended in 1988 to include specific authorization of the Minister of Industry and Trade to issue regulations with the approval of the Economics Committee of the Knesset (i.e., the Israeli Parliament), in which the Minister may state terms and conditions for advertising directed at minors, including prohibition of such advertising that may mislead minors, taking advantage of their age, ignorance and lack of experience or encouraging activities that may harm physical or mental health or integrity. Such regulations were enacted in 1991.⁴

The regulations, hence, forbid use of manipulation, which may affect minors, or encouragement of any action, which may be hazardous or harmful to them. Such general and inclusive restricting rules, violation of which is a criminal offence, are not found as regards any advertising not directed to minors, with the exception of the *Restrictions on Advertising Tobacco Products for Smoking Law, 5743-1983*. The reason for not enacting such inclusive rules for advertising directed at adults is the wish of the legislature to refrain from intervening in commercial relations and also from laying down moral-social obligations.

A general rule covering all contracts, including business and trade, is given in section 12 of *Contracts (General Part) Law, 5733-1973*. It states:

- (a) Each person should act in a common and honest way during the negotiations aimed to cause the entering into a contract.
- (b) A party who has not acted in a common way nor honestly shall compensate the other party for any damage caused to him as a result either of the negotiations or of the entering into the contract.

Court Cases

The Tempo Beer Case

Restrictions on the use of gimmicks or any manipulation in advertising may be considered to be in violation of the right of occupation, freedom of speech and expression, violation of the property of the producer or distributor and restricting the liberty of contract. The Israeli Supreme Court dealt with this question in the case of Tempo Beer Industries.⁵

The Second Authority for Television and Radio Law, 5750-1990 authorized the Council of the Authority to make rules on any matter that concerns broadcasts (section 24) and on all aspects of the broadcasting of advertising messages, including

In virtue of that power, the Council of the Second Authority enacted *The Second Authority For Television And Radio (Ethics in Advertising in Television and Radio) Rules, 5754-1994*. Rule 23(a), as amended in 1996 states: “A franchisee (i.e., one who has received a franchise to operate a broadcasting station) shall not broadcast or transmit any advertising broadcast for any alcoholic drink, containing 1.2 alcohol in vol. or more, directed to minors, or where a minor appears, and shall not broadcast or transmit and advertising broadcast alleging or misleadingly hinting that drinking alcohol drink contributes to quality of life, health, success, better mental or physical functioning, or sexual success, or a broadcast offering competition or prizes in relation to drinking, or presenting uncontrolled drinking.”

Tempo Beer Industries Ltd. wanted to encourage consumption of the Beer, which it manufactures under the brand name "Maccabi", by announcing a drawing. To promote it, Tempo Beer prepared a television commercial, which included a film with a couple of young tourists walking in a moving background showing various scenes from around the world. In the film the narrator announces that first prize is a trip around the world, and this also appears in writing on the screen. The narrator of the commercial encourages viewers to take part in the drawing, and explains the terms, which included collecting caps and labels from bottles of Maccabi Beer. The film ends with a jingle: “You have Maccabi – you have friends.”

The Second Authority did not permit the commercial to be screened. Tempo Beer petitioned the Israeli Supreme Court against the Second Authority alleging, inter alia, that the rules published by the Council of the Second Authority violated the freedom of expression and the fundamental right of occupation.

The petition was dismissed. The Court ruled that the Law authorized the Council to prevent abuse of the powerful advertising means to influence or affect the public consuming preferences, in a way which may harm or act against vital public interests, such as public health, public good and safety. Encouragement to drink alcoholic beverages may cause all that,

according to the Court. However, the Council did not find there was a well-based cause to totally forbid any advertisement for alcoholic drinks, but balanced it by putting restrictions on such advertising broadcasts

However, the court ruled that Tempo Beer could promote its business and beer as it chooses in any other framework and manner, provided it does not use the facilities and services of the Second Authority. This case emphasizes the different approaches, as well as the limits, of law and ethics. The Court did rule that the promotion initiated by the beer company was unethical, and even against vital interests of the public. However, it did not forbid it in principle, but instead restricted it only as regards the use of the broadcasting through the Second Authority. The Court based its decision on the wording of the Law.

The Melnik Case

In a later case – the *Melnik* case - handled by the Supreme Court sitting as the High Court of Justice, where the Second Authority was involved, a slightly different approach was taken.⁶ The petitioner was the owner of a piano store and imported pianos from around the world. He noticed that clients were less and less interested in the pianos he imported. He suspected that the main reason for declining interest in his pianos was the commercials broadcast on television for another brand of piano exclusively imported by a competitor. The advertisement did not appear in commercial advertisement for pianos, but as incidental or concealed advertising in other commercials, when the camera stopped and focused on the brand name of the piano or of the importer. It just so happened that all the pianos appearing in the commercials broadcast by the Second Authority were those imported by his competitor. He petitioned to the High Court of Justice and demanded to instruct the Authority to discontinue screening any program or broadcast where there were musical instruments bearing brand names or the names of the distributors or importers, or at least to order the removal of any such

brand name. He alleged it was a kind of manipulation aimed at encouraging the promotion of the other pianos by influencing the reasonable viewer to purchase a particular brand of piano or to attract attention to the brand of pianos as seen on television. This type of misleading advertising can also function subliminally. Such advertising has a subliminal effect on the consumer, touches the subconscious and may even be more efficient, alas, more dangerous, than regular conscious advertising.

The Court ruled that in principle it is forbidden to prevent advertising. Advertising is a part of freedom of expression and even serves social needs and help, especially in a democratic country built on free market and business competition. However, advertising may have a negative approach. Freedom of the press and the freedom of occupation are on one side of the spectrum and on the other side is the potential damage to society. Another kind of harm is the exposure of the public to commercial advertising, which is not identified as such. Also there is a danger of opening a channel for benefits and unfair advantages in commercial competition by preferring people on the basis of personal contacts or others. The petition was upheld, and the Court ordered the Second Authority to reconsider the whole question of incidental advertising.

The Golden Wheels Case

An exceptional case was heard at the Magistrate Court of Tel-Aviv – the *Golden Wheels* case.⁷

The defendant was a company whose business is billboard and on-bus advertising. The company wanted to prove to marketing people that its channel of advertising was very efficient. For that purpose it “invented” a product that did not exist, naming it “Lemonana” (nana is the name of the plant from which mint is extracted). This was a pure virtual product, which existed on paper only. The first stage was the preparatory one. The advertisement included questions such as “What did Yaffa tell Ilana?” This was the stage to initiate curiosity. The second stage, which appeared after some time, was providing answers, such as: “Both

Yaffa and Ilana drink Lemonana.” Next to the answers on the advertisements was a picture of a bottle with a brand name “Lemonana” with the inscription “new” in red. The third stage took place two weeks later. The company sent circulars to the marketing people explaining that Lemonana was never a real product, but only existed in the advertisements. The letter was accompanied by results of a survey proving the great success of the system by showing the great number of people who were looking for the product in the supermarkets, kiosks and other stores, as a result of the billboards and on-bus advertisements. At this stage the plaintiff sued the company. He claimed that he was misled by the advertisements, and as a great lover of lemon and mint he looked for that drink in many places and was greatly disappointed not to find it on the shelves. He requested compensation and damages from the defendant for the great disappointment and for being used as a guinea pig in their manipulative gimmick. His main cause of action was misleading in advertising.

The judge was of the opinion that advertisement of a product that does not exist was misleading in the meaning of the *Consumer Protection Law*, especially when the advertisement included a picture of bottle with the inscription “new”. The gimmick employed in the advertisement and the use of the public as guinea pigs in a laboratory constitutes a civil wrong of misleading. The advertisement, as a matter of fact, was not directed to the general public, but only to marketing people. However, the advertisement used the general public, which was misled. This was not the case of concealed advertisement. It was an open one. The “product” advertised was the service of the company. But even if such an advertisement can be considered misleading, should it be forbidden or restricted? Could such an attitude be interpreted as overprotection of the public?

Advertising is a form of expression. As such, advertising should be protected as part of the term “Dignity” in its meaning in *Basic Law: Human Dignity and Liberty*. Furthermore, advertising is an applied art, and as such serves as a meeting point of the industrial and artistic

worlds. Advertising is and may be restricted and limited on various grounds, such as the prohibition against passing off and fraud. The liberty or freedom of advertising expression can be limited and restrained by rights of individuals or vital interests of the public.

Commercial advertisement is a very important channel for information. It promotes commercially; it broadens the possibilities of the individuals, and assists consumers in making decisions. However, the goal of each advertisement is to promote a certain product or products. When such advertisements are accompanied by false or untrue information, they should be forbidden. This is the balance point. Restriction of misleading advertising is not a violation of freedom of expression beyond what is required. It is much more so when the misleading is accompanied by manipulation on the public account. "Human dignity" does not include only freedom of expression. It means also treating the human being as a person of value and self-identity. Using the public or any human being as a means for promotion of sales in a misleading manner is misleading per se and is a violation of the dignity of the person as such. The judge ruled that advertising based on non-existing facts is misleading.

The remedy in that case could not be an injunction to stop the advertising, as it had already ended. The judge decided, therefore, that the company should pay only the costs of the plaintiff, as he did not prove any other pecuniary damages. It is not completely clear from this judgment whether the judge upheld the claim because he found that the advertisement was a misleading act in its meaning in the Consumer Protection Law, or he upheld the claim because he thought that the advertising violated the dignity of the person, which is a broader interpretation and may also include ethical aspects not mentioned specifically in the Law.

Conclusion

We can see that the general trend of the Israeli legislature is to back away from moral considerations and rely on the free trade and the invisible hand of the market to protect

consumers. On the other hand, courts do try to apply some moral considerations in cases brought before them, but even then they try to base them on an interpretation of the written law, or call the legislature, either the primary or the subsidiary, depending on the case, to amend the written law so it can be applied.

Including more rules of ethics in penal legislation will not create greater protection of the consumer. Including “violating freedoms” rules in penal legislation may raise great opposition and may even be interpreted as unconstitutional. However, recognition by the civil law of more types and causes of actions, be it contract law, civil wrongs law or any other civil legislation regarding misleading, deceit, manipulation and fraud, based on morals and ethics may grant the individual consumer the necessary weapon against the unethical advertisers, salesmen and manipulators

Examining the legal dimension of marketing, we encounter a body of knowledge and a series of important distinctions that are non-existent from the ethical standpoint. The legal dimension to marketing is based on the law. The Israeli society is ready and willing to accept any arrangement regulated and sanctioned by the law. Living up to moral responsibilities is different from complying with legal obligations. Hence, no clear-cut answer can be given to the question when has an advertiser crossed the line between right and wrong. In order to be a morally responsible marketing professional, it is not sufficient to merely comply with the law. In marketing, like other facets of life, there are things a responsible person either does or refrains from doing that go beyond legal responsibility. .

The law refrains from intervening in the activity of the market and does not regulate it unless the legislator believes a clear and distinct danger to the public exists or that there is a need to protect the people against themselves. Such are the cases where groups need the protection of the law. In other cases, the law leaves it to the individual to find a solution in private civil law of contracts and torts and not in the context of public law or state intervention.

While both the marketing profession and consumers require the protection of the legislature against the deceitful and manipulative marketing professionals and advertisers it is important for the legislature to respect the decisions of the actors in the free market and minimize external, legal regulation. Moreover there are many cases where the legislator prefers not to intervene as advertising is at least in part associated with freedom of expression, and serves important social needs, especially in a democratic country built on free market and business competition. There are other sanctions aside from legal punishment: unethical advertisers might be sanctioned and banned by their professional organization and if all else fails, perhaps the market will be wise enough to sanction those who are dishonest and deceitful in their conduct.

NOTES

¹Carr, A.Z.: 1968, "Is Business Bluffing Ethical?" *Harvard Business Review* **46**, 143-153.

² Solomon, R.: 1993, *Ethics and Excellence (The Ruffin Series)*(Oxford University Press, NY)

³ H.C. 73/53 "*Kol Haam*" Co. Ltd. v. *Minister of the Interior*, [1953] 7 P.D. 871 [in Hebrew].

⁴ Consumer Protection (Advertising Directed to Minors) Regulations, 5751-1991.

⁵ H.C. 4520/95 *Tempo Beer Industries Ltd. v. The Second Authority for Television and Radio et al.* (not reported, but appeared in 41 *Dinim Elion* 245 [in Hebrew]).

⁶ H.C. 7833/96 *Melnik v. The Second Authority for the Television and the Radio et al.* 52(3) P.D. 586 [in Hebrew]

⁷ C.C. 5431/96 *Avigayil v. Golden Wheels Ltd. Co.* (not reported, but appeared in *Dinim Shalom* 11. In Hebrew). No appeal has been filed against this judgement.

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