

*Advertising Regulation*, by Shenagh Barnes and Michael Blakeney, Sydney, Law Book Company Limited, 1982, lxx + 612 pp. \$45 (imp).

Until publication of this book there was a dearth of material available for both legal practitioners and students interested in this field. Although several U.K. and U.S. text books have been published on the multi-faceted topic of "advertising law" this is the first Australian text on the subject.

The book commences with an examination of what is "advertising" and comments on certain social and economic aspects. For the purposes of the book the authors have treated "advertising" as including any form of promotional communication aimed at potential consumers by producers and suppliers of goods, services and land. As the authors point out this field involves diverse media from radio and television to direct mail and trade expositions. Obviously the laws and regulations with which these diverse areas may be concerned are numerous. The book is entitled "Advertising Regulation" as the term "regulation" admits a variety of interpretation and includes the advertising industry schemes of self-regulation.

A glance at the index to the book will show that the topics examined in relation to the field of advertising include the Trade Practices Act, Copyright Law, Weights and Measures Legislation, Trademarks, Passing Off, Lotteries Legislation, Trading Stamps, Defamation, etc. It was obviously a mammoth task to produce a book dealing with such wide and varied areas of legislation. The scope of the subject has necessarily entailed that many of the subjects cannot be dealt with in great depth. However, the book does an admirable job and a practitioner when confronted with a problem of which area of the law is relevant to a particular "advertising" question would be well advised to start his research by leafing through the index and reading the appropriate commentary.

From a practitioner's point of view and also from the point of view of anyone involved in the industry, the book is particularly valuable as it contains a comprehensive appendix setting out the text of many of the voluntary codes adopted by trade associations of media proprietors and by groups of traders in particular areas as well as those of individual trading and advertising agencies. These codes, while outside the ambit of the law, are taken seriously by most advertisers. Failure on the part of an advertising agency to comply with these regulations can result in action being taken by the Media Accreditation Authority. Such action can include a warning, fines, the reduction or cancellation of commissions and, most seriously, the cancellation or suspension of accreditation. An accredited advertising agent is entitled to place advertisements with any media proprietor who is a member of a constituent or affiliated association of the Media Council on the basis that payment need only be made within the period allowed by the accreditation rules. Furthermore, only accredited agents shall be eligible to receive commissions payable by media proprietors in respect of the lodgment of particular categories of advertising. Maintaining accreditation is obviously extremely important for an advertising agency.

The authors maintain that the costs and complexities of regulation

may produce a failure to secure the regulatory objectives. They state that "the greater the financial interests in issue, the more likely will the advertiser be to exploit the risks involved in the legal process, since the legal costs will become trivial in comparison to the market interest". However, the authors neglect to consider the fact that in practice, the immense costs of having to amend or cease publication of an advertising campaign will usually be a sufficient deterrent for any advertiser who may contemplate taking a risk on not being prosecuted in return for a perceived marketing advantage. It should be remembered that consumers themselves are often not the instigators of objections to a particular campaign, often it is an advertiser's competitors who maintain vigilance over their rivals' marketing practices and who are never reticent to point out any deficiencies in their rivals' campaigns. For example, the threat of an action for breach of copyright where the competitor considers that the rival has appropriated his copyright material, will often be sufficient to make an advertiser radically alter his campaign. The costs of re-printing, re-recording and the loss of air space, etc. can run to thousands of dollars (and in the case of an advertising agency also may result in the loss of the particular client) so that most advertisers will seek legal advice on a campaign prior to publication.

The authors regard consumers as being "inadequately protected from advertising practices by the common law". However, most practitioners concerned in the industry would argue that consumers were over protected by the common law and by statutory legislation. In the field of advertising, we have come a long way from "caveat emptor".

In their discussion on lotteries, the authors maintain that the regulation of lotteries in Australia is very much a matter of exercise of discretion by the appropriate Government authority. Lotteries were originally legislated against in order to protect the gullible consumer from frittering away his money on schemes in which, although promising wonderful prizes, he had little chance of winning. Today, many traders run schemes which come within the definition of "lotteries". However, although the consumer may not be able to enter into many of the current lotteries until he purchases a particular product, he is not required to dip into his pocket for anything over and above the price of the goods. It is difficult to see why a consumer requires protection from these types of schemes. The authors state that the decision to apply laws legislating against lotteries in an advertising context has probably distorted the substantive law pertaining to lotteries and infused a probably inappropriate moralising context into advertising regulation generally. It is difficult not to agree with this conclusion.

Although trade promotion lotteries can be conducted in New South Wales and (since publication of the book) in Victoria provided permits are obtained, a lottery for a trade promotion cannot be conducted in Western Australia as the relevant authorities will not grant a permit. Therefore, any advertiser who runs a "lottery" in every State and Territory of Australia, will be guilty of an offence under the Western Australian Act and may be

liable to prosecution. However, the relevant Western Australian authorities turn a blind eye to such promotions notwithstanding the fact that they are strictly illegal in that State. This area of the law, as well as the area relating to trading stamps, could do with substantial revision or repealing as it is difficult to justify legislation aimed at protecting the consumer, which in fact causes the consumer no particular harm and which, in any event, is often ignored by the relevant authorities.

The authors conclude with an examination of the extent to which the legal and industry regimes have secured their regulatory objectives and evaluate reform options suggested by overseas experience. They consider that the aim of advertising regulation should be to preserve the perceived benefits of advertising whilst eradicating its perceived vices. They endorse the central policy objective of the United Kingdom precedent which is to harmonise industry self-regulation with the public interest. The discussion is extremely interesting and poses many questions. Their recommendations attempt "to preserve as much as possible of the ethos of self-regulation since ultimately advertising regulation depends upon the commitment of advertisers, the industry, the media and the public".

In conclusion, the book is an erudite examination of the field of advertising regulation in Australia. The scope of the book, although preventing detailed examination of many particular areas, will be one of its most attractive aspects from the point of view of not only legal practitioners and students but also anyone involved in the industry.

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