

instances where "Smith" supported the popular opinion. Despite the general difficulty in determining whether omissions intend to deceive, then, there are cases where intent is clearly present. Commercial examples of deceptive omission might be found in ads that omit hidden charges or costs, for instance, points on a mortgage, or that omit to say that a sale price applies only to a very small number of products.

The preceding examples are meant to illustrate some of the ways in which ads can intend to deceive. Any controversy surrounding the examples should not cloud the main point: There are reasonable presumptive judgments of intended deception that we can make about ads based on the facts of their design, language, and context. Consumers have legitimate moral grounds for complaining about any ad where such reasonable presumption exists. More importantly, advertisers themselves have obligations to assess their own intentions self-critically. They should reject as inappropriate any technique whereby they might mislead by statement, implication, omission, or visual image. Intent is one main criterion by which ads should be evaluated. Both the public and advertisers should apply that standard of evaluation more strictly. Advertisers too frequently engage in a corrupt mouse game with consumers, and the public too frequently tolerates that corruption.

With that conclusion drawn, one final question must be posed. Are there cases where, lacking intent to deceive, advertisers nevertheless have a moral responsibility to the consumers being misled? There are at least two cases in which the answer to that question is yes. First, there is one in which the false impression in the mind of the consumer was a reasonably foreseeable result of an omission. If the advertiser did not intend that result, he or she will be responsible for a negligent failure to exercise appropriate forethought in the design of the advertisement. Some examples of visual representations that highlight the positive features of a product would be the classic cases of chunky cars, even if the advertiser intended no deception. The false ideas carried away by consumers are foreseeable. Omissions that we cannot conclude are intentionally deceptive may often fall into this category. Second, though it is hard to determine when omissions intend to deceive, we still have resources for concluding that advertisers sometimes bear responsibility for false impressions caused by omissions, intentional or not.)

The second kind of case is perhaps more common. In situations where an ad intends no deception, it may

be that consumers unpredictably misread the meaning of the ad. If an advertiser knows this has been the result and yet continues to use the same ad, there is reason for claiming the continued use of the ad is intentionally deceptive. For even if the ad in its debut did not intend to deceive, an advertiser who knowingly trades on a miscommunication knowingly allows a future false impression to be created. Thus, there are cases where, absent initial intent to deceive, the deceptive effect of an ad is nonetheless the ethical responsibility of the advertiser. Further discussion of deceptive effect (and the role it plays in government regulatory action) is left for later readings in this chapter.

## NOTES

1. Some suggest that where no one expects honesty, there can be no deception. . . . Even if that were true, which it is not, it cannot apply to the point that societies can operate with bounded rules against deception. All that such bounded prohibition against deception requires is that most members understand where the rules operate, not that all members do. And, in any case, the claim is false. Even where the social rules against deception are suspended, one person may still attempt to mislead another. The example of the poker game makes this point. Suspending the presumption against deception, then, means only that deception in that area is not considered wrong. It does not mean that deception is impossible.
2. Lying, by definition, is the intentional utterance of a falsehood with the intent to deceive another. As such, lying is a species of deception, and it is the element of *intended* deception that makes a lie presumptively wrong. Jokes or pieces of fiction, after all, are intentional falsehoods. They simply do not intend deception.
3. This analysis also points out the difference between standards of moral evaluation and standards for legal regulation of deceptive advertising. In regulatory matters it is of some importance whether the ad actually misleads the reasonable or only the ignorant consumer, that is, if the ad misleads many or only a very few. If it is few, and if the consequent harm to those few is also small, a government regulatory response may not be appropriate. However, regardless of the number or nature of those misled, if the ad intends to deceive some portion of the public, then there is a strong reason to say the behavior of the advertiser is immoral.