

case in point. Such deception might merely be understood as appropriate sociability. (However, there are cases where falsely telling someone they look fine might be inappropriate—for example, when a person is on his way to a job interview and needs an honest opinion rather than reassurance. Telling when a lie is sociable and when it is inappropriate requires subtle skill and moral sensitivity.)

We also accept deception in the third case, where the parties involved *all* know that deception is likely. The poker game mentioned earlier is an example. So also is the labor negotiation where a party puts forward its “best offer.” Even in these cases, however, the areas of permissible deception are narrowly defined. The poker player cannot legitimately deceive by slipping hidden cards into his hand; the negotiator cannot legitimately deceive by accepting a negotiated settlement and then later refusing to comply with the terms of the agreement.

Do these categories of exception have any implications for our topic of deceptive advertising? Can advertising be counted as an exception to the general rule against deception? Clearly, it cannot count as an instance of the first two types of acceptable deception. Typically, deceptive advertising is not required to save a life or to protect some equally important interest of another party from unjust harm. Nor is deceptive advertising usually a harmless act without any attempt to gain an unfair advantage. More typically, deception in advertising is calculated to create an unfair advantage for the advertiser both against the consumer targeted by the ad and against the business’s competitors. It also intends some loss or harm to both of those parties. A consumer who buys one brand of product because she or he was deceived into thinking it a better value than a competitive product is harmed, as is the competitor.

It is frequently claimed, though, that deceptive advertising counts as an instance of the third category of deception—that is, it is deception in a case where everyone expects (or ought to expect) deception to occur. The frequency of this opinion does not alter the fact that it is confused on both factual and conceptual grounds. There is ample evidence that consumers are in fact regularly tricked by deceptive advertising and marketing practices. (Why would those practices be used if those employing them did not believe they would be successful?) While this discussion is a discussion of the morality of deceptive advertising rather than one about government regulation of ads, a comment about the Federal Trade Commission is in order here. The FTC frequently concludes on the basis of market study that ads trick a significant number of consumers. Ivan Preston’s [. . .] recent book, *The*

*Tangled Web: Truth, Falsity and Advertising*, provides numerous examples where the FTC has found that a significant portion of the surveyed consumer population was misled by intentionally deceptive advertising practices. (The FTC also found that if the claim that consumers expect deception is taken into account, the evidence from consumer research

One possible, and I think very weak, response is to point out that there is no logical contradiction between saying that consumers expect deception and saying that they are simultaneously deceived by deception. After all, some claim, in poker and labor negotiations the parties expect deception yet are sometimes successfully deceived. That is true enough. That mere logical possibility is insufficient to convince me that consumers expect to be deceived. Here is where the real confusion arises for those thinking that such cases fall into the third exception category.

Consumers, having been harmed by a particular deceptive practice, learn to be wary of that practice again. Once you learn that “big size” merely meant bigger but not cheaper, you learn to compare unit prices for products of equal quantity. That alone, of course, suggests that consumers are not expecting that particular form of deception the next time it happened to you.

Moreover, the attempt to assimilate deceptive advertising into the third category again fails. If deception to be expected, it has to be expected in relatively well defined areas. It may be possible to expect deception in the use of a word, but it is not possible, however, to expect deception in all the places where advertisers might use deception. Expecting deception to that degree is both factually and psychologically impossible. It is impossible because the available deceptive practices are infinite in number and a consumer logically cannot guard against a significant number of deceptive avenues of deception would soon result in confusion and decision-making paralysis. Imagine walking down the supermarket aisle and looking for the innumerable ways you might be deceived.

It seems clear, then, that deceptive advertising is not a case of deception where everyone about and expects. The fact that many consumers are deceived about advertising practices does not establish the conclusion that it is conceptually necessary to place ads in the third category.