

READING 11.1

DECEPTIVE ADVERTISING

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PRESUMPTIONS AGAINST

control over their personal information and service of the loyalty program. They, though, are troubled by "big data" to offer organizations the ability to identify personal preferences to shape a person's behavior. The loyalty program as a small instance of the ability of commercial and governmental organizations to track, analyze, and predict behavior. They worry that consumers are voluntarily surrendering their personal information in search of better deals. Consumers seem unconcerned about their carefully mined and analyzed data, but marketing that exploits the data gained by analysis of their behavior is not. That customers voluntarily join a program sufficient by itself to be ethically acceptable? On the one hand, your answer to this question depends on whether you understand the value of information and analysis in the reward program they enroll in.

Regarding the proposed Consumer Privacy Bill in this chapter, what conditions would be enforced on loyalty programs?

Features of Internet search data make it more or less acceptable than the program described here? What are the reasons, and why are they relevant to the practices?

Questions of privacy do you believe about their searching and shopping? Do they understand the data uses of their business partners? Do the uses, actual and potential, of the data might be put?

Are they more concerned about the ability to influence their choices and intimate knowledge of their behavior?

drawn from the following sources: Michael E. Smith, "Effort Is the Industry's Gold Standard," *AdAge*, 2003, <http://adage.com>; Paula Klein, "Data-Driven Decisions at Caesar's," *IDE*, March 2003, <http://ide.com>; David Wallace, "How Caesar's Data-Driven Culture," *DataInformed*, 2003, <http://datainformed.com>; Gary Loveman, "Diamonds Are Forever," *AdAge*, May, 2003, <http://adage.com>; "Planet Money," *Planet Money*, 2003, <http://www.planetmoney.com>.

evolution to more complex transactions seems to require a higher level of trust between parties, as do certain circumstances where the same individuals engage in repeated transactions over time.) In any case, the need for cooperation and trust does not entail a general presumption against deception in advertising. It only entails that societies have some rules against deception.

The morality of our culture, happily, also contains nonconsequentialist standards that can generate stronger and less bounded presumptions against deception. If . . . the ideas of individual rights and dignity rest in part on the autonomy of persons, then there are additional reasons to reject acts of lying and deception.²

Deception cuts at the core of another's autonomy because it is an attempt to short-circuit that person's ability to engage in free, reasoned choice. It is an attempt to manipulate another's decision by getting that person unknowingly to act on false beliefs. Even so conservative a picture of business responsibility as Milton Friedman's sees the relationship between deception and autonomy when it enjoins both coercion and deception. Thus, the contemporary moral commitment to individual rights and dignity allows us to derive a stronger and less bounded presumption against deception than we could if we depended only on the social necessity of some unspecified rule against deceit. We can argue now that any attempt to deceive is presumptively wrong because it attempts manipulatively to undermine the capacity for reasoned choice.

Of course, even this argument against deception will admit that there are instances of deception that can be justified. We cannot identify all possible exceptions to the rule against lying here, but we can identify three typical cases where lies and deception are acceptable. Perhaps the clearest case is the first one, where the deception is needed to save a life. No one, that is no one with moral sensitivity, seriously believes that Dutch villagers were acting wrongly when they deceived the Nazis about the presence of Jews among them. That elaborate deception was necessary to prevent an even greater wrong, an even greater violation of someone's autonomy.

Second, we generally accept harmless deceit where no unfair advantage is sought through the deception. "You look nice today!" when a person really doesn't may be a

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