Advertising and Promotional Activities As Regulated In Jewish Law

By Rabbi Dr. Aaron Levine

Advertising plays a key role in the everyday functioning of the modern market economy. Its positive function consists of improving the information channels of the marketplace. Promotional activities make consumers more aware of alternatives open to them and allow firms who satisfy consumer wants to expand their sales and profits.

The objective of modern advertising clearly goes beyond an informative purpose. Sophisticated techniques are regularly employed today to persuade and cajole people to buy products and services they would not otherwise buy. Likewise, favorable terms of credit allow consumers to effectively attain for themselves a much higher standard of living than would be possible if they were forced to live within their own means.

This article will investigate the ethics of persuasion from the perspective of Jewish law. Two areas of inquiry will be pursued.

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The first area of investigation will identify the responsibilities and constraints Jewish law imposes on the seller to insure that his representations and promotional activities would not be regarded as deceptive or otherwise generate a detriment of some form to the buyer. Specific selling techniques popularly employed today will then be analyzed in light of the criterion developed.

Perceived deception, misrepresentation or detriment on the part of the buyer does not, however, form the only basis for constraining promotional activity in Jewish law. *Normative* judgments in Jewish law deem certain voluntary exchanges as not serving the best interests of the buyer, despite the latter's eagerness to enter into the transaction. Identification of these circumstances forms the substance of our second area of investigation.

The Seller's Disclosure Obligation

Jewish law requires parties to a transaction to deal with each other in an open and forthright manner. Conveying a false impression (*genevat da'at*) by means of word or action[1] is strictly prohibited.[2]

The biblical source of the *genevat da'at* interdict is disputed by Talmudic decisors. R. Yom Tov Ishbili of Seville (Ritva, ca.

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1. An example of creating a false impression by means of an action, discussed in the Talmud, is the merchant practice of painting old utensils for the purpose of passing them off as new *(Bava Mezia* 60b). Giving the appearance of a readiness to provide testimony in a litigation, when in fact no evidence will be offered, provides another example of prohibited misleading conduct. Accordingly, A may not appear in court at the moment plaintiff produces his only witness that B owes him a hundred dollars, even if the purpose of the appearance is merely to frighten the defendant into admitting on his own accord his debt to the plaintiff. Since A has no real evidence to offer in the matter, he may not create a false impression that he has testimony to offer. Such conduct is prohibited by force of the verse: "From a false matter keep far" (Exodus 28:7) see *Shebu'ot 31a.*
2. Maimonides (1135-1204), *Yad, Mekhirah* XVIII:I; R. Jacob b. Asher (1270-1343), *Tur, Hoshen Mishpat* 228:5; R. Joseph Caro (1488-1575), *Shulhan Aruch, Hoshen Mishpat* 228:6; R. Jehiel Michael Epstein (1829-1908), *Arukh ha-Shulhan Hoshen Mishpat* 228:3

1250-1330) places such conduct under the rubric of theft.[3] R. Jonah b. Abraham Gerondi (ca. 1200-1263), however, regards *genevat da'at* as a form of falseness.[4]

Proceeding from the *genevat da'at* interdict is a disclosure obligation for the seller. Proper disclosure requires the seller to divulge to his prospective buyer all defects in his product which are not visibly[5] evident.[6] Disclosure responsibility extends even to a flaw whose presence does not depreciate the article sufficiently to allow the vendee a price-fraud claim.[7]

The Good Faith Imperative in Jewish Law

In connection with the biblical prohibition against false weights and measures, the Torah writes "Just balances, just weights, a just *ephah*, and a just *hin* shall ye have ....." (Leviticus 19:36). Since the *hin* is a measure of smaller capacity than the *ephah*, its mention is apparently superfluous. If accuracy is required in measures of large capacity, it is certainly required in mesures of small capacity. This apparent superfluity leads Abaye (4th cen.) to exegetically connect *hin* with the Aramaic word for yes, *hen*, giving the phrase the following interpretation: Be certain that your "yes" is just (sincere) and (by extension) be certain that your "no" is just (sincere). The phrase "a just *hin*" hence forewarns against hypocritical behavior. If an individual makes a commitment or offer he should fully intend to carry it out.[8]

Market Behavior Causing Needless Mental Anguish

Admonishment against dealing deceitfully in business transac-

3. R. Yom Tov Ishbili, *Ritva, Hullin* 94a
4. R. Jonah b. Abraham Gerondi, *Sha'arei Teshuvah*, sha'ar 3, *ot* 184
5. R. Binyamin Rabinowitz - Teomim, *Hukat Mishpat* (Jerusalem, Harry Fischel Foundation, 1957) p. 90
6. *Yad*, op. cit.; *Tur*, op. cit.; *Sh. Ar.*, op. cit.; *Ar. haSh.*, op. cit.
7. *See* R. Joshua ha-Kohen Falk (1555-1614) *Sma, Sh. Ar.*, op. cit. 228 note 7; *Ar. haSh*, op. cit., 228:3
8. Abaye, *Bava Mezia* 49a; *Yad, De'ot* VI:2

tions appears twice in the Pentateuch. The first mention of the interdict occurs in Leviticus 25:14: And if thou sell aught unto thy companion, or buy aught of thy neighbor's hand, ye shall not be extortionate to one another." Reiteration of the warning occurs shortly afterward in verse 17: "Ye shall not therefore be extortionate one to another, but thou shalt fear thy G-d for I am the Eternal your G-d." Rather than being taken as a repetition of the warning against fraud in monetary matters, verse 17 is exegetically interpreted in Bava Mezia 58b to prohibit causing someone needless mental anguish.[9] Referred to in the rabbinic literature as *ona'at devarim*, this prohibition extends to a variety of contexts.[10]

Ona'at devarim in a commercial setting is illustrated when an individual prices an article while having no intention to buy it.[11] What is objectionable here, according to R. Menahem b. Solomon of Perpigman (1249-1316), is that pricing an article creates an anticipation on the part of the seller that he will make a sale. This anticipation is dashed when the inquirer decides not to pursue the matter further.[12] While the prospective buyer need not concern himself with the disappointment a vendor may experience should his price inquiry not consummate into a purchase by him, pricing

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9. *Rif, Bava Mezia* 58b; *Yad, Mekhirah* XIV:12; *Rosh, Bava Mezia* IV:22; *Tur*, op. cit., 228:1; *Sh. Ar.*, op. cit., 228:1; *Ar. haSh.*, op. cit., 228:1
10. Examples of behavior in a noncommercial context that are interdicted on the basis of *ona'at devarim* include reminding a repentant person of his past misdeeds, soliciting technical advice from someone whom the inquirer knows lacks the necessary expertise, and telling someone that his suffering is due to his evil deeds. In all these instances the behavior causes needless pain and is therefore prohibited.
11. R. Judah, *Bava Mezia* 58b; *Rif*, ad locum; *Rosh*, loc. cit.; *Tur*, op. cit., 228:3; *Sh. Ar.*, op. cit., 228:4; *Ar. haSh.*, op. cit., 228:2
12. R. Menahem b. Solomon, *Beit ha-Behirah, Bava Mezia* 59a. Pricing an article with no intention to buy it is prohibited, according to R. Samuel b. Meir (ca. 1080-1174), *Rashbam, Pesahim* 114b, on account of the possible financial loss this behavior might cause the vendor. While the vendor is preoccupied with the insincere inquiry, serious customers may turn elsewhere.

an article he has *no intention* of buying causes the vendor *needless distress* and is hence prohibited.[13]

The *ona'at devarim* interdict, according to R. Judah b. Samuel He-Hasid of Regensburg (ca. 1150-1217), disallows the vendor to conduct his business by soliciting a bid for his article by a potential customer. Rather, the vendor must quote to the interested party the price he demands for his article. The former method is objectionable on the grounds that it may cause the buyer needless disappointment in the event his bid is rejected.[14]

Bait-and-Switch

Blatantly violating the good faith imperative, the *ona'at devarim* interdict, and the *genevat da'at* prohibition is the bait-and-switch advertising technique.

In its basic form, bait-and-swich involves the advertising of a popular article at a ridiculously low price simply for the purpose of luring customers into the store. The deception becomes apparent when the bargain bait cannot be purchased, for one pretext or another, and salesmen, after disparaging the advertised product, attempt to switch customers to higher priced substitutes.

Since the vendor has no intention of selling the bait item, the advertisement is clearly an insincere offer as well as deceptive and hence violates the "good faith" imperative and the *genevat da'at* prohibition. The *ona'at devarim* interdict is also violated here. Notwithstanding that use of the bait-and-switch tactic may *eventuate* in the satisfaction of the customer, nothing removes the fact that the latter is filled with a sense of disappointment and annoyance *at the moment* he is advised the item is not available.

A variant of the above case occurs when the vendor is in possession of the advertised item but only in limited supply. Suppose the offer for the attractive item is made for a specific period of time, and crude estimates of the demand for the product

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13. See commentary of R. Solomn b. Isaac (Rashi) of Leviticus 25:17
14. R. Judah B. Samuel He-Hasid, *Sefer Hasidim, siman* 1069

at the attractive price indicate that the supply of the advertised item will be exhausted considerably before the expiration date of the offer. Given the totally unrealistic duration of the offer, the advertisement remains insincere and violates for the advertiser both the "good faith" imperative and the *ona'at devarim* interdict.

Attaching a warning to the advertisement that supplies are limited and are available on a "first-come-first-served" basis may, however, be sufficient to satisfy the "good faith" imperative and free the advertiser from the *ona'at devarim* interdict. In the final analysis, whether the above caveat does in fact make the advertisement morally acceptable depends, in our view, on the interpretation the majority of people attach to the advertisement. Consumer surveys could prove very helpful here.

Undeserved Good Will

Good will in the form of a reputation for fine customer service, low prices, or a high quality product represents an important factor accounting for business success and expansion. Generating good will on the basis of deception and illusion violates Jewish business ethics. Such conduct is prohibited under the *genevat da'at* interdict.

An illustration of generating undeserved good will, discussed in the Talmud, involves the sale of meat originating from an organically defective animal, to a non-Jew. Duping the customer into believing he is getting a bargain by misrepresenting the meat as originating from a healthy animal constitutes *genevat da'at.* While price fraud may not be involved, as the non-Jew is charged a fair price for what he actually receives,[15] the transaction is, nonetheless, prohibited on account of the undeserved sense of obligation the customer is left with for the storekeeper. This sense of appreciation is, of course, undeserved as the bargain is imaginary.[16]

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15. *Ar. hasSh.,* op. cit., 228:3

16. Samuel, *Hullin* 94a; *Rif,* ad locum; *Yad,* op. cit., XVIII:3; *Rosh, Hullin* VII:18; *Tur,* op. cit. 228:6; *Sh. Ar.,* op. cit., 228:6; *Ar. haSh.,* loc. cit.

A variant of the above case occurs when the storekeeper offers the misrepresented meat as a gift to his non-Jewish friend. Authorities are in dispute as to whether this practice is objectionable.[17]

Violation of the *genevat da'at* interdict, according to R. Joseph D. Epstein (contemporary), does not stand pending until the duped party actually performs an undeserved favor for the offender, but rather is transgressed immediately by dint of the "stolen" feeling of indebtedness the offender secures by means of his ploy.[18]

Genevat Da'at in the Passive Case

Another circumstance involving possible violation of *genevat da'at* law occurs when A, by means of neither action nor word, inspires B with a false impression. Does A's *passivity* in the matter free him of an obligation to correct B's misconception? An analysis of the following Mishnaic passage of Makkot II:11 provides an insight of the treatment of the above case in Jewish law:

> Similarly, a manslayer, if on his arrival at the city of his refuge, the men of that city wish to do him honor, should say to them, "I am a manslayer!" And if they say to him, nevertheless (we wish it), he should accept from them (the proffered honor), as it is said: And this is the *word* of the manslayer - (Deut. 19:14)

One critical detail essential in identifying the precise

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17. Generating undeserved good will in the gift case is permitted according to R. Asher b. Jehiel (*Rosh*, loc. cit) and *Tosafot, Hullin* 94b, on the interpretation of R. Joel Sirkes (*Bah, Tur*, loc. cit.)

    Members of the school of thought prohibiting such action include R. Jacob Tam (quoted in *Rosh, Hullin* VII:18); R. Solomon Adret *(Rashba, Hullin 94a)*, R. Isaac b. Jacob Alfasi, Maimonides, and R. Moses of Coucy on the interpretation of R. Solomon b. Jehiel Luria (see *Yam-shel Shelomo, Hullin, 7 Siman 19)*

18. R. Joseph David Epstein, *Mizvot ha-Shalom* (New York:Torat haAdam 1969) p. 243

circumstances the Mishna refers to is the nature of the presumption the townspeople are operating under when they proffer the manslayer the honor. Does the Mishna speak of the case where the townspeople are ignorant of the fact that the individual they desire to honor is a manslayer? Within this line of interpretation the gesture is entirely mistaken, i.e., had the townspeople only known of his status, they surely would not have tendered their offer. Or, is the Mishna speaking of the case where the townspeople are fully aware that the individual they desire to honor is a manslayer? The former interpretation would squarely place the manslayer case within the framework of *genevat da'at* law.

Supportive of the former interpretation is the following point in *genevat da'at* law the Jerusalem Talmud derives from the above Mishna: Suppose the townspeople assess A to be proficient in two tractates, when, in fact, he is proficient in only one. Notwithstanding A's passivity in inspiring the community's bloated assessment of him, he is, nonetheless, obligated to correct their misconception. This lesson is derived by the Jerusalem Talmud from the refusal obligation of the manslayer discussed above.[19] With the bloated-assessment case derivative in nature, parallel structure requires the parent case to involve a mistaken offer of honor.

The above approach to the Mishna makes it abundantly clear why the manslayer's refusal obligation must be established by force of the verse: "And this is the *word* of the manslayer." With the refusal obligation rooted in *genevat da'at* law, it may well be argued that given the *passive* role the manslayer assumed in inspiring the false impression in the community, he is free of any obligation to correct their misconception of him. Interjection of the verse "And this is the *word* of the manslayer" is therefore necessary to broaden the corrective obligation to even the passive case.

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19. *Jerusalem Talmud Makkot* II-6; *Jerusalem Talmud Shevi'it* X:32

Broadening the corrective obligation to even the passive case apparently does not follow from Ritva's discussion of the introductory clause of the above cited Mishna in Makkot. Introducing Mishna 11 with the word *similarly*, points out Ritva, indicates a definite link with Mishna 10. In Mishna 10 we are told that in the event the manslayer is a Levite and he already resides in an official city of refuge, he may not serve his punishment of "exile" in his own city of residence, but rather must be banished to another city of refuge. The underlying purpose of banishment, explains Ritva, is to humble the manslayer by isolating him from his familiar surroundings. Allowing the Levite the convenience of serving his exile in his *own* city of residence would therefore defeat the whole purpose of banishment. Now, the link between Mishna 10 and 11 becomes abundantly clear. The point of law discussed in Mishna 11 is also rooted in a desire to humble the manslayer so as to effect his atonement. Accordingly, should the townspeople of his city of refuge offer to honor him, the manslayer must humble himself and initially refuse the honor, so as to say "on account of the heinous crime I committed I am not worthy of honor.[20]

With the manslayer's refusal obligation stemming from his atonement need, extending the corrective responsibility to the bloated-assessment case discussed above would not appear valid. What follows from Ritva's view is that a *compelling* case cannot be made for imposing corrective responsiblity in the passive case.

The Corrective Obligation in the Case of Self-Deception

While misleading someone by word or action is prohibited, an individual is not obligated to correct an erroneous impression when it is the result of self-deception. The following episode, recorded in Hullin 94b, illustrates this point.

> Mar Zutra the son of R. Nahman was once going from Sikara to Mahuza, while Rava and R.

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20. R. Yom Tov Ishbili, *Ritva, Makkot* 12b

> Safra were going to Sikara, and they met on the way. Believing that they had come to meet him he said, "Why did the Rabbis take this trouble to come so far (to meet me)?" R. Safra replied, "We did not know that the master was coming; had we known of it we should have put ourselves out more than this." Rava said to him, "Why did you tell him this? You have now upset him." He replied, "But we would be deceiving him otherwise." "No. He would be deceiving himself."

Talmudic decisors regard Rava's reaction as appropriate. Since Mar Zutra had no basis for presuming that his fortuitous meeting with his colleagues constituted a welcoming party, Mar Zutra was guilty of self-deception. Consequently, the group was under no obligation to correct the erroneous impression.[21]

While the judgement that Mar Zutra was a victim of self-deception provides the rationale for relieving R. Safra and Rava of an obligation to divulge to him the fortuitous nature of their encounter, the appropriateness of this course of action apparently follows from a different standpoint as well. Examination of the details of the incident reveal that had R. Safra and Rava only known of Mar Zutra's impending arrival they would have gladly formed a greeting party in his honor. Why then would failure on their part to correct Mar Zutra's misconception violate for them the *genevat da'at* interdict?

This incident is apparently analagous to a wine barrel hospitality case discussed in Hullin 94a. Here, we are told that a host should not delude his guest into believing that he conferred him with a magnanimous hospitality gesture, when in fact he did not. Opening a barrel of wine in honor of a guest usually constitutes a magnanimous gesture of hospitality, as the exposure the remaining contents is subject to may reduce its quality. The

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21. *Rosh,* loc. cit., *Tur,* op. cit.; 228:7; *Sh. Ar.,* op. cit. 228:6; *Ar. haSh., op. cit., 228:3*

magnanimity of the gesture is, however, considerably reduced when the host happened to have sold the barrel of wine to a retailer just prior to the arrival of his guest. Opening a barrel of wine for a guest without informing him of the sale violates the *genevat da'at* interdict, as the non-disclosure generates for the host an undeserved sense of indebtedness. Nontheless, the Talmud relates that R. Judah opened a barrel of pre-sold wine for his guest Ulla. While one version of the incident reported that R. Judah made disclosure of the pre-sale to this guest, another version insists that he did not. The second version is defended by the Talmud on the ground that Ulla was very dear to R. Judah and consequently he would have extended him the hospitality gesture even if it entailed considerable expense.

Tosafot reject the above analogy. In the wine barrel hospitality case, R. Judah's *action,* i.e., the opening of the barrel, involved no element of deception, as it was clearly done in honor of Ulla. The only element of possible infringement of *genevat da'at* consists of the false impression conveyed that the act of hospitality entailed considerable expense. Since R. Judah was quite certain that he would have honored his guest Ulla by opening a barrel of wine for him even if it entailed considerable expense, non-disclosure does not amount to *genevat da'at.* In sharp contrast, R. Safra and Rava's journey to Sikara was clearly not undertaken for the purpose of honoring Mar Zutra. Given the fortuitous nature of the encounter, relieving R. Safra and Rava of an obligation to correct Mar Zutra's false impression of tribute cannot be defended on the basis of the certainty that these scholars would have formed a greeting party for Mar Zutra had they only known of his arrival.[22]

It should be noted that the point of leniency in *genevat da'at* law emergent in the R. Judah-Ulla incident is conspicuously omitted by Maimonides (Rambam) and R. Jacob b. Asher (Tur) in their treatment of the wine-barrel hospitality case. Noting the curious omission, R. Aryeh Judah B. Akiba (1759-1819) posits that

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22. *Tosafot Hullin* 94b

the aforementioned codifiers regard the Talmudic incident as lacking general applicability. Vicarious assessment of a selfless devotion toward the guest frees the host of an obligation to correct the latter's false impression of magnanimous hospitality only when the host is a man like R. Judah, i.e., an individual of exceptional moral character. Here, the host's self-assessment that he would confer his guest with a generous gesture of hospitality even if it entailed a considerable expense is completely reliable. Such an assessment would not, however, free an individual of ordinary moral character from his disclosure obligation. For an ordinary person such an assessment amounts to *self-delusion.* Confronted with an *actual* opportunity to confer the friend with a generous gesture of hospitality only at a considerable expense, the average person would find many convenient excuses not to do so. With the point of leniency in *genevat da'at* law emergent in the R. Judah-Ulla incident not having general applicability, Maimonides and R. Jacob b. Asher omit mention of it.[23]

Freeing a host from an obligation to correct his guest's false impression of hospitality on the basis of his self-assessment of readiness to incur the necessary expense to provide the latter with whatever he imagined he was bestowed with, follows, in our view, only if the source of the *genevat da'at* interdict is regarded to be a form of falseness. Should the *genevat da'at* interdict be regarded, however, to be a form of theft, it is difficult to see why an assessment of selfless devotion toward the guest frees the host of correcting the latter's false impression of lavish hospitality. Given that the sense of indebtedness a guest feels towards his host is based on the basis of what he *perceives* the host actually did for him and not on what the host is certain in his *own* heart he would do for him, not correcting the false impression of hospitality would generate for the host an undeserved sense of indebtedness.

Proceeding as a corollary from the above analysis is that the two versions of the R. Judah-Ulla incident are rooted in the source

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23. R. Aryeh Judah b. Akiba, *Lev Aryeh, Hullin* 94a

of the *genevat da'at* interdict. Following the line that *genevat da'at* is a form of theft, Maimonides and R. Jacob b. Asher rule according to the version which held that R. Judah corrected Ulla's false impression of hospitality.

We will now turn to advertising, setting applications of the various nuances of *genevat da'at law* discussed above.

Weasel-Word Stratagem

Modern advertising, as documented by Carl Wrighter, often avoids making direct and forthright product claims. From a legalistic standpoint, use of "weasel words" transforms an advertising message into gibberish and hence makes it immune from possible challenge, but at the same time conveys the desired effect. To illustrate, a manufacturer of ammonia claims that his product "cleans like a white tornado." Use of the above metaphor avoids for the manufacturer a direct claim of superiority over competing brands and hence frees him from possible challenges from rivals. Comparing a bottle of ammonia to a tornado is, of course, ludicrous, as the appearance of a tornado would undoubtedly not only lift dirt from the kitchen floor, but would at the same time uproot the entire house from its foundations as well. The metaphor, however, serves well to conjure up in the mind of the housewife an image of something much more glamorous than the odious job of scrubbing a floor. Catapulted into the world of fantasy, the housewife is made to imagine by means of ingenious animation that the whirlwind activity of the tornado will replace the whirlwind motion of her arm.[24]

Weasel words, as Wrighter documents, often create false impressions. One example will be cited to illustrate this problem:

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24. Carl P. Wrighter, *I Can Sell You Anything* (New York, Ballantine Books), pps 23-28

Suppose airline A offers two types of accommodations, first class and economy class. A calls its first class accommodations Ambassador Service and proceeds to copyright this name. Now, A proceeds to advertise that it is the only airline that offers Ambassador Service. Promoting its service in this fashion avoids for A the making of any direct superiority claim over the first class accommodations offered by competing airlines, but at the same time creates a definite impression of an exclusivity claim.[25]

Avoidance of infringement of *genevat da'at* law requires, in our view, the pilot testing of advertising messages making use of weasel words. The use of such advertising messages would be given legitimacy only if the pilot testing found that false impressions were not created.

Discount Sales

Discount sales, through the medium of advertising, often go beyond merely informing the public that the customary selling price of a particular product has been reduced. What is often attempted is no less than the creation of a strong impression that the lower price represents a *bargain opportunity,* available only for a limited time. Projecting discount sales in the light of a *bargain* opportunity generates for the firm not only a sense of appreciation from those who purchase the sale item, but, in addition, earns for them a favorable reputation from the general public.

Assimilating the reduced price with a bargain opportunity may, however, not always be justified.

A frequent motive behind discount sales is a desire on the part of the firm to increase its profits. To illustrate, suppose carpet dealer A assesses that by reducing his price, he can expand his sales volume and thereby increase his profit.

In a similar vein, a multi-product firm may find it advantageous to discount one of its popular items, even below cost. The good will the firm captures thereby will hopefully allow the discounted item to

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25. Wrighter, op. cit., p. 72

assume the role of a "loss leader," generating an expansion of sales for the firm in its various *other* lines.

Notwithstanding the selfish motive behind the aforementioned discount sales, no moral issue is involved in characterizing the discounted price as a bargain opportunity for the consumer. This conclusion, in our view, is valid irrespective of the operational market structure. Within the framework of competitive conditions, the discounted price represents a bargain simply because the said article is available elsewhere only at a higher price. Assuming a monopolist market structure, i.e., the discounted article is unavailable elsewhere, does not change the bargain feature of the discounted price. Given that the effective demand the seller faces for his product has not diminished, protecting his present profit-loss position in no way requires him to lower his price. Automatic market forces hence have not worked here to reduce the *objective* value of the subject product. Quite to the contrary, it is the *voluntary* action of the seller that is *entirely* responsible for the discounted price of the article. With the price cut affording consumers the opportunity to purchase the article below its *objective market value*, characterizing the discounted price as a bargain opportunity involves no moral issue.

Generating Undeserved Good Will

Modern advertising techniques have perfected to an art the ability of the firm to fully exploit the good-will potential inherent in any action it may undertake. Projecting a business policy in a manner that allows the firm to capture more good will than is warranted may, however, violate Jewish business ethics from several standpoints. To illustrate, suppose A advertises that he is reducing the regular price of his item, stressing the bargain opportunity the new price represents. To this, A adds that his motive in running the sale is his deep concern for the crippling effect inflation has on the consuming public. Provided it is not, in fact, adverse market conditions that force A to reduce his price, no objection would be found in allowing him to focus attention on the bargain aspect of the discount sale. Such promotional activity merely allows A the opportunity to exploit the

good will inherent in the price cut. Injecting an altruistic impulse as the motive behind the discount sale is, however, another matter. Drawing attention to his altruistic motive, while making no mention that the move is designed to increase his profit level, effectively projects the price reduction in a more favorable light than is merited.

Besides capturing undeserved good will, playing up the altruistic motive, while making no mention of the profit consideration motive behind the discount sale, could very well amount to a form of falseness. This occurs when the profit consideration is the *primary* motive behind the price reduction and the altruistic impulse is at best only a secondary motive. Revealing to someone the secondary purpose behind one's action, while concealing its primary purpose, is regarded in Jewish law as deceptive behavior and is a form of falseness.[27]

Finally, R. Aryeh Judah b. Akiba's comments regarding the difficulty of assessing the *authenticity* of an individual's *untested* feeling of altruism toward his friend is, in our view, very relevant here. Does A's humanistic impulse independently account for the price reduction, or is the feeling of altruism entirely inspired by the happy prospect that the price discount will increase his profits?

Projecting a price reduction in a humanistic framework when the altruistic impulse is in fact either a derivative motive or an incidental consideration, is not only a form of falseness but generates for the firm a measure of good will beyond what it merits.

Disparagement of a Competitor's Product

Disparaging a competitor's product presents a moral issue in Jewish law even when no misrepresentation of fact is made and the motives of the disparager are sincere. Falsely maligning a competitor incurs for the offender violation of the biblical interdicts against slander[28] and falsehood.[29,30]

27. R. Samuel Eliezer b. Judah ha-Levi Edels (1555-1631), *Maharsha, Yevamot* 65b
28. R. Eleazar derives the warning against slander from Leviticus 19:16. R. Nathan derives the admonishment from Deuteronomy 23:11 (*see Ketubbot* 46a)
29. Leviticus 19:11
30. The complicated moral issues involved in warning customers about a

Comparative Merit Stratagem

An aspect of the disparagement tactic concerns the ethics of the comparative merit stratagem. In one variant of this tactic the seller (A) demonstrates to a prospective buyer (B) the superiority of his product by drawing his attention to the deficiencies of rival models. Motivated by a desire to forestall B from engaging in comparative shopping, A, while careful not to impugn the integrity of his competitors, tries to persuade B that rival models are *inferior* in various ways. To illustrate, suppose A provides B with a demonstration of his vacuum cleaner. At the conclusion of the demonstration, A mentions that lower-priced competitor C's model operates very noisily. In addition, B is informed that D's lower-priced model is very cumbersome and difficult to maneuver. With the rival models cheaper than his product, forestalling comparative shopping by pointing out to B the deficiencies present in these models cannot be given legitimacy on the ground that the report averts financial loss for B.

Moreover, insofar as B's favorable attitude toward A's product is secured by means of impressing him with the deficiencies of rival models, the stratagem, in our view, violates Jewish business ethics. While A has the legitimate right to point out to everyone the fine qualities of his product, *magnifying* the attractiveness of these qualities by pointing to the deficiencies of rival models amounts to elevating himself at the expense of his neighbor's degradation. Such conduct was severely condemned by the Talmudic Sages, as evidenced by R. Yose b. Hanina's dictum: "Anyone who elevates himself at the expense of his friend's degradation has no share in the world to come." (Jerusalem Talmud, Hagigah II-1)

Concretely illustrating the nature of the above objectionable conduct is the following Talmudic passage:

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competitor or his products are addressed by R. Yisroel Meir ha-Kohen in *Hofetz Hayyim, Hilkhot Issurei Rekhilot.* For a detailed discussion of this issue, *see, Journal of Halacha and Contemporary Society,* Vol. I, No. I, pg. 73-77.

> R. Nehunia b. Ha-Kaneh was asked by his disciples: In virtue of what have you reached such a good old age? He replied: Never in my life have I sought respect through the degradation of my fellow . . . as illustrated by R. Huna who once was carrying a spade on his shoulder when R. Hana b. Hanilai wanted to take it from him, but he said to him, if you are accustomed to carry in your own town, take it, but if not, I do not want to be paid respect through your degradation.[31]

Why R. Huna's behavior is regarded as exhibiting extraordinary moral character is explained by R. Samuel Eliezer b. Judah ha-Levi Edels, (Maharsha, 1555-1631) as stemming from the fact that R. Huna did not merely refrain from requesting R. Hana to carry his spade for him, but *rejected* the latter's offer to do so.[32] Refraining from making such a request is presumably a normal behavioral expectation, not meriting particular praise, as demanding honor at the expense of a fellow's degradation constitutes contemptible behavior. Akin to the latter case, in our view, is the salesmanship tactic of demonstrating the superiority of one's product by means of pointing up the defects of *lower*-priced competing models.

A variation of the above case occurs when A demonstrates the superiority of his product by drawing attention to the defects of competing models priced at or above his product. Since the report averts for the buyer the mistake of paying the same, or more, for a product *inferior* to A's model, the conduct is apparently legitimized.

The Exclusivity Claim — Another twist of the comparative merit stratagem is the exclusivity claim. Providing a case in point is A's advertising message that his vacuum cleaner is the only one in the market place featuring detachable parts. Since the absence of a detachable part feature does not render a vacuum cleaner defective, A's exclusivity claim amounts to nothing more than pointing out

31. *Megillah* 28a
32. R. Samuel Eliezer b. Judah ha-Levi Edels, *Maharsha, Megillah* 28a

an *advantage* his model has over competing models. With A not guilty of enhancing the attractiveness of his product by means of pointing up the *defects* of competing models, the advertising message does not, in our view, violate Jewish business ethics.

Superiority Claim — Another variant of the comparative merit stratagem is the superiority claim. Superiority claims take the form of either limited or unrestricted assertions. The limited superiority claim often appears in connection with the multi-purpose product. To illustrate, A advertises that his aspirin compound is more effective in relieving arthritic pain than competing brands. Insofar as aspirin is used to relieve an assortment of pains and aches, A's claim amounts to nothing more than an exclusivity claim. Since A does not enhance the attractiveness of his product by means of pointing out *defects* in competing brands, the tactic, in our view, does not violate Jewish business ethics.

Providing a case in point of an unrestricted superiority claim is A's general claim that his aspirin compound is the most effective non-prescription drug in relieving aches and pains. Given that the superlative claim implicitly concedes adequacy to competing brands and certainly does not degrade them, the tactic, in our view, would be given legitimacy in Jewish law.

Supportive of the view that the general superiority claim does not violate Jewish ethics is the ruling of R. Hayyim Hezekiah Medini (Sedei Hemed, 1832-1904) that voicing an opinion that A is a greater Talmudic scholar than B does not amount to degrading B and is therefore a permissible statement.[33]

Puffery

Extolling the qualities of a product in an exaggerated manner, called puffery, has proven to be an effective promotional device. Defenders of the practice point out that exaggeration makes advertising more memorable. The more memorable advertising is, the more efficiently it can perform its informative role. Detractors

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33. R. Hayyim Hezekiah Medini (1832-1904), *Sedei Hemed* IV K'lal 86

of the practice, however, assert that exaggeration misleads and therefore makes the firm guilty of false claims.

In this section we will develop a guideline for the use of puffery as a promotional device from the standpoint of Jewish law. Puffery manifests itself either in the aesthetic — sensual — or performance dimensions of the product. We will deal with each in turn.

Assessments regarding the aesthetic and sensuous impact a product will have on a customer fall into the realm of the subjective. In Jewish law, majority opinion does not establish fact or truth in a subjective matter relating to aesthetics. Examination of the following Talmudic text bears this point out:

> Our Rabbis taught: How does one dance (what does one sing or recite) before the bride? Bet Shammai say: The bride as she is. And Bet Hillel say: 'Beautiful and charming bride!' Bet Shammai said to Bet Hillel: If she was lame or blind, does one say of her: 'Beautiful and charming bride?' Whereas the Torah said, 'Keep thee far from a false matter.' Said Bet Hillel to Bet Shammai: According to your words, if one has made a bad purchase in the market, should one praise it in his eyes or deprecate it? Surely, one should praise it in his eyes. Therefore, the Sages said: Always should the disposition of man be pleasant with people.[34]

Talmudic decisors rule in accordance with Bet Hillel's view.[35] Why this school of thought does not regard an invariable bridal praise formula as a form of falseness, as Bet Shammai would have it, requires explanation. Rationalizing Bet Hillel's view, R. Judah Loew b. Bezalel (Maharal, c. 1525-1609) posits that while

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34. *Ketubbot* 17a
35. *Tur, Even ha-Ezer,* 65:1; *Sh. Ar., Even ha-Ezer,* 65:1; *Ar. haSh., Even ha-Ezer,* 65:1

characterizing the bride as beautiful and charming may, at times, run counter to popular sentiment, the description presumably conforms well with the bridegroom's feelings in the matter. If he did not find his prospective bride beautiful and charming, he presumably would not have married her. Given that what constitutes beauty is a *judgmental* matter, pronouncing the bride beautiful and charming does not amount to a mischaracterization of reality, notwithstanding majority opinion to the contrary. Similarly, approving the buyer's glowing characterization of his "unseemly" purchase does not amount to falseness, as a sales transaction creates a presumption of buyer satisfaction.[36]

Before implications for the business practice of puffery can be drawn from Bet Hillel's bridal-praise formula, further clarification of the latter case must be made.

Aside from the issue of falsehood Bet Hillel's formula raises, calling for the wedding guest to regale the bridegroom that his bride is beautiful and charming even when this sentiment runs counter to his own feelings, amounts to outright hypocrisy and insincerity. Maharal's analysis removes the falsehood issue, but the insincerity question appears to remain.

The insincerity question, in our view, is somewhat attenuated in consideration of the fact that the Sages suspended the biblical injunction against lying when the purpose of the untruth is to bring about reconciliation. Classically illustrating this dispensation is the message Joseph's brothers sent him after Jacob's death "And they commanded some to go unto Joseph saying, Thy father did command before his death, saying, 'So shall ye say unto Joseph, Forgive, pray, the trespass of thy brethren, and their sin; for they did unto thee evil and now, pray forgive the trespass of the servants of the G-d of thy father . . .' (Genesis 50:16-17). Fearing Joseph harbored ill feeling toward them for selling him into slavery, the brothers presented Joseph with a fabricated conciliatory plea from their father. Because their behavior was

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36. R. Judah Loew b. Bezalel, *Maharal, Ketubbot* 17a

motivated to achieve reconciliation, legitimacy is found with the use of a lie to further the end.[37]

Analagously, the behavioral requirement of absolute sincerity was apparently relaxed by the Sages in connection with the biblical precept of gladdening the bride and bridegroom. An essential feature of this precept apparently consists of elevating the spirits of the bridegroom by means of complimenting him that his bride is beautiful and charming. Note, however, the limited nature of the dispensation. With a reconciliation motive inoperative here, complimenting the bridegroom by means of mischaracterizing reality is not permitted. What is relaxed here is only the behavioral requirement of absolute sincerity.

What follows from this interpretation of Bet Hillel's view is the impermissibility for the wedding guest, who does not feel that the bride is beautiful and charming, to relate the bridal-praise formula to anyone but the bridegroom himself or to someone else in the bridegroom's presence. Similarly indicated is a restrictive interpretation of the "bad purchase" case. With A's true feeling toward the article very negative, approving B's purchase would appear proper only in direct response to B's solicitation for his opinion or as a spontaneous reaction to the latter's glowing self-appraisal of his article of purchase.

We will now turn to the implications of the above discussions for the business practice of puffery. Of primary relevance is the finding that in a subjective matter relating to the realm of aesthetics, majority opinion does not establish fact to the extent that an individual's contrary opinion must be regarded as invalid. Accordingly, the seller would be entitled to advertise his or other people's judgments regarding either the aesthetic quality of his product or the sensuous impact the product had on him or on the endorser. Aesthetic judgments are, however, subject to the sincerity constraint and may not be made in a manner that creates an

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37. *Yevamot* 65b

impression that the judgment is shared by a larger group than the case may be.

Another ethical issue for the advertising practice of puffery is the admissibility of making aesthetic claims based on the product's popularity. Without conducting a survey to determine the reason(s) people are buying the product, the aesthetic claim remains unsubstantiated and therefore is misleading.

Puffery In The Performance Domain

In sharp contrast to puffery in the aesthetic domain, puffery in the performance realm effectively exaggerates the objective qualities of the product. Hyperbolic statements regarding the performance of the product amounts therefore to false and misleading claims. Notwithstanding the deceptive potential of hyperbole in the performance realm, such statements do not mislead when they are not taken literally. Provided the public deflates the puffery in the advertising message to such an extent so as not to interpret the advertiser's claim as ascribing qualities to the product beyond its objective properties, the message would be free of any element of deception. Puffery here serves a useful purpose in the form of creating a memorable message, thereby improving the information flow to the market place.

Jewish law's attitude toward non-deceptive generating puffery can, in our view, be derived from its treatment of vows of *incitement (nedrei zeiriezin)* made in a commercial setting: Suppose A and B are locked in a price negotiation. A asks $4 for his article. B counters with an offer of $2. Upon hearing B's bid, A proclaims "If I accept anything less than $4, let bread be forbidden to me by force of a vow." B then counters "If I offer anything more than $2, let bread be forbidden to me by force of a vow." Though each party fortified his negotiating position by means of a vow, the vows are not regarded to be the result of firm resolution. With the

vows lacking legal force, the deal may be concluded at $3 and both parties may eat bread without prior resort to the absolution process.[38] Common business practice, Tosafot et alia point out, makes the intention of the parties clearcut. Rather than intending to convey intransigence in regard to his asking price, as the formulation indicates, A merely intends to convey his seriousness of not accepting B's original offer. B's intentions are similarly interpreted. Though unverbalized thoughts are usually of no account in Jewish law, A and B's unverbalized thoughts regarding their intentions are *universally* shared, i.e., anyone hearing the vow would interpret each party's intentions to consist of merely forewarning his opposite number to adopt a more favorable position. Given that the unverbalized thoughts of each negotiating party are universally shared, it is legally regarded as if A and B *verbalized* an *addendum* to their explicit vows, explaining their true intentions.[38]

Notwithstanding that vows of incitement are not legally binding, an individual is forbidden to utter such a vow. This lesson is exegetically derived from the verse "He shall not break *(yahel)* his word (Num. 30:3), i.e., he shall not make profane *(hullin)* his own words.[39]

Jewish law's treatment of vows of incitement provides, in our view, a criterion for the use of puffery in the performance realm as

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38. *Nedarim* 21a; *Rif* ad locum; *Yad, Nedarim* IV-3; *Rosh, Nedarim* IV-1; *Tur, Yoreh De'ah* 232-1; *Sh. Ar., Yoreh De'ah* 232-2

Given the negotiating intent of both the buyer and the seller, some authorities take the view that the respective vows are not legally binding even in regard to the original positions which prompted the vows. Hence, the buyer would not be prohibited by force of his vow to finally agree to conclude the transaction at the initial $4 asking price of the seller. Similarly, the seller's vow would not prohibit him from concluding the transaction at the initial $2 bid of the buyer. Other authorities regard the vows as legally not binding only in respect to some compromise sum. By force of these vows, each party, however, would be prohibited from concluding the transaction at the initial price of his opposite number. (*see* R. Nissim b. Abraham Gerondi, (*Ran, Nedarim* 21a and R. Moses Isserles, *Rema, Sh. Ar., Yoreh De'ah* 232-2) R. Joel Sirkes (Bah, *Tur,* loc. cit.) points out that common practice is in accordance with the lenient view.

39. *Tosafot Nedarim* 21a; *Ritva Nedarim* 21a

a promotional technique. Provided the puffery statement is not in the form of an oath or vow and does not generate deception, the advertising message would not violate Jewish business ethics. Certainty on the part of the advertiser that his hyperbolic claim does not have the effect of misleading the public does not appear, in our view, as sufficiently reliable to safeguard against deception. Avoidance of violation of *genevat da'at* law requires the seller, prior to the release of his advertising message, to confirm that his judgment of non-deception is shared by the general public. Conducting a survey to assess public reaction to the message accomplishes this.

The Testimonial Technique

A seller's comparative merit claim is often catapulted to a heightened level of credibility when it is accompanied by professional or expert endorsement. Expert opinion confers credibility and an aura of objectivity to an otherwise entirely subjective assertion.

Illustrating the testimonial technique is the Sa'am Drug Company's claim that a certain reputable independent laboratory determined that its aspirin tablet relieves arthritic pain more effectively than competing brands. Providing another example of the use of this technique is the Anavim Wine Company's announcement that a well-respected wine connoisseur found their concord grape wine to be superior to competing brands.

Should the objectivity image the testimonial message generates be misleading, *genevat da'at* law would be violated. This occurs when the professional or expert opinion cited is in fact biased.

What constitutes bias in Jewish law can, in our view, be derived from an examination of its judicial code of conduct.

Jewish law safeguards the integrity of the judicial decision-making process by means of both preventive measures and corrective action.

Preventive measures take the form of prohibiting the judge of a law suit from submitting to any influence that might have the

effect of tainting his integrity and calling for him to disqualify himself on the basis of bias.

By force of the verse "Thou shalt not wrest judgment" (Deut. 16:19) the judge of a lawsuit is forbidden to accept a payment to acquit the guilty or to condemn the innocent. What constitutes a corrupting payment is considerably broadened by force of the verse "And thou shalt take no gift." (Exodus 23:8). Exegetical interpretation of this verse prohibits the judge from accepting payment from one of the opposing litigants even with the instruction to acquit the innocent or to condemn the guilty.[40] Rava's (d.352) rationalization of the latter point of stringency is very telling:

> What is the reason for (the prohibition against taking) a gift? Because as soon as a man receives a gift from another he becomes so well disposed toward him that he becomes like his own person, and no man sees himself in the wrong. What (is the meaning of) *shohad? She-hu had* — he is one with you.[41]

Fully recognizing that bias may be created by means other than the acceptance of money, Jewish law prohibits the judge from submitting to even a bribe of words *(shohad devarim).*[42] Illustrating *shohad devarim* is the following Talmudic incident:

> Amemar was once engaged in the trial of an action, when a bird flew down upon his head and a man approached and removed it. 'What is your business here?' (Amemar asked him) 'I have a lawsuit,' the other replied. 'I', came the reply, 'am disqualified from acting as your judge.'[43]

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40. *Tosefta Nedarim* IV-4; *Yad,* op. cit., IV-4; *Tur,* op. cit., 232-20; *Sh. Ar.,* op. cit., 232-13
41. *Ketubbot* 105a; *Yad, Sanhedrin* XXIII-1; *Tur, Hoshen Mishpat* 9-1; *Sh. Ar. Hoshen Mishpat* 9-1; *Ar. haSh., Hoshen Mishpat* 9-1
42. *Ketubbot* 105b
43. *Ketubbot* 105b; *Yad,* op. cit., XXIII-3; *Tur,* op. cit., 9-4; *Sh. Ar.,* op. cit., 9-1; *Ar. haSh.,* op. cit. 9-1

The stringency of *shohad devarim* applies even to words of greeting. Acordingly, in the event A did not make it a practice to anticipate judge B's greeting with his own greeting, initiating this practice just prior to the time his lawsuit will come up in B's docket amounts to *shohad devarim*. With B regarded as being biased toward A on account of the latter's new found friendliness toward him, B is disqualified from serving as judge in his lawsuit.[44]

A close friendship or enmity with one of the litigants similarly disqualifies an individual from serving as judge in their lawsuit.[45]

Judicial verdicts rendered under the influence of *shohad* are null and void.[46] With the *shohad* payment regarded as a forbidden receipt, the judge is legally bound to return the illicit fee. Though the Jewish court will not force the judge to return the *shohad* unless the claimant demands repayment,[47] the former is, nevertheless, ethically bound to make restitution even in the absence of claimant's petition.[48]

Recognition that professional judgment is susceptible to even subconscious biases leads, in our view, to the necessity of regulating the use of the testimonial technique in advertising.

Bolstering his comparative merit claim by means of expert testimonial achieves for the seller heightened credibility. The heightened credibility the testimonial affords him may, however, be undeserved. This occurs when the expert opinion secured is in fact tainted, but is presented in a manner that effectively conceals the biasing influence involved. To illustrate, suppose Sa'am Drug Company contracts Emet Laboratories to conduct research to determine which of several pain relievers, including their own brand, most effectively combats arthritic pain. The arrangement calls for Sa'am to review the research progress every month and

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44. *Ketubbot* 105b
45. R. Joshua ha-Kohen Falk, *Sma, Sh. Ar.* op. cit. 9 Note 4; *Ar. haSh.*, loc. cit.
46. *Sanhedrin* 29a; *Rif* ad locum; *Yad*, op. cit., XXIII-6; *Rosh, Sanhedrin*, III-23; *Tur*, op. cit. 7-8, 10; *Sh., Ar.*, op. cit. 7-7; *Ar. haSh.*, op. cit. 7-9-10.
47. *Yad*, op. cit. XXIII:1; *Tur*, op. cit. 9:2; *Sh. Ar.*, op. cit. 9:1; *Ar. haSh.*, op. cit. 9:1
48. *Ar. haSh.*, a loc. cit.

allows it the option of terminating the agreement within a week of each progress review. Another provision of the contract calls for Sa'am to pay Emet an escalating monthly fee for the lifetime of their contract. After eighteen months of research, Emet concludes that among the competing brands tested, Sa'am tablets are most effective in combating arthritic pain.

Given the above arrangement, bias could very well be expected to enter Emet's judgment both in its selection of research design and in its interpretation of data. Accordingly, the significance of its finding should be appropriately discounted. Reporting the finding without disclosing the nature of its arrangement with Emet, catapults Sa'am's comparative merit claim to a level of credibility it does not deserve. Use of the testimonial hence violates for Sa'am the *genevat da'at* interdict. Emet's presumed awareness at the outset that disclosure of its arrangement with Sa'am would not accompany any eventual commercial use of its findings makes them guilty of complicity in Sa'am's crime. Receipt of its fees, nonetheless, does not constitute *shohad* as Emet assumes here merely the role of Sa'am's employee, taking on no judicial role whatsoever.

Avoidance of *genevat da'at* infringement requires, in our view, pilot testing of any testimonial message prior to its commercial use. The purpose of the pilot would be to ascertain the assumptions the public makes regarding the relationship between the sponsor and the endorser. Should the survey indicate public presumption of the absence of certain biasing factors which are in fact operative, the testimonial message would have to be either entirely discarded or modified accordingly.

Installment Plans Allowing the Buyer to Live Beyond His Means

Successful promotion frequently requires the seller not only to present his product in an attractive manner, but also to arrange favorable terms of payment for his customer. Installment plans may violate Jewish business ethics even if the plan does not call for

a premium payment above the cash price.[49] This occurs when the credit terms effectively allows the buyer to live beyond his means.

Halachic disfavor with living beyond one's means can be derived from an analysis of the sliding-scale sacrifice and Jewish charity law.

In the times of the Temple, the offering of sacrifices often formed a part of the expiation process for the transgressor seeking atonement. Sacrificial requirements in connection with certain classes of offenses allowed the penitent to offer a sliding-scale sacrifice. To illustrate the nature of the sliding-scale sacrifice we will describe its application in connection with a particular qualifying offense, i.e., the false oath of testimony case. This offense consists of A falsely swearing to B that he is not privy to information relevant to his case. The sacrificial aspect of A's atonement process requires him to offer a female sheep or goat. Should A's means not suffice, he may substitute the animal sacrifice with two turtledoves or two young pigeons. If his means do not suffice for birds, he offers a tenth of an *ephah* of fine flour.[50]

The means criterion, according to Torat Kohanim, translates into allowing the penitent to move down the sliding scale if bringing the more expensive sacrifice would put him into debt.[51]

Noting the means criterion, R. Aaron ha-Levi of Barcelona, (1235-1300), Sefer ha-Hinnukh, advances the opinion that if the poor man offers the rich man's sacrifice, he does not fulfill his obligation. This ruling is rationalized on the grounds that since the All-mighty shows compassion to the poor man by allowing him to

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49. Installment credit calling for a premium above the cash price as well as pre-payment discount schemes may violate the rabbinical extensions of the ribbit law *(avak ribbit)*. For a discussion of these cases with the applications for modern business practices, see Aaron Levine. *Free Enterprise and Jewish Law: Aspects of Jewish Business Ethics* (New York, Ktav - Yeshiva University Press, 1980) pp. 95-97, 110-112
50. Leviticus 5:1-13; Keritot 10b; *Yad, Shegagot* X:1-4
51. *Torat Kohanim* 5:7

bring a sacrifice according to him means, it would not be proper for the poor man to reject the gesture by incurring an expense for his sacrifice beyond his means. Sound practical advice regarding living standards, continues Sefer ha-Hinnukh, should be derived from the sliding-scale sacrifice case: An individual should not live beyond his means. Such conduct could lead the individual to unethical aggrandizement as a means of sustaining his habit of high living.[52]

Halachic disfavor with living beyond one's means can also be inferred from its ordinance against donating charity in excess of 20% of income. The basis of the interdict is the fear that overgenerosity in giving charity could make the donor himself vulnerable to poverty.[53] With restraint prescribed for alms giving, disfavor would certainly be directed against maintaining a standard of living beyond one's means.

What follows from the judgment that living beyond one's means constitutes wreckless conduct is restrictions in the use of installment credit.

Offering a reluctant customer an installment plan as a means of inducing him to purchase an item he feels he cannot afford clearly violates Jewish business ethics. To illustrate, suppose crystal dealer A shows B an exquisite crystal chandelier. B reacts with

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52. R. Aaron ha-Levi of Barcelona, *Sefer ha-Hinnukh* 123. R. Joseph b. Moses Babad (1800-1874), however, finds the position that the poor man who offers the rich man's sacrifice as not fulfilling his obligation to be contradicted from *Mishnah Nega'im* XIV:12. *See Minhat Hinnukh* ad locum

53. *Ketubbot* 50a; *Rif* ad locum; *Yad Arakhin* VIII:13; *Ketubbot* IV:15; *Rema, Sh. Ar., Yoreh De'ah* 249:1; *Ar. haSh, Yoreh De'ah,* 249:1. The interdict against over generosity in charity giving has been variously interpreted. Some authorities understand it as a restriction on the proportion of his income that an individual may devote to a charity fund in the *absence* of requests for assistance. Should an individual be confronted, however, with pleas for assistance, no maximum restriction on the amount of his aid is prescribed. Other authorities suspend the interdict only in relation to bequests and to situations where the aid would avert loss of human life. (*see* R. Ezra Basri, *Dinei Mamonot* vol. 1, Jerusalem; Reuben Mass, 1973) p. 405

excitement and admiration, but turns ashen when informed of its price. Eager to make a sale, A offers B the opportunity to pay out the purchase over a year in monthly installments. B remains reluctant, admitting that while the installment plan would make it feasible for him to make the purchase, his budget in consequence would suffer considerable strain. Reminding B once again of the aesthetic qualities of the chandelier, A repeats his offer, exclaiming an exuberant confidence that B will somehow make ends meet, the chandelier purchase notwithstanding. B is now persuaded and proceeds to conclude the purchase. With the purchase allowing B to live beyond his means, A's *persuasion* clearly amounts to ill-suited advice and violates for him the *lifnei Iver* interdict.

Advertising Inciting Envy

In a pecuniary culture where personal worth is often measured by invidious distinction, maintaining an ostentatious life style beyond the means of ordinary people secures status for the individual. Within this cultural milieu, successful advertising strategy for luxury items often dictates that the seller project for his product an exclusivity image. The more inaccessible the luxury article is thought to be, the greater the status symbol will be attached to it.

Promotional messages relating to luxury products, designed to create an image that the acquisition of the subject product is beyond the means of ordinary people, presents a moral dilemma in Jewish law.

Conduct having the effect of generating envy, as the following Talmudic text indicates, is strictly prohibited in Jewish law:

Our Rabbis taught:

> If one journeys from a place where they do not fast to a place where they do, he should fast with them. . . . . .If he forgot and ate and drank, let him not make it patent in public nor may he indulge in delicacies, as it is written, "And Jacob said to his sons, why should you show yourself?" (Gen. 42:1) –

> Jacob conveyed thereby to his sons, "when you are fully sated do not show yourselves before Esau or before Ishmael that they should not envy you."[54]

Differential living standards inevitably produce feelings of inadequacy, embarrassment and envy among those of limited means. With the aim of reducing the intensity of these ill feelings, the Sages in Talmudic times regulated the life style of the wealthy in various ways. Mourning customs provide a case in point:

> Formerly they were not to convey (victuals) to the house of mourning, the rich in silver and gold baskets and the poor in osier baskets of peeled willow twigs, and the poor felt shamed: they therefore instituted that all should convey (victuals) in osier baskets of peeled willow twigs out of deference to the poor.
>
> Formerly, they were wont to serve drinks in the house of mourning, the rich in white glass vessels and the poor in colored glass, and the poor felt shamed: they instituted therefore that all should serve drinks in colored glasses out of deference to the poor . . . . .[55]

Out of concern that conspicuous consumption would ignite both internal discord and envy among neighboring non-Jews, the autonomous Jewish communities in the Middle Ages regulated living standards. Legislation typically imposed limitations on the type of dress residents could wear, and restricted expenditures for weddings and other social occasions.[56]

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54. *Ta'anit* 10b; *Rif* ad locum; *Yad, Ta'anit* I:15; *Rosh Ta'anit* I:7; *Tur, Orah Hayyim* 574:1; *Sh. Ar., Orah Hayyim* 574:2-3; *Ar. haSh., Orah Hayyim* 574:2-3
55. *Mo'ed Katan* 27a; *Rif* ad locum; *Yad Avel* XIII:7; *Tur, Yoreh De'ah* 378:12; *Ar. haSh., Yoreh De'ah* 378:7
56. R. Bezalel Landau, "Takonot Neged ha-Motrot," *Niv ha-Medrishah*, 1971, p. 213-226

Application of the aforementioned principles to commerical advertising disallows, in our view, use of the exclusivity stratagem for mass media promotion of luxury articles. While such messages are primarily directed to potential buyers, mass media advertising allows the message to reach huge audiences, including many who cannot possibly afford the product. For the latter group the impact of the promotional message is to stir up in them feelings of envy. Given that the greater the intensity of envy the advertising message generates among the non-buyers, the more attractive the luxury product becomes to the potential buyers, the generation of envy is, at the very least, a welcomed consequence of the advertising message from the standpoint of the seller. Since Jewish law interdicts envy generating conduct, such advertising messages violate Jewish business ethics.