

September 9, 2002

7286 02 216 1076

Dockets Management Branch,
Food and Drug Administration,
5630 Fishers Lane, rm. 1061,
Rockville, MD 20852

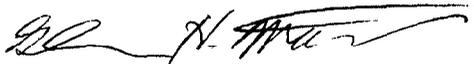
RE: First Amendment and commercial speech issues

The FDA should emphasize that commercial speech serves promotional purposes much more than educational ones. These promotional purposes do not deserve constitutional protection – even when not technically untruthful or misleading. Such commercial may by omission, emphasis or emotional appeal spur consumer purchasing patterns that are contrary to public health goals.

While it is vital that consumers be empowered with information about pharmaceuticals, DTC ads are about promotion, not education. DTC ads encourage consumers to demand brand-name products from doctors. Evidence suggests doctors are influenced by these demands, and sometimes prescribe requested medicines despite ambivalence about the choice of treatment.

While the FDA does not currently have jurisdiction over tobacco, there are numerous initiatives to give the agency such jurisdiction – including some legislative proposals favored by the tobacco industry – and good reason to expect Congress will confer jurisdiction in the near future. FDA should consider the issue of tobacco advertising in determining its posture on commercial speech issues.

Thank you,



Glenn H. Martin
3035 23rd Street
San Francisco, CA 94110

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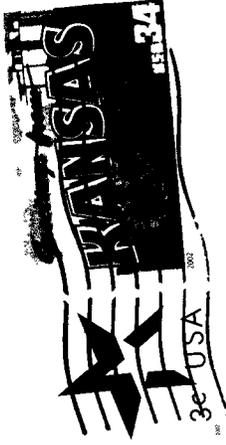
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