

Legal Week

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The commercials man

*Douglas Wood's career in advertising law spans three decades. Here, he speaks to **Ed Thornton** about his role as general counsel to the US' Association of National Advertisers and the challenges he has encountered*

Never far from controversy, the advertising industry is seen by many as a force for aggressive capitalism, attempting to persuade consumers to buy products that, at best, they do not need, and at worst — in the case of tobacco or unhealthy foods — inflict damage.

Douglas Wood's experience of the advertising industry dates back 27 years when he founded the specialist advertising and marketing law firm Hall Dickler. It merged last year with Reed Smith where Wood now heads the advertising and marketing law group.



However, at least a third of the advertising veteran's time is taken up with his role as general counsel to the Association of National Advertisers (ANA) and president of the Global Advertising Lawyers Alliance (GALA).

He estimates that he spends 50% of his time away from his New York office and New Jersey home, 50% of which involves foreign travel. Having been brought up in the army, this lifestyle comes naturally to Wood. "I was an army brat so I used to move every three years," he says.

Wood knows only too well that the advertising industry is an easy target for regulators and legislators. "Advertising is a good whipping post so we are always on the defensive," he explains. "When legislators are looking around to get money, the first place they come to is advertising."

Indeed, taxes on the advertising industry are hardly likely to provoke public outcry. However, Wood claims that the industry has been very successful at suppressing special taxes for advertising.

Wood founded GALA seven years ago after global advertising clients began making

enquiries about whether he knew lawyers in various countries such as Singapore.

The organisation now has 54 country members and provides a forum to discuss issues affecting advertising lawyers and a resource to tackle legal problems.

Meanwhile, as general counsel to the ANA, Wood acts as the industry's lead negotiator in drawing up advertising agreements with the Hollywood Screen Actors Guild (SAG), which represents some 120,000 actors. The next set of negotiations, which take place every three years, begin in May.

Wood does not anticipate this being an easy process. SAG president Alan Rosenberg, who was elected in September, is proving highly vocal and is determined to secure more money for his members. The union is calling for its members to receive a cut of the revenue generated by the migration of commercials onto new media software such as Apple iPods.

"If we cannot find a common ground, then there could be a strike. The last time there was a strike was in 2000, which lasted for six months. The economics are even more complicated today."

Wood also co-heads the ANA's Legal Affairs committee along with ANA chief executive Dan Jaffe. The committee comprises senior in-house counsel from companies across a range of sectors, including McDonald's, Pfizer and Merrill Lynch.

One industry trend the Federal Communications Commission (FCC) has its sights on is product placement — where a company pays for its product to appear in a film or television show. While rules about this practice are relatively liberal in the US, FCC commissioner Jonathan Adelstein has called for increased disclosure of product placement and for federal authorities to step up their investigations of spurious practices.

He argued that advertisers are obliged by law to make clear that they have paid to have their product on display and feared that current disclosure practice, which often only amounts to a message scrolled quickly across the bottom of the screen, was inadequate.

Not surprisingly, this is not a view Wood shares. "Our members' position is that consumers are a lot smarter than they are given credit for," he says.

Wood takes the same view of buzz marketing, whereby advertisers solicit so-called buzz marketers to generate excitement about a product among the public in the street.

"There are moves in Washington to see whether there needs to be adequate disclosure that people [promoting the products] are being paid," he explains. "Our view again is that people are intelligent — if someone is in a company t-shirt talking about a product, it is pretty obvious they are being paid."

The FCC is also keen to ensure that children are not subject to excessive targeting by advertisers and are protected from unsuitable or indecent content — an indicator of the

influence exerted by the US' religious right.

The FCC's conservative stance was exacerbated by the now infamous incident at the 2003 Super Bowl when, during the half-time show, singer Janet Jackson's right breast was exposed. This incident provoked 200,000 complaints to the FCC from shocked prime-time viewers and widespread cries from the moral majority that US television had sunk to new depths of taste and indecency. The FCC launched an investigation and has subsequently increased fines for indecency tenfold.

The FCC has also begun to make moves to limit the extent to which advertisers are able to target children, proposing amendments to the Children's Television Act that would impose further time limits on advertising that is aimed at children. It proposes that promotional materials, public announcements and educational messages should no longer enjoy exemptions from time limits. The committee has argued that such rule changes affect the First Amendment and the economic interests of ANA's members.

The committee has also voiced its objection to a campaign by consumer advocacy group Commercial Alert and some medical professional to end direct-to-consumer (DTC) prescription drug advertising.

It has also been protesting against legislation recently signed by California governor Arnold Schwarzenegger that prohibits unsolicited commercial faxes being sent without the express prior consent of the consumer.

While the regulator has had its eye on the advertising industry, litigation has also been on the increase.

"The problem is that, unlike in Europe, the winner does not get their legal fees paid," says Wood. "The courts are open, but it can be very expensive to defend. Even if you win, the cost can still be huge."

Wood adds that alternative forms of dispute resolution, such as arbitration, are yet to catch on in the US in the way that they have in Europe, where their popularity is growing. "The US Trial Lawyers Association is so strong it is unlikely there will be reform," he says.

This close monitoring of advertising content inevitably raises broader, more philosophical questions about free speech and the point at which regulation becomes censorship. Wood considers this an important issue, but does not think the industry as a whole is as concerned. "Free speech is a great academic debate, but advertisers are not so concerned about it, even though I think they should be. It often falls on deaf ears."

With nearly three decades' experience of the advertising industry, Wood says he has become used to issues going "round and round". The main difference he detects today compared with 20 years ago is that there is so much more advertising around.

This means that in years to come Wood and his colleagues, as well as the regulators and

legislators, will be kept very busy indeed.

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