Report to The Florida Bar  
On  
THE USE OF ACTORS AS POLICE OR JUDGES IN ENDORSEMENTS  
IN TELEVISION ADVERTISEMENTS  

Leonard Bickman, Ph.D.  
May 8, 2012  

The Issue  

The task is to review the research literature with regard to advertising by lawyers as explained in a telephone conversation with Barry Richard on April 12, 2012. Specifically to examine the research “with respect to the influence on consumers of certain types of attorney advertising, in particular the use of actors portraying police officers and judges.” (Email from Barry Richard on April 18, 2012).

Social influence and compliance  

Over 50 years of research in social psychology, advertising and marketing have demonstrated that others influence people. There are several theories and conceptualizations that explain why we are subject to this influence. Cialdini (2010) describes six psychological principles of social influence that are used in everyday life that are supported by experimental research. These are: reciprocity, social validation, consistency, liking, scarcity, and authority. In the context of police and judges appearing in lawyer advertising the most relevant principle is authority. Cialdini states that legitimate authorities are very influential regardless how they obtained their position. We learn to follow the orders or advice of these authorities because following what they say is usually advantageous to us. However, he notes that we often follow authorities even when they are outside their legitimate role. This is the situation that consumers confront when advertisements include authorities who are actually not acting legitimately because in most jurisdictions judges and law enforcement officers are not permitted to appear in advertisements for lawyers.

Reference  

Uniforms and Social Influence

The advertisements of concern used by lawyers are ones that portray law enforcement official or judges in "uniform." The judges may appear in robes and behind a bench while police appear in uniform. The question is whether the appearance of these individuals in uniforms affects the observers. Throughout history the uniform has been used as a symbol of authority. But, first let us address one reason why lawyers might want to have judges and police in their advertisements that are not related directly to their dress.

The Gallup Organization has polled Americans to rate the honesty and ethical standards of professions since 1976, and annually since 1991. In November 2010 telephone interviews conducted with a random sample of 1,037 adults, aged 18 and older, living in the continental U.S., were selected using random-digit-dial sampling. They were asked to "Please tell me how you would rate the honesty and ethical standards of people in these different fields -- very high, high, average, low, or very low" The percentage receiving a very high or high was 57% for police officers, 47% for judges and 17% for lawyers. These percentages were fairly stable for the previous six years. Clearly being endorsed by professions that are seen as more honest and ethical than lawyers is seen as an advantage beyond their authority. Next we look at research that examined if persons in uniforms could actually influence people’s behavior.

There are a limited number of empirical studies that examine the effect of uniforms on the behavior of the observer. The first published study of uniforms and compliance was conducted by Bickman and appeared in 1974 in a scholarly journal as well as in the popular press (Psychology Today). A theoretical approach useful in understanding the operation of authority is provided by social power theory that suggests the following as the bases of power:

1. Reward power rests on the person's belief that the influencing agent has in his possession some resource that the individual feels he or she can obtain by conforming to the agent's request.
2. Coercive power is based on the agent’s ability to punish non-compliance.
3. Legitimate power is based on internalized values that specify that an agent has a legitimate right to exert influence and that this influence ought to be accepted. Cultural values, acceptance of the social hierarchy, or role prescriptions are
of legitimate power. Obedience and compliance to an experimenter’s orders in laboratory situations are probably based on legitimate power.

(4) Referent power is based on the identification with the agent. The agent derives his power from his attractiveness.

(5) Expert power stems from the perception that the agent possesses superior knowledge or ability. Expert power operates only as long as the agent is seen as acting in good faith and within the area of this expertise.

(6) Informational power is based on information communicated by the agent.

These sources of power are similar to the ones discussed earlier that are described by Cialdini.

The purpose of Bickman’s research was to measure the relative degree of social power that uniformed persons possess and to determine the basis of this power. One way of understanding the nature of authority is to examine its efficacy in a domain removed from the context in which it "typically" operates. For example, observing that a physician is able to get us to undress at his or her request in the privacy of the examining room tells us something about the nature of his or her authority. The doctor’s ability to accomplish this in a public setting would tell us much more.

The study tested whether an actor in a guard’s uniform had more power to influence people than a person in a milkman’s garb (a non-authority uniform) or a person in civilian dress (sports coat).

Superficially, the uniform may have appeared to be a policeman’s, however, the badge and insignia were different and he did not carry a gun. The study was conducted on the streets in Brooklyn, New York.

In order to test the generalizability of the relationship the influence of the uniform was tested in three situations. These situations were selected to examine the influence of the uniform where the person had no clear legitimate right to ask strangers on the street to follow the actor’s order (1) Picking up the bag. The actor (in appropriate dress) stopped the chosen person and pointed to a small paper bag lying on the ground and said; "Pick up this bag for me!" (2) Dime and meter. The actor stopped a person walking on the sidewalk, pointed to a confederate standing beside a car parked at a parking meter and said, "This fellow is over-parked at the meter but doesn’t have any change. Give him a dime!" (3) Bus Stop-No Standing. In this situation a person was chosen to be if he or she was standing alone at a bus stop. The
person was approached and told, "Don't you know you have to stand on the other side of the pole? The sign says 'No Standing'." The "No Standing," of course, refers to the fact that it is illegal for a car to stand in a bus stop.

There was no statistically significant difference between obedience to the milkman and obedience to the civilian. Across the three situations 19% obeyed the civilian, 14% the milkman and 38% the guard. The guard, however, received significantly more compliance than did the civilian or milkman. Neither the sex nor the ages of the subjects were significantly related to compliance with the request.

Since it was demonstrated that power was related to the type of uniform and not the mere presence of a uniform, an analysis of the basis of this power can be attempted. Social power theory differentiates the six bases of social power into three general categories based on whether the relationship was independent of the agent, dependent on the agent and requiring surveillance, or dependent without surveillance being necessary. Legitimate power is considered to be socially independent of the agent since the agent only provides information, which leads to immediately internalized cognitive changes. Similar internalized power is found with referent, expert and legitimate power. Only coercive and reward power require surveillance.

Although the various types of power may produce similar levels of initial overt behavioral compliance, the degree to which surveillance is important is critical in analyzing the basis of the agent’s power. For example, if the guard's power is based on either reward or coercion, then he or she should have more ability to influence under surveillance than under no surveillance. However, if the guard's power is based on, for example, legitimacy, then surveillance should have no effect on the guard's power. The aim of Experiment II was to examine whether the guard's social power was affected by surveillance.

In the second study surveillance was varied in the dime and meter situation. In the surveillance situation the guard stood by the meter after telling the subject to give the dime. In the non-surveillance situation the subject was approached about 50 feet away from the meter and told to give the person by the meter a dime. The guard then turned the corner and disappeared. The second study replicated the results of the first study, finding compliance for the civilian (46%) to be significantly less than for the guard (83%). There was no difference between compliance in the surveillance condition versus the no compliance condition thus leading to the conclusion that the power
was based on legitimacy in spite of the fact that guards (or police) do not have the recognized power to order others to give money to strangers. In fact when 141 college students were asked to rate the legitimacy of 29 different situations the guard was seen as less legitimate than a civilian in the dime and meter situation. Moreover, 189 students when asked to predict what they or others would do in one of the three situations did not think the uniform would affect them.

The implication of these studies is that the predictions people make about their behavior in dealing with authorities cannot be counted on for protecting them from carrying out what they also may perceive as being orders from a legitimate authority. The person’s perception and evaluation of the authority may be of greater importance in determining his legitimacy than specific orders given by the authority figure. Does the person trust the authority, see the authority's actions as generally beneficial, and feel that others would support his opinion? It is highly probable that uniformed governmental authorities have even more legitimate social power than did the guard in the present research.

One other investigator replicated and extended Bickman’s study. Bushman (1984) used the dime and meter situation with 150 adult pedestrians in Salt Lake City Utah. He compared compliance to a person dressed as a “bum”, a business executive and a fire fighter in a uniform. The bum received 44% compliance, the business executive 50% and the fire fighter 82%. There were no significant gender differences and older subjects complied more than younger ones in the fire fighter condition. Bushman concluded it was not dress alone that made a difference but the authoritative position of the firefighter that was important. In a study published in 1988 Bushman again used the dime and meter situation in Saint Louis Missouri but this time with a under 5 foot female. The woman was either dressed as a “panhandler”, a businesswoman, or in dark blue uniform with an ambiguous badge. Again, the results replicated previous findings with 72% complying in the uniform condition, 48% in the businesswoman and 52% in the panhandler. No differences were found in race, sex or age of the subjects.

Geffner & Gross (1984) had an actor stop a person who was about to cross the street at a preselected crosswalk; the actor then told the person that he/she could not cross at that place but instead had to cross at another location down the block designated by the actor. There were 48 subjects chosen at random at various locations in the
San Jose-San Francisco Bay area. Each actor wore a "uniform" that consisted of (1) a clearly visible badge that had printed on it "Santa Clara Valley Dept. of Public Works, Research Division", (2) an orange hardhat, and (3) a notebook or clipboard. The results showed statistically significantly more people obeyed in the uniform conditions and that overall more female subjects disobeyed. Male and female actors were obeyed equally.

Moving to a different country and a very different compliance request, Guéguen (2009) studied 240 young women walking in a pedestrian zone in a medium size town located in the west of France. According to the experimental condition, the confederates wore their firefighter’s uniform (only boots, trousers and tee-shirt) or civilian clothes (clean jeans, tee-shirt and sneakers). In the relevant study the confederate approached a young woman and said “Hello. My name’s is Antoine. I just want to say that I think you’re really pretty. I have to go to work this afternoon but I wonder if you would give me your phone number. I’ll phone you later and we can have a drink together someplace.” The results obtained show that the firefighter’s uniform was associated with greater compliance to the request (21.7 %) than civilian clothing (8.3 %).

There are few other studies in the literature that address uniforms from a different perspective. In a very different situation than the previously described studies Lowenstein, Blank, & Sauer, (2010) found that the presence of a police officer in uniform while children were asked to make identification of “suspects” resulted in more errors of identification than when the officer was in civilian clothes. They theorized that wearing a uniform constitutes an authority cue that adversely affects a child’s ability to make accurate eyewitness identifications because they wanted to please the uniformed officer.

The above studies showed uniforms influenced the behavior of people. It is usually much more difficult to affect behavior than attitudes or cognitions. In a study by Singer and Singer (1985) 72 female college students in New Zealand were shown one photograph of the same police officer either in uniform, civilian clothes or just his face. Police officers in uniforms were perceived as more competent, more reliable, more intelligent and more helpful than the same person in the facial or non-uniform photograph.

A very thorough and in-depth literature search for any research involving uniforms and compliance/obedience/influence was conducted. Only five studies have been published since 1974. This is
a very small experimental research literature but the results of all five, conducted by four different investigators in very different settings with varied subjects were consistent. In all situations persons in the general public were significantly more likely to comply with a person in an authoritative uniform than to a civilian. In most of the situations it can be argued that the attempt to influence was not even part of the legitimate power of the uniformed authority. However, Bickman's follow-up study suggests that the obedience was most likely based on the perception of legitimacy since compliance was not affected by surveillance. Cialdini (2010) in his chapter on social influence in “Advanced Social Psychology” describes authority as one of the key social influence factors. He states, “Legitimately constituted authorities are extremely influential persons (p.404).” But more importantly he goes on to cite the Bickman and Bushman studies as indicating, “In the case of influence that generalizes outside of relevant expertise, the impact of authority (real and symbolic) appears equally impressive.” (p. 405)

References for uniforms


INDIRECT PERSUASION IN ADVERTISING

While some have argued that behavioral research should have a limited role in legal decisions (see Friedman, 2010, Blumenthal, 2007 and Rizzo & Whitman, 2008, for discussions of this complex issue) it is clear that behavioral research can have a critical function that goes beyond simple assumptions made by some courts about the “average or rational person.” There is no question that advertising can affect human attitudes, beliefs and behavior, especially in purchasing goods and services. What is less recognized is that this advertising can affect persons without their awareness or in an unconscious fashion. This fact has a critical role to play in how the effects of advertising is measured and studied. Several studies address this issue.

Yoo (2008) notes that almost all-contemporary psychology theories contend that humans can acquire information unconsciously. The term unconscious is usually defined as “unawareness of stimuli or their effects during a task.” Unconscious processing is usually thought to be “fast, involuntary, automatic, not subject to capacity limitations, and always triggered by response to a certain cognitive input.” In a study of Web advertisements Yoo experimentally examined the effects of unconscious processing of ads by manipulating the level of attention paid to the ad. The results suggest that consumers’ previous exposure to the ads build a more favorable attitude toward the advertised brand regardless of the levels of attention they paid to the advertisements. Furthermore, those who unconsciously processed ads did not remember seeing the ad, but they were more likely to include the advertised brand in the consideration set than those who had reported seeing the ad.

Russo and Chaxel (2010) note that persuasive messages can succeed in several ways, including direct and indirect paths of influence and conscious and non-conscious ones. In their study they concluded that there was no evidence that subjects recognized the indirect impact of the commercials on their product choices. They were unaware of influence of advertising on their own behavior.

McQuarrie and Phillips (1993) found that indirect persuasion attempts to influence can be advantageous because consumers must “self-generate” the implicitly stated claim. These types of claims are more
resistant to counter arguments. Perhaps the most important implication of their study is that it identifies ways in which advertisers effectively mislead consumers. That emphasis that visuals (pictorial metaphors) can cause consumers to infer positive inferences about the advertised product, including misleading claims that could not legally be stated outright. Visual stimuli may in fact be more effective than verbal ones. That note that the standard for evaluating an ad should shift from what a “reasonable person” would do because a supposedly reasonable person would not make inferences from pictures but the research they conducted showed this occurs.

Arkush (2008) provides a legal perspective on the role of emotion and the unconscious in a lengthy essay. He states that the causes of consumer choices are frequently unknown by the consumer and may be unknowable. The law should not assume that individuals are capable of making rationale choices when emotion and influence without awareness are present.

The application in the present case is straightforward. That consumers are aware that actors are portraying judges or police does not mean that it does not influence them. In fact that is what the advertisers are anticipating. However, their awareness does not protect them from the effects of misleading advertisements.

References


Blumenthal, J. Emotional Paternalism, (2007) Florida State University law review, 35 (1) 1- 72

Yoo, S. Y. (2008) Unconscious processing of Web advertising: effects on implicit memory, attitude toward the brand, and Consideration Journal of Interactive Marketing, 22(2), 1-18

Disclosures and Disclaimers

One approach to dealing with misleading information is to require the use of a disclosure or disclaimer. Does the presence of a disclosure or disclaimer prevent an otherwise misleading advertisement from influencing the consumer? Although the literature search in this area was not exhaustive no studies dealt with judges or police and disclaimers. But there is a body of research in other areas that bear on this question.

In a review of the literature the Stewart and Martin (2004) concluded that the market does not consistently provide critical information that is important to consumer decisions. In such cases regulatory action using affirmative disclosure may be required. The Federal Trade Commission developed guidelines for affirmative disclosure in 1970: the “clear and conspicuous” standard. The Food and Drug Administration requires disclosure in direct-to-consumer pharmaceutical advertising, the Environmental Protection Agency requires disclaimers in mileage statements and The Securities and Exchange Commission requires certain disclosures when publishing corporate information. The authors point out that the act of disclosure may not be sufficient to produce the expected outcome. Evidence of disclosure may be obtained by measuring consumer awareness of information through surveys. However, determining whether a disclosure is adequate should include more than simple awareness. Measures of adequacy should include the degree to which information is understood and used by consumers. These measures of understanding can range from comprehension of specific claims to knowledge and beliefs about particular products and services. They note that measurement methodology is not an issue because such measures are well known and widely used.

As previously discussed in more detail in the section dealing with
unconscious influence there are differences in what people think they know and what they actually know. It is doubtful that in many situations the consumer has sufficient understanding to make informed decisions that are not influenced by misleading or incomplete information, regardless of the existence of government regulations about disclaimers.

Warnings and disclaimers can be considered a special kind of communication statements purportedly meant to cause a consumer to act in a specific way or reach a specific cognitive outcome (Heymann, 2010). Heymann believes that the prevailing view among some courts appears to be that consumers are too susceptible to advertising to fully understand the information in a disclaimer. She cites several studies in a footnote to support her conclusion. The references to these studies are provided at the end of this section.

She goes on to say that the law provides a mixed message about disclaimers and warnings. Product liability cases assume that an appropriate warning would have prevented an injury. But in trademark infringement cases, courts discourage disclaimers and may require empirical evidence that the disclaimers can counteract the harm by the consumer's use of the product. Her rather ironic statement is informative of this point of view “Despite general statements from some courts and commentators that these texts are ineffective because consumers rarely notice, read, or internalize such communications, courts continue to accord legal significance to warnings and disclaimers, particularly when the harm to be prevented cannot be reduced in an otherwise cost-effective or principled manner. Thus, unless courts are intentionally encouraging inefficiency by requiring defendants to engage in window dressing, they must be operating under the assumption that consumers do in fact understand properly presented disclaimers. If this were not the case, courts would presumably have abandoned reliance on such communications as an appropriate remedy across the board.”

There are several empirical studies that address the effectiveness of disclaimers. The SEC requires mutual fund advertisements contain a disclaimer warning that past returns do not guarantee future returns and that investors could lose money. A total of 553 students at two universities participated in the experiment conducted by Mercer, Palmiter and Taha (2010). After viewing a version of the advertisement, participants answered a series of question about their beliefs about the advertised fund’s future performance and their willingness to invest in the fund. The results showed that the SEC-
mandated disclaimer was ineffective. The disclaimer did not reduce perceived probability of investment nor reduce investors’ expectations about future returns.

Dodge and Kaufman (2007) tested the presence of a disclaimer with 262 undergraduate students that appear on the labels of dietary supplements “This statement has not been evaluated by the Food and Drug Administration (FDA). This product is not intended to diagnose, treat, cure, or prevent any disease.” When the disclaimer was present, individuals were slightly more skeptical of the product’s effectiveness than when the disclaimer was absent. There was no effect of the disclaimer on the ratings of safety.

Mason, Scammon & Fang (2007) conducted two studies. The sample in study one was 78 consumers who were current users of dietary supplements. In study two they used 199 undergraduate students. Both studies found the same overall effect with regard to the following disclaimer: “this statement has not been evaluated by the FDA.” The dependent measures were ratings of efficacy and safety, and decision or intent to purchase. There were no differences in ratings of safety or efficacy between the disclaimer and no disclaimer conditions. The disclaimer did not appear to impact product evaluations. Perceptions of participants seeing a disclaimer are very similar to those seeing the no-disclosure control condition.

Johar and Simmons (2000) state that because encoding and use are separate stages, simple disclosure recall is not an adequate measure of efficacy of a disclosure. Thus, disclosures may be recalled without being used as inputs to judgment. The choice of an appropriate efficacy measure is a difficult one. A single index of efficacy such as impact on judgment is infeasible. Instead, they suggest multiple measures that focus on process as well as outcomes. They recommend that measures of the efficacy of disclosures should focus on evidence that the implications of the disclosures are understood, that there is sufficient opportunity to use this understanding in a judgment situation, that the disclosure is presented that enhances motivation to use it and that there be evidence that the disclosure influenced judgment.

There is a fairly clear picture that disclaimers that are designed to guard against misleading claims of efficacy are of limited effectiveness. Noticing, encoding (understanding) and applying the disclaimer are all interdependent. Noticing, with or without awareness, is necessary, understanding what the disclaimer implies and then using it in a
decision are all steps necessary for protecting the consumer from false or misleading statements that may lead to bad decisions on the part of the consumer. In the case at hand the specific question is does the endorsement or presence of uniformed authorities or actors representing those authorities mislead the consumer? Operationally this would define misleading the consumer if the consumer concludes that the advertised attorney’s services are better than other attorneys. We cannot judge if in fact it would be a bad decision to hire that attorney but the uniformed authorities endorsement supports a fact not in evidence, that these services are better than others. Given the existing research on disclaimers it is doubtful that the disclaimer nullifies any false positive impression provided by the uniformed authority figure. At best, disclaimers may be effective when they add factual information that is not present in the advertisement, but even here there the disclaimer does not appear to affect the consumer’s behavior. What is more certain is the lack of evidence that disclaimers can correct misleading advertisements that operate without awareness or unconsciously on the viewer.

References


Heymann’s additional citations.

Jacob Jacoby & Robert Lloyd Raskopf, Disclaimers in Trademark Infringement Litigation: More Trouble Than They Are Worth?, 76 TRADEMARK REP. 35, 57-58 (1996) (recommending that empirical studies as to effectiveness of disclaimers be conducted before disclaimers are mandated);

Howard Latin, "Good" Warnings, Bad Products and Cognitive Limitations, 41 UCLA L. Rev. 1195, 1198 (1994) (noting that "consumer inattention to warnings is very common"),

Michael B. Mazis et al., An Evaluation of the Alcohol Warning Label: Initial Survey Results, 10 J. PUB. POL'Y & MARKETING 229, 240 (1991) (reporting some awareness of warning messages but with caveats);

Fred W. Morgan & Jeffrey J. Stoltman, Television Advertising Disclosures: An Empirical Assessment, 16 J. BUS. & PSYCHOL. 515, 532-33 (2002) (concluding that consumers overestimate their ability to perceive disclosure information in television advertising);

Rebecca Tushnet, Trademark Law as Commercial Speech Regulation, 58 S.C. L. REV. 737, 742-43 (2007) (summarizing academic research concluding that disclaimers "rarely affect consumer perceptions in the overall context of advertising or packaging");


Conclusion

Theories of social influence and empirical research on social influence have clearly established that other persons influence people in many situations. The specific research on uniforms is consistent in these findings. Authoritatively uniformed persons are seen as more attractive and have more power to influence people’s behavior even beyond their legitimate role. The research on influence without awareness establishes that people can be influenced by many factors
for which they are not aware. Finally, research has failed to
demonstrate that disclaimers are an effective approach to dealing with
misleading advertisements. All of this evidence leads to a conclusion
that endorsements by actors portraying law enforcement authorities or
judges are misleading.

However, there are three limitations to the above conclusion. First,
there are only five published experiments on uniforms and compliance.
Second, none of the studies deal with advertising and specifically
address the issue of lawyer’s advertising using authorities. Third, no
empirical research was found that describes how the public chose
attorneys and what factors affect their choice. What is missing from
the literature are small-scale studies that would test whether such
advertisements affect consumers beliefs and intentions in hiring an
attorney as would be expected based on the extant research. These
studies can be used to better establish a causal linkage between
endorsement advertisements, in this specific context, and consumer
beliefs and intentions.