

## CHAPTER 6

## CONSUMERS

## INTRODUCTION

**THE “MARLBORO MAN” HAS LONG MESMERIZED** people around the world, and few can deny the glamour of the ruggedly good-looking Marlboro cowboy, with boots, hat, chaps—and, of course, a cigarette in his mouth. Product of one of the most successful advertising campaigns in history, the Marlboro Man revolutionized the image of Marlboro cigarettes, making it the best-selling brand in the United States. Always a leader in its field, Marlboro has now begun selling in Turkey and test marketing elsewhere a short, “snack-size” cigarette, the Marlboro Intense, for employees and others who are forced to take quick outdoor cigarette breaks. Smokers can consume it in only seven puffs yet receive the same amount of nicotine as they would from a regular-size cigarette.

Everybody, of course, knows that smoking is hazardous to one’s health—everyone, that is, but the tobacco industry. It continues, publicly at least, to deny any cause-and-effect relationship between smoking and disease, even though smoking doubles a person’s risk of stroke and makes coronary artery disease two to four times more likely. Furthermore, male smokers are twenty-two, and female smokers twelve, times more likely than nonsmokers to die from lung cancer. Smoking is the “most dangerous voluntary activity in the world.”<sup>1</sup> On average, smokers die fourteen years earlier than nonsmokers. The fact that “about half of all Americans who continue to smoke will die because of the habit”<sup>2</sup> makes smoking the leading cause of preventable deaths in the United States. Although the percentage of Americans who smoke is dropping, the absolute number of smokers—and smoking’s death toll—remains as high as ever. Four hundred

forty thousand Americans die each year of tobacco-related causes (up from 400,000 in 1990), at an annual price tag of \$75 billion in medical expenditures and another \$80 billion in indirect costs.<sup>3</sup>

Virtually no other consumer good compares to cigarettes in terms of individual injury and social cost. This is one reason that the federal government took the unprecedented step of bringing an anti-racketeering lawsuit against the large tobacco companies. The suit contended that cigarette manufacturers “have engaged in and executed . . . a massive 50-year scheme to defraud the public” by suppressing evidence that cigarette smoke contains carcinogens and that nicotine is addictive. In addition, the suit accused tobacco companies of marketing cigarettes to teenagers, agreeing among themselves not to develop safer cigarettes, and manipulating nicotine levels in cigarettes to create and sustain addiction. (For example, so-called low-tar and low-nicotine cigarettes, marketed as “light” or “ultra-light,” were designed so that addicted smokers inhale as much nicotine as always.) After a nine-month trial, the government won its lawsuit in 2006—although not the \$280 billion in damages it had sought. But U.S. District Court Judge Gladys Kessler did require cigarette manufacturers to correct their falsehoods; to desist from making incorrect, misleading, or deceptive statements about the health risks of cigarettes; and to disclose their marketing practices annually to government officials.

In 2009, Congress took things a step further by empowering the Federal Drug Administration to regulate cigarettes—although not to outlaw smoking or ban nicotine altogether.

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Buena Vista Pictures/courtesy Everett Collection

The movie *The Insider* brought to the screen the story of Jeffrey Wigand, who served as Vice President for Research and Development for Brown & Williamson Tobacco Corporation. In a *60 Minutes* interview Wigand revealed that his former employer knew nicotine was addictive and intentionally manipulated the tobacco content of its cigarettes to increase the amount of nicotine they delivered.

Among other things, the FDA now has the legal authority to reduce nicotine content, to regulate the chemicals in cigarettes, and to restrict cigarette advertising even further. The law also bars tobacco flavorings (which are thought to lure first-time smokers), forbids marketing cigarettes as “light,” “mild,” or “low tar,” and requires larger, more graphic warnings on cigarette packages. Meanwhile, smokers continue to sue cigarette manufacturers for injuries allegedly caused by their deadly habit. Despite the warnings that have been required on cigarette packs and ads since 1966, many smokers—or their estates—contend that they were addicted and couldn’t stop. Many of these lawsuits are large class-action suits involving dozens of law firms with the collective resources to take on the big tobacco companies. As a result, the smokers have been winning. In cases around the country, juries have been penalizing tobacco companies with compensatory and punitive damage verdicts for millions, even billions, of dollars (although the companies often succeed in getting the largest of these judgments, such as that of a Miami jury for \$144.8 billion, reduced or overturned on appeal). In response to this and to declining cigarette consumption in the United States and parts of Europe, the tobacco companies are marketing their wares more aggressively than ever in Asia and the developing world and fighting the efforts of poorer nations to reduce smoking through restrictions on the advertising, packaging, and sale of cigarettes.<sup>4</sup>

Given all this, it seems the world should welcome electronic cigarettes with open arms.<sup>5</sup> E-cigarettes work by turning nicotine-infused liquid into vapor, which the user inhales or “vapes.” Free of all the noxious substances that ordinary cigarettes contain, they don’t cause cancer or lung disease. They don’t smell bad, and they don’t pose a hazard to the health of bystanders. In effect, e-cigarettes allow consumers to get the pleasure that smokers get from the nicotine in cigarettes without the danger to their health (or that of others) that comes from smoking tobacco. But not everyone is persuaded that they are a good thing, and health lobbyists have succeeded in getting a few cities and countries to impose restrictions on them. Nicotine is, after all, a poison, though probably no more dangerous than caffeine. It is also addictive. Critics of e-cigarettes claim that they allow smokers who might otherwise kick their habit to remain hooked by switching to vaping when it’s not convenient to puff. But what really worries health lobbyists is that e-cigarettes might entice children or be a “gateway” to the real thing. More generally, they wish to discourage anything that even remotely resembles smoking or that might make it more socially acceptable. And the ads for vaping do make it seem cool. Meanwhile, the market for e-cigarettes is growing rapidly. Though still tiny compared to cigarette sales, its potential is obvious—especially to the big tobacco companies, several of which are now selling e-cigarettes.

Vaping may be relatively safe, but ordinary cigarettes remain an especially dangerous product. Their manufacture, marketing, advertising, and sale raise a number of acute questions relevant to

the consumer issues discussed in this chapter. For instance, what are the responsibilities to consumers of companies that sell potentially or (in the case of cigarettes) inherently harmful products? To what extent do manufacturers abuse advertising? When is advertising deceptive? Can advertisers create or at least stimulate desires for products that consumers would not otherwise want or would not otherwise want as much? How, if at all, should advertising be restricted? Are consumers sufficiently well informed about the products they buy? Are they misled by deceptive labeling and packaging?

In general, how far should society go in controlling the claims of advertisers, in regulating product packaging and labels, in monitoring product quality and price, and in upholding explicit standards of reliability and safety? What moral responsibilities do businesses have in these areas? In a market-oriented economic system, how do we balance the interests of business with the rights of consumers? How do we promote social well-being while still respecting the choices of individuals?

### LEARNING OBJECTIVES

These questions highlight some of the issues probed in this chapter. In particular, it examines:

1. Product safety—the legal and moral responsibilities of manufacturers and the pros and cons of government regulations designed to protect consumers, including the issue of legal paternalism
2. The responsibilities of business to consumers concerning product quality, prices, and labeling and packaging
3. Deceptive and morally questionable techniques used in advertising
4. The role of the FTC in regulating advertising, especially, advertising to children
5. The social desirability of advertising in general: Is it a positive feature of our economic system? Does it manipulate, or merely respond to, consumer needs?

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## PRODUCT SAFETY

### SUMMARY

The complexity of an advanced economy and the necessary dependence of consumers on business to satisfy their many wants increase business's responsibility for product safety.

Business's responsibility for understanding, providing for, and protecting the interests of consumers derives from the fact that they depend on business to satisfy their many and varied material needs and wants. This dependence is particularly true in our highly technological society, characterized as it is by a complex economy, automation, intense specialization, and urban concentration. These conditions contrast with those prevailing in the United States when the country was primarily agrarian and people could satisfy most of their own needs. Today we rely on others to provide the wherewithal for our survival and prosperity. We rarely make our own clothing, supply our own fuel, manufacture our own tools, or construct our own homes, and our food is more likely to come from thousands of miles away than from our own gardens.

The increasing complexity of today's economy and the multifaceted dependence of consumers on business for their survival and enrichment have heightened business's responsibilities to consumers—particularly in the area of product safety. From toys to tools, cars to baby cribs, consumers use countless products every day believing that neither they nor their loved ones will be harmed or injured by them. Consumers, however, lack the expertise to judge many of the sophisticated products they utilize. Being human, they also make mistakes in handling the things they buy—mistakes that the manufacturers of those products can often anticipate and make less likely. For these reasons, society must rely on the conscientious efforts of business to promote consumer safety.

Statistics suggest that faith in the conscientiousness of business is sometimes misplaced. Every year millions of Americans require medical treatment from product-related accidents. For example, in a typical year, lawn mowers send 86,000 consumers to hospital emergency rooms, and home workshop equipment causes 119,500 people to seek

emergency care; packaging and containers for household products injure 224,000 people, and sports and recreational equipment over 927,000.<sup>6</sup> Consumer products also electrocute around fifty people a year.<sup>7</sup>

### THE LEGAL LIABILITY OF MANUFACTURERS

If any of us is injured by a defective product, we can sue the manufacturer of that product. We take this legal right for granted, but it didn't always exist. Before the landmark case of *MacPherson v. Buick Motor Car* in 1916, injured consumers could recover damages only from the retailer of the defective product—that is, from the party with whom they had actually done business. That made sense in a bygone day of small-scale, local capitalism. If your buggy crashed because the harness you bought from the local harness maker was defective, then your complaint was against him. By contrast, when a wheel fell off Donald MacPherson's Buick, the firm he had bought the Buick from hadn't actually made it.

Legal policy before *MacPherson* based a manufacturer's liability for damage caused by a defective product on the contractual relationship between the manufacturer and the purchaser (the "privity doctrine"). Their contractual relationship is simply the sale—that is, the exchange of money for a commodity of a certain description. But that contractual relationship is an important source of moral and legal responsibilities for the producer. It obligates business firms to provide customers with a product that lives up to the claims the firm makes about the product. Those claims shape customers' expectations about what they are buying and lead them to enter into the contract in the first place. The question in *MacPherson*, however, was whether a manufacturer's liability for defective products was limited to consumers with whom it had a direct contractual relationship.

The *MacPherson* decision from the New York Court of Appeals recognized the twentieth-century economic reality of large manufacturing concerns and national systems of product distribution. Among other things, local retailers are not as likely as large manufacturers to be able to bear financial responsibility for defective products that injure others. One can also see the court moving in *MacPherson* to a "due-care" theory of the manufacturer's duties to consumers. **Due care** is the idea that consumers and sellers do not meet as equals and that the consumer's interests are particularly vulnerable to being harmed by the manufacturer, who has knowledge and expertise the consumer does not have. *MacPherson*, for instance, was in no position to have discovered the defective wheel before he purchased the Buick. According to the due-care view, then, manufacturers have an obligation, above and beyond any contract, to exercise due care to prevent the consumer from being injured by defective products.

As the concept of due care spread, legal policy moved decisively beyond the old doctrine of *caveat emptor*—literally "let the buyer beware"—which was seldom the guiding principle by the time of *MacPherson* anyway. Today we associate *caveat emptor* with an era of patent medicines and outrageously false product claims. Although legally the doctrine of "let the buyer beware" was never upheld across the board, there was a time when consumers' legal responsibility to accept the consequences of their product choices was greater than it is today. Consumers were held to the ideal of being knowledgeable, shrewd, and skeptical. Because they freely chose whether to buy a certain product, they were expected to take the claims of manufacturers and salespeople with a grain of salt, to inspect any potential purchase carefully, to rely on their own judgment, and to accept any ill results of their decision to use a given product. In the first part of the twentieth century, however, the courts repudiated this doctrine, largely on grounds of its unrealistic assumptions about consumer knowledge, competence, and behavior.

The 1916 *MacPherson* case expanded the liability of manufacturers for injuries caused by defective products.

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**SUMMARY**

The legal liability of manufacturers for injuries caused by defective products has evolved over the years. Today the courts have moved to the doctrine of strict liability, which holds the manufacturer of a product responsible for injuries suffered as a result of defects in the product, regardless of whether the manufacturer was negligent.

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Two broadly utilitarian considerations support strict product liability.

**Strict Product Liability**

Despite its support for the due-care theory and for a broader view of manufacturer's liability, the *MacPherson* case still left the injured consumer with the burden of proving that the manufacturer had been negligent. Not only might such an assertion be difficult to prove, but also a product might be dangerously defective despite the manufacturer's having taken reasonable steps to avoid such a defect.

Beginning with the 1963 California case *Greenman v. Yuba Power Products*, this situation changed. In that landmark case, the court explicitly held that an injured consumer may be awarded damages without having to prove that the manufacturer of the defective product was negligent. Consumers, the court ruled, have a right to expect that the products they purchase are reasonably safe when used in the intended way. On the basis of these and hundreds of subsequent cases, the "strict liability" approach to product safety has come to dominate legal thinking.

The doctrine of **strict product liability** holds that the manufacturer of a product has legal responsibilities to compensate the user of that product for injuries suffered because the product's defective condition made it unreasonably dangerous regardless of whether the manufacturer was negligent in permitting that defect to occur. Under this doctrine a judgment for the recovery of damages could conceivably be won even if the manufacturer adhered to strict quality-control procedures. Strict liability, however, is not absolute liability. The product must be defective, and the consumer always has the responsibility to exercise care.

Critics of strict product liability contend that the doctrine is unfair. A firm that has exercised due care and taken reasonable precautions to avoid or eliminate foreseeable dangerous defects, they insist, should not be held liable for defects that are not its fault—that is, for defects that happen despite its best efforts to guard against them. To hold such a firm liable seems unjust.

The argument for strict liability is basically utilitarian. *First*, its advocates contend that only such a policy will induce firms to bend over backward to guarantee product safety. Because they know they will be held liable for injurious defects no matter what, they will make every effort to enhance safety. *Second*, proponents of strict liability contend that the manufacturer is best able to bear the cost of injuries due to defects. Naturally, firms raise the price of their products to cover their legal costs (or pay for liability insurance). But defenders of strict liability do not disapprove of this. They see it as a perfectly reasonable way to spread the cost of injuries among all consumers of the product, rather than letting the cost fall on a single individual—a kind of insurance scheme.

**GOVERNMENT SAFETY REGULATION**

These developments in product liability law set the general framework within which manufacturers must operate today. In addition, a number of government agencies have become involved in regulating product safety. Congress created one of the most important of these agencies in 1972 when it passed the Consumer Product Safety Act. This act empowers the **Consumer Product Safety Commission (CPSC)** to protect the public "against unreasonable risks of injury associated with consumer products." The five-member commission sets standards for products, bans products presenting undue risk of injury, and in general polices the entire consumer-product marketing process from manufacture to final sale.

In undertaking its policing function, the CPSC gathers data, conducts research, and aids consumers in evaluating product safety. It sets uniform standards and coordinates local, state, and federal product safety laws and enforcement. The commission's jurisdiction extends to more than 15,000 products, and it has the power to require recalls, public

warnings, and refunds. Exceptionally risky products can be banned or seized. Rather than stressing punitive action, however, the commission emphasizes developing new standards and redesigning products to accommodate possible consumer misuse. It is less concerned with assigning liability than with avoiding injuries in the first place.

Aside from drugs and motor vehicles, however, most products—such as toys, tools, and appliances—go to the market without regulation.<sup>8</sup> Compared with many other developed countries, the United States regulates fewer products on grounds of safety, implicitly relying more on the tort system and the threat of private lawsuits to protect consumers and keep corporations in line. By contrast, the European Union follows a “better safe than sorry” approach and regulates products that haven’t been definitively proved dangerous but that might cause harm. Europe bans some products (such as cheap Chinese cigarette lighters that can flare up and explode) that are readily available in the United States and regulates other products (such as decorative oil lamps) more closely than the United States does. Moreover, American safety regulators, unlike their European counterparts, frequently find themselves entangled in red tape, which retards or prevents their defending consumers from unsafe products. A *Wall Street Journal* report on comparative approaches to product safety remarks, “As Europe increasingly gives regulators more clout and flexibility, their American counterparts remain hamstrung by a bureaucratic thicket that prolongs efforts to remedy all but the most egregious product defects.”<sup>9</sup>

### Economic Costs

Although most product safety regulations bring obvious benefits, critics worry about the economic costs. New safety standards add millions of dollars to the cumulative price tag of various goods. Often economists can estimate how many lives a regulation saves and then compare that number with the cost of implementing the rule. For example, the cost of requiring labels showing the trans fat content of foods is only \$3,000 per life saved, whereas the cost of insulation to protect against fire in airplane cabins is \$300,000. For other regulations, the cost to save one life is considerably higher: stronger automobile doors \$500,000; flame-retardant children’s sleepwear \$2.2 million; and reducing the asbestos exposure of factory workers \$5.5 million.<sup>10</sup> Is the expense always worth it?

And what about recalls? Millions of automobiles are recalled every year for a variety of reasons; some years, automakers recall more vehicles than they sell.<sup>11</sup> And recalls are expensive. BMW’s recall of 17,000 7-Series sedans to check problematic electronic fuel pumps set the company back \$3 million—a large sum, one might think, but only a tiny fraction of the billions of dollars that a series of recalls—10 million vehicles in 2009–10 and 7.4 million vehicles in 2012—cost Toyota (taking into account not just the recalls themselves and the record \$1.2 billion criminal penalty it paid in 2014 for delaying some of them, but also the decline in sales that Toyota suffered as a result).

### Consumer Choice

In addition to cost is the issue of consumer choice. Sometimes consumers dislike mandated safety technology. In 1974, for example, Congress legislated an interlock system that would require drivers to fasten their seat belts before their cars could move. No doubt the law would have saved lives, but a public outcry forced lawmakers to rescind it. Apparently, many drivers saw interlock systems as a nuisance and believed their inconvenience outweighed any gain in safety.

In other cases, safety regulations may prevent individuals from choosing to purchase a riskier, though less expensive, product. Take, for example, the notorious Ford Pinto with its unsafe gas tank (see Case 2.2). In 1978, after all the negative publicity, scores of lawsuits, and the trial of Ford Motor Company for reckless homicide, the sale of Pintos fell

Safety regulations benefit consumers but raise the price of products. Is the expense always worth it?

Preventing consumers from being able to choose a cheaper but riskier product can have both economic and ethical drawbacks.

dramatically. Consumers evidently preferred a safer car for comparable money. But when the state of Oregon took all the Pintos out of its fleet because of safety concerns and sold them, at least one dealer reported brisk sales of the turned-in Pintos at their low, second-hand price. Some consumers were willing to accept the risks of a Pinto if the price was right.

Economists worry that preventing individuals from balancing safety against price is inefficient. Philosophers worry about interfering with people's freedom of choice. Take automobile safety again. Because smaller cars provide less protection than larger ones, people in small cars are less likely to survive accidents. Bigger, safer cars are more expensive, however, and many would prefer to spend less on their cars despite the increased risk. If only those cars that were as safe as, say, a Mercedes-Benz were allowed on the market, then there would be fewer deaths on the highways. But then fewer people could afford cars.

### Legal Paternalism

That example touches on the larger controversy over **legal paternalism**: the idea that the law may justifiably be used to restrict the freedom of individuals for their own good. No one doubts that the law rightly restrains people from harming or endangering other people, but a sizable number of moral theorists deny that laws should attempt to prevent people from running risks that affect only themselves. There is nothing paternalistic about requiring you to have working brakes in your car. This protects other people; without brakes, you are more likely to run over a pedestrian. But requiring you to wear a seat belt when you drive affects only you. Anti-paternalists would protest that forcing you to wear a seat belt violates your moral autonomy. Nonetheless, in the past hundred years state and federal governments have enacted thousands of paternalistic laws. In 2008, for example, California basically outlawed retail sales of raw, unpasteurized milk because of potential health risks, even though a number of consumers prefer it to pasteurized milk.<sup>12</sup>

Three points about paternalism and safety regulations.

Paternalism is a large issue that can't be done justice here, but in regard to safety regulations, three comments are in order. *First*, the safety of some products or some features of products (such as a car's tires) affects not only the consumer who purchases the product but third parties as well. Regulating these products or product features can be defended on nonpaternalistic grounds. *Second*, anti-paternalism gains plausibility from the view that individuals know their own interests better than anyone else does and that they are fully informed and able to advance those interests. But in the increasingly complex consumer world, that assumption is often doubtful. Whenever citizens lack knowledge and are unable to make intelligent comparisons and safety judgments, they may find it in their collective self-interest to set minimal safety standards. Such standards are particularly justifiable when few, if any, reasonable persons would want a product that did not satisfy those standards.

*Finally*, the controversy over legal paternalism pits the values of individual freedom and autonomy against social welfare. Requiring people to wear seat belts may infringe the former but saves thousands of lives each year. We may simply have to acknowledge that clash of values and be willing to make trade-offs. This doesn't imply a defense of paternalism across the board. Arguably, some paternalistic regulations infringe autonomy more than laws about seat belts do but bring less gain in social welfare. In the end, one may have to examine paternalistic product safety legislation case by case and weigh the conflicting values and likely results.

### HOW EFFECTIVE IS REGULATION?

Consumers usually assume that if a product is on the market, especially if it is something they ingest, then it has been certified as safe. That assumption can be mistaken,

despite new federal food safety legislation enacted in 2011. For example, compared with Canada, Japan, and the European Union, the United States takes an approach to testing for mad cow disease that can only be called lackadaisical,<sup>13</sup> and there are serious gaps in its effort to keep beef free from contamination by *E. coli*.<sup>14</sup> Unapproved drugs, to take another example, can linger on the market for years while the **Food and Drug Administration (FDA)** studies them. For instance, Solvay first began manufacturing the hormone replacement Estratest in 1964, and millions and millions of women have taken it over the years. But the drug remained under FDA review until 2009, when the company discontinued production (generic versions are still available), and was never officially approved.<sup>15</sup> Unfortunately, however, even FDA approval is no guarantee of safety as the scandal a few years ago over the high risk of heart attack from Vioxx and related painkillers revealed.

No government agency vouches for the safety of cosmetics and personal-care products such as shampoos, even though many of them are alleged to contain ingredients that are untested or known to be harmful.<sup>16</sup> Herbal remedies and dietary supplements are another source of concern. Although they represent an enormous—and enormously profitable—industry, they are exempt from the regulatory scrutiny applied to drugs.<sup>17</sup> The effectiveness of most herbal supplements is, at best, unsubstantiated. Worse, a recent study found widespread contamination and mislabeling. Genetic testing of forty-four supplements from a dozen companies revealed that only two companies used completely authentic ingredients.<sup>18</sup>

In some cases, public opinion and political considerations can interfere with regulatory efforts to protect consumers. The FDA has admitted, for example, that “extreme,” “unusual,” and persistent pressure from four New Jersey congressmen led the agency to approve a medical device that its scientific reviewers had repeatedly and unanimously ruled was unsafe.<sup>19</sup> Similarly, pressure from gun enthusiasts caused the CPSC to drop its effort to get Daisy Manufacturing to recall BB guns with a defective magazine that had contributed to the accidental shooting death of a teenage boy.<sup>20</sup> The same year, political pressure appears also to have led the FDA to override the recommendation of its panel of medical experts and to refuse to lift the ban on over-the-counter sales of the “morning after” pill. This decision stirred so much controversy that the FDA eventually relented and approved selling the pill to women over eighteen and then, two years later, to women over seventeen. In an unprecedented intervention, however, the Obama administration overruled that decision in 2011 only to reverse course in 2013 and permit over-the-counter sale of the morning-after contraceptive pill to any woman or girl, regardless of age. One thing that neither the administration nor the FDA has changed its mind about is medical marijuana. Ignoring a report by the National Academy of Science’s Institute of Medicine as well as other medical and scientific evidence, the FDA continues to maintain that the use of marijuana has no medical benefits for any patients.

Political pressure aside, the FDA, the CPSC, and other regulatory agencies frequently have difficulty fulfilling their many responsibilities. The FDA, for example, receives nearly half a million reports each year of adverse reactions to popular medicines (most of them false alarms).<sup>21</sup> Nor can it keep up with legal requirements to inspect manufacturers of medical devices (ranging from contact lenses to defibrillators),<sup>22</sup> and at its current rate of inspection, it would take the FDA 1,900 years to check all the plants around the world that process our food.<sup>23</sup> The 2004 shortage of flu vaccine, the massive 2007 recall of children’s toys made in China with lead paint, and the salmonella outbreak of 2008 only underscored the difficulty that federal agencies have ensuring that products entering the country are safe.<sup>24</sup> Even when a regulatory agency recalls a product, it often ends up lingering on the shelves for years. Ask Walter Friedel: He spent four days

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#### SUMMARY

Government agencies, such as the CPSC, have broad powers to regulate product safety, although the United States is less aggressive than the European Union about doing so. Critics contend that these regulations are costly and prevent individuals from choosing to purchase a riskier but less expensive product. This argument touches on the controversy over legal paternalism, the doctrine that the law may justifiably be used to restrict the freedom of individuals for their own good.

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in intensive care after breathing fumes from a do-it-yourself product to waterproof tile floors that he found at his local Home Depot, even though the CPSC had banned it a year earlier.<sup>25</sup>

Part of the reason for these regulatory lapses is underfunding. The CPSC, for instance, has only half the employees it did in 1980,<sup>26</sup> and the FDA has lost nearly one-third of its inspectors since 2004.<sup>27</sup> Still, regulatory agencies do help to protect the interests of consumers and to pressure businesses to act responsibly. In addition to government regulation, of course, public opinion, media attention, pressure from consumer advocacy groups, and the prospect of class-action lawsuits prod companies to take product safety seriously.

**Self-Regulation**

Businesspeople tend to be hostile both to regulation and to consumer lawsuits or other pressure. When it comes to safety, they generally prefer self-regulation, competition, and voluntary, industry-determined safety standards. Their point of view is certainly in keeping with the tenets of classical capitalism, and self-regulation is arguably an attractive ideal on both moral and economic grounds. However, self-regulation can easily become an instrument for subordinating consumer interests to profit making when the two goals clash. Under the guise of self-regulation, businesses can end up ignoring or minimizing their responsibilities to consumers.

For example, nothing enrages airplane passengers more than being stuck on a runway because of bad weather and congested terminals, waiting for hours to take off, with little to eat or drink, overflowing toilets, and poor ventilation. (One passenger, who became desperate after several hours of being trapped in a parked plane, made national news when he used his cell phone to call 911 to report that he and his fellow travelers were being held against their will. That call got authorities to empty the plane, but it also brought him a jail sentence.) In an effort to avoid regulation, the airlines successfully lobbied Congress to be allowed to solve the problem themselves. The result, however, was that only a few airlines developed any rules at all, and Congress was eventually forced to pass legislation forbidding them to hold passengers for more than four hours.<sup>28</sup>

Recently, however, some industries have reversed their usual stance and sought out federal regulation. Why the change of attitude? In the case of children’s toys, retailers and manufacturers have sought regulation in the hope of reassuring customers, scared off by massive recalls, that their products are safe.<sup>29</sup> Other companies figure that they can use federal safety regulations to thwart competition from cheap foreign imports or as a way of heading off liability lawsuits and legal action by individual states.<sup>30</sup>

**Automobile Safety**

The auto industry, however, has a long and consistent history of fighting against safety regulations. For example, it successfully lobbied the federal government to delay the requirement that new cars be equipped with air bags or automatic seat belts. Each year of the delay saved the industry millions of dollars. But the price paid by consumers was high: According to the NHTSA, driving with your seat belt on in a car with air bags cuts in half your chance of dying in a crash.

When the law finally required passive restraint systems in new vehicles, Chrysler became (in 1989) the first U.S. auto manufacturer to install driver-side air bags in all its new models. Only five years earlier, Chrysler chairman Lee Iacocca had boasted in his autobiography of fighting against air bags since their invention in the mid-1960s. In 1971, he and Henry Ford II (then the top executives at Ford) met secretly with President

Business dislikes regulation and consumer lawsuits or other pressure. But self-regulation sometimes falls short.

**SUMMARY**

Regulations help ensure that business meets its responsibilities to consumers, although many products are not as closely regulated as people think and political considerations sometimes interfere with the regulatory process. Businesspeople tend to favor self-regulation and government deregulation, but—as the auto industry shows—this sometimes provides insufficient consumer protection.

Richard Nixon to persuade him to kill a pending Department of Transportation regulation requiring air bags in every new car sold in the United States.<sup>31</sup> Had air bags been made standard equipment in 1974, more than 70,000 deaths and many times that number of severe injuries would have been avoided.

Decades earlier, Alfred Sloan decided not to fit Chevrolets with safety glass, one of the most important safety protections ever, in order to save money. Even after Ford began doing so, Sloan insisted, “It’s not my responsibility to sell safety glass.”<sup>32</sup> Today, too, automakers often resist the introduction of new safety measures. For a long time, the auto industry denied that car passengers are at greater risk from pickups or SUVs than from automobiles despite the fact that in a collision those larger vehicles can easily slide over the doorsills and bumpers of autos and pierce deep into their passenger compartments. Only under pressure from the NHTSA did the industry agree that, as of 2009, all SUVs and pickups would be built either lower to the ground or with an energy-absorbing beam that fits under the front and rear bumpers. A study released by the Insurance Institute for Highway Safety shows that an SUV that complies with these standards is 18 to 21 percent less likely to kill the driver of a passenger car in a front-to-front collision and 47 to 48 percent less likely to do so in a front-to-side collision. “To cut somebody’s risk of death in half, that’s huge,” says one auto safety expert. “That’s almost as good as seat belts. You’re lucky if a new regulation gets you a 5 to 10 percent reduction in the death rate.”<sup>33</sup>

The story is similar when it comes to tire pressure monitoring systems and electronic stability control. Although they clearly save lives, auto manufacturers did not make them standard equipment in their vehicles until forced to do so by the NHTSA (in 2009 and 2012, respectively). Anti-lock brakes also reduce traffic fatalities because they greatly improve a car’s ability to stop short without skidding. Although the technology has been around for years, anti-lock brakes are still not standard on vehicles built in the United States. The same is true of side-curtain air bags.

As car buyers have become better informed, however, automobile manufacturers are rethinking Iacocca’s old bromide “Safety doesn’t sell.” For example, Ford is using its introduction of inflatable rear seatbelts as a marketing tool to improve its image and attract new customers.<sup>34</sup> But even if safety does sometimes sell, for an industry to wait for marketplace demand before increasing safety standards can be irresponsible. If society always waited for marketplace demand before insisting on public health and safety regulations, then pasteurization of milk and sprinkler systems to suppress fires in public places would still be “options.”

## THE RESPONSIBILITIES OF BUSINESS

Simply obeying laws and regulations does not exhaust the moral responsibilities of business in the area of consumer safety. The CPSC, for example, has long required toy manufacturers to analyze their products for choking hazards, and it has banned toys that small children can easily choke on. By contrast, until a few years ago no agency conducted safety testing of, or otherwise regulated or monitored, candy for its potential to choke children—even though many more children were choking to death on candy, particularly little gel candies, than on toys—and other food items that pose a choking hazard for young children go completely unreviewed.<sup>35</sup> However, this regulatory asymmetry between toy manufacturers and candy manufacturers marked no significant difference in their moral obligations. Regardless of what the law does or doesn’t require, candy manufacturers have as great a responsibility as toy manufacturers do to minimize choking deaths.

When it comes to consumer safety, the moral responsibilities of business go beyond merely obeying the law.