Chapter 9
Ethical Issues in Selling and Advertising
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Introduction

This paper addresses moral questions common to advertising and sales: questions concerning lying, deception, and withholding information.

Advertising

I explain the laws concerning deceptive advertising and argue that deceptive advertising is *prima facie* wrong because it harms consumers, competitors, and the social fabric. The benefit to the advertiser is almost never an adequate justification for deceptive advertising. I also argue that deceptive advertising is wrong because those who practice it violate consistency requirements for morality – the golden rule and the categorical imperative.

Sales

The ethics of sales is an important, but neglected, topic in business ethics. Approximately 10 percent of the US workforce is involved in sales. In addition, most of us occasionally sell major holdings such as used cars and real estate. Because sales were long governed by the principle of *caveat emptor*, discussions of the ethics of sales usually focus on the ethics of withholding information and the question “what sort of information is a salesperson obligated to reveal to customers?” One of the best treatments of this topic is David Holley’s (1993) paper “A Moral Evaluation of Sales Practices.” I explain his theory, propose several criticisms, and formulate what I take to be a more plausible theory about the duties of salespeople. My theory avoids the objections I raise against Holley and yields intuitively plausible results when applied to cases. I also defend my
theory by appeal to the golden rule and offer a defense of the version of the golden rule to which I appeal.

Preliminaries: A conceptual roadmap

We need to distinguish between lying, deception, withholding information, and concealing information. Roughly, deception is intentionally causing someone to have false beliefs. Standard dictionary definitions of lying say that a lie is a false statement intended to deceive others. The *Oxford English Dictionary* defines a lie as: “a false statement made with the intent to deceive.” Webster’s (1963) gives the following definition of the verb “to lie”: “to make an untrue statement with intent to deceive.” (We might want to add a third condition to this definition and say that, for a false statement to be a lie, the person who makes it must know or believe that it is false. The third condition makes a difference in cases in which someone attempts to deceive another person by means of a false statement that he mistakenly believes to be true. Nothing in the present paper turns on this issue.) Lying arguably requires the intent to deceive others — I express my doubts about this in Carson (1988) — but lies that do not succeed in causing others to have false beliefs are not instances of deception. The word “deception” implies success, but lying is often unsuccessful in causing deception. A further difference between lying and deception is that, while a lie must be a false statement, deception needn’t involve false statements; true statements can be deceptive and many forms of deception do not involve making statements of any sort. Thus, many instances of deception do not constitute lying.

Withholding information does not constitute deception. It is not a case of causing someone to have false beliefs; it is merely a case of failing to correct false beliefs or incomplete information. On the other hand, actively concealing information usually constitutes deception.

Deception in Advertising

*Deceptive advertising and the law*

In the United States the laws concerning deceptive advertising are administered by the Federal Trade Commission (FTC) and state consumer protection agencies. The FTC has jurisdiction only in cases of ads that in some way cross state lines. Local ads that do not cross state lines fall under the jurisdiction of state consumer protection agencies. In addition, the Federal Lanham Trademark Act allows businesses that have been harmed by misrepresentations of other sellers to sue for damages (Preston, 1994, pp. 9, 47, 97; Preston, 1998, p. 63). Lanham suits are a significant deterrent to deceptive advertising. Since advertising does not require
a license or membership in any professional organization such as the bar association, industry or professional codes of ethics have very limited power to discourage deceptive advertising. Professional codes of ethics for advertisers lack the force of codes of ethics for the law and medicine; there is nothing comparable to disbarment proceedings in advertising (Preston, 1994, p. 176).

Since most states follow the FTC, it is sufficient for our purposes to describe the FTC standards for regulating and defining deceptive advertising. The FTC prohibits deceptive advertising. Advertisers who are found guilty of deceptive advertising are required to discontinue the deceptive ads. Ordinarily, no penalties are imposed unless the advertiser continues the deceptive ads, but the FTC sometimes fines advertisers for ads that contain explicit falsities when the falsity is judged to be obvious and deliberate (Preston, 1994, pp. 10, 41). By contrast, suits in Lanham courts subject advertisers to substantial civil penalties.

The FTC Standards for deception

The FTC defines the deceptiveness of an ad in terms of the likelihood of its misleading reasonable consumers (misleading consumers who act reasonably):

The Commission believes that to be deceptive the representation, omission or practice must be likely to mislead reasonable consumers under the circumstances. The test is whether the consumer’s interpretation or reaction is reasonable (FTC Statement, 1983).

In many cases, the FTC judges whether ads are deceptive without going to the trouble and expense of testing consumer responses to them. When it studies consumer responses, the FTC looks to see whether ads convey false claims about the products in question (a claim is conveyed if consumers take the ad to be making or implying that claim). The FTC usually judges an ad to be deceptive if it conveys a false claim to 20–25 percent or more of the target audience; the FTC usually judges ads to be not deceptive if they do not convey any false claims to 20–25 percent or more of the target audience (Preston, 1994, p. 13). This figure is not a standard that the FTC uses in making decisions. Rather, it describes what is typically done. How the FTC rules depends, in part, on the extent of the harm that the deception is likely to cause consumers.

It is possible for an ad to convey a false claim to someone without misleading her. Suppose that I take an ad to be claiming that \( X \), where \( X \) is a false statement. The ad conveys to me the claim that \( X \), but I am not misled unless I believe that \( X \) is true. I am not misled if I think that \( X \) is false. The FTC usually takes the fact that an ad conveys a false claim to 20–25 percent or more of the target audience to be evidence that it is likely to mislead consumers who act reasonably.

Lanham Courts tend to apply stricter criteria for deceptiveness. Ads that convey false claims to 15 percent or more of the target audience are usually found to be deceptive by Lanham courts (Preston, 1994, p. 13).
Several features of the FTC definition of deception stand out. First, the FTC regards an ad as deceptive only if the deception in question is "material" to consumer behavior.

The representation or practice must be a "material" one. The basic question is whether the act or practice is likely to affect the consumer's conduct or decision with regard to a product or service... the Commission will find deception if there is a representation, omission or practice that is likely to mislead the consumer acting reasonably in the circumstances, to the consumer's detriment (FTC Statement, 1983).

An ad that caused many reasonable consumers to have false beliefs would not be considered deceptive if the FTC judged that it was unlikely to affect consumers' behavior.

Second, an ad can be deceptive even if all of its explicit claims are true. An ad that is literally true might be deceptive in virtue of implying a false claim. For example, a TV commercial for Baggies contained the following demonstration. Sandwiches were wrapped in Baggies and a competing brand of sandwich wrap. Both were placed under water. Baggies kept the sandwiches dry and the competing brand did not. Everything shown and claimed in the ad was true, but the commercial was still judged to be deceptive by the FTC. It implied or conveyed the false claim that Baggies were better at keeping sandwiches fresh than the other brand. In fact, both brands of sandwich bags have pores that let in air. Baggies are not superior to the other brand for ordinary purposes, since sandwiches are not ordinarily stored under water (Preston, 1994, p. 37).

Ads that appeal to demonstrations or studies can be deceptive, even if all the statements they make about the demonstrations or studies are literally true. For example, an ad for Black Flag Roach Killer presented a demonstration in which Black Flag killed roaches while "the other leading brand" failed to kill them. This ad was very misleading because the demonstration used roaches that had been bred to be resistant to the type of poison used by the competitor (Preston, 1999, p. 41).

Third, ads that contain false statements are not necessarily considered deceptive. Some ads contain obviously false and exaggerated claims for the sake of humor. An Isuzu TV ad showed a speeded up film clip of Joe Isuzu driving his car and claimed that he was going more than 500 m.p.h. Such ads are not deceptive because they are not likely to mislead very many consumers.

Fourth, deception as defined by the FTC doesn't require that the advertiser intends to mislead consumers. It is a "no fault concept" in that intention and blameworthiness are not assumed and, ordinarily, advertisers are not subject to any punishment for their first violation of the law (Preston, 1994, p. 133). In this respect, the FTC's definition of deception differs from the ordinary language concept of deception (which seems to require the intent to mislead others).

Fifth, if an ad is directed at a specific audience or group, then the FTC judges the deceptiveness or non-deceptiveness of the ad relative to that audience.
When representations or sales practices are targeted to a specific audience, such as children, the elderly, or the terminally ill, the Commission determines the effect of the practice on a reasonable member of that group (FTC Statement, 1983, III).

Sixth, the FTC Policy Statement on Deception defines deception in terms of the likelihood of misleading consumers who act reasonably. The FTC usually takes evidence that an ad conveys false claims to 20–25 percent or more of its target audience to be evidence that the ad is likely to mislead members of the target audience who act reasonably. Even if an ad causes people to be misled on account of their own inattention, carelessness, or stupidity, it can still be considered deceptive if it misleads a sufficient percentage of its target audience (Preston, 1994, p. 13). The FTC Statement specifically allows that consumers who are acting reasonably sometimes read only parts of written ads and sometimes fail to appreciate the importance of qualifications included in advertisements. The FTC takes its charge to be to protect any group of people that is large enough to constitute an important public interest (Preston, 1994, pp. 13, 131–3).

Preston’s criticisms of the FTC

Preston, claims that, in practice, the FTC permits many deceptive ads that are harmful to consumers and ought to be prohibited. What the FTC regards as harmless puffery is often harmful deception that ought to be prohibited. Preston claims that, in the case of puffery, the FTC fails to enforce its own standards prohibiting any ads that mislead a significant percentage of the population.

Puffery includes bald or bare claims to the effect that a certain product is the best when there is no basis for those claims, e.g., Goodyear’s claim that it makes the best tires in the world, “Nestle’s makes the very best chocolate,” and “Nobody gets the dirt out like Hoover” (Preston, 1998, p. 54). The FTC maintains that such ads are meaningless and do not influence consumer decisions. However, according to Preston, such claims are often meaningful, false, and deceptive. Preston claims that the FTC takes an a priori approach to puffery and doesn’t do nearly enough to investigate actual consumer behavior and beliefs. He cites two studies examining consumer response to typical puffery in advertising, e.g., “Minute rice gives you perfect rice every time,” “Coke is it,” and “Ford has a better idea.” Well over 20 percent of the respondents regarded these claims as “completely true” and a majority regarded them as at least “partly true” (Preston, 1998, pp. 80–1).

The legal loopholes that permit puffery harm consumers who trust advertising (Preston, 1998, p. 103). To a lesser extent, these loopholes also harm those who distrust advertising (Preston, 1998, pp. 105–6). Given that advertising is deceptive, it is best not to be trusting, but people should be able to trust and rely on advertising. The law should aim to make it the case that all advertising can be trusted and relied on. Preston claims that this would benefit both consumers and advertisers (Preston, 1994, p. 222; 1998, pp. 106–13).
purchased the Kenmore dishwasher presumably would have preferred not to pur-
chase it had they not been deceived. Some people with perfectly good dishwashers
purchased the Kenmore because they wanted a dishwasher that didn’t require any
prior rinsing or scraping. These people wasted their money. The Sears ads were
apparently successful, since the Kenmore dishwasher gained an increased market
share. Thus, the ad also harmed Sears’s competitors. Sears clearly knew that the
claim made by the ad was false. Tests that Sears ran indicated that the dishwasher
would not clean the dishes unless they were first rinsed and scraped. The owner’s
manual instructed people to rinse and scrape the dishes prior to putting them in
the dishwasher! (Preston, 1994, pp. 16–18).

Listerine Mouthwash was long advertised as strong (bad tasting) mouth-
wash “that kills millions of germs which can cause colds on contact.” Listerine
kills germs, but germs don’t cause colds (colds are caused by viruses). These ads
harmed many consumers. Many were led to spend more money for Listerine
than they otherwise would have spent on mouthwash. Many who spent money
on Listerine and endured its bad taste would not have used mouthwash at all (or
as often) had they not been deceived by the ads. The ads also harmed Listerine’s
competitors who lost market share (Beauchamp, 1983, pp. 65–74).

Deceptive advertising can be harmful to people’s health. During the past 20 years,
many foods such as stick margarine were advertised and prominently labeled
as being low in cholesterol (and therefore healthy). Many consumers eat these
products thinking that they are healthy for their hearts when, in fact, they are very
high in saturated fats. (All saturated fats pose a serious risk for heart disease.)
Cholesterol is saturated fat from animal sources. Saturated fats from non-animal
sources, e.g., palm oil, contain no cholesterol, but they are just as harmful as
cholesterol. These facts are now widely known, but they were not commonly
known twenty years ago. At least in the past, many people were misled.

A person’s true interests are determined by the decisions she would make were
she fully informed and rational — to the extent that an ad gives me false beliefs about
what I am buying it has the potential to harm me. To the extent that deceptive
advertising succeeds and causes people to make purchases that they would not
have made otherwise, it harms competing businesses by reducing their sales.

Deceptive advertising is also harmful in that it lowers the general level of trust
and truthfulness essential for a flourishing society and economy. The law alone
cannot secure the level of honesty and trust in business necessary for people to be
sufficiently willing to enter into mutually beneficial market transactions. In order
for this to be the case, most people must voluntarily adhere to norms of honesty
on moral grounds. No legal system can effectively police or deter rampant universal
dishonesty in business. The legal system doesn’t have the means to prosecute all
business people. Consumer protection laws could not function effectively if all
businesses practiced deception. If people were honest only because they feared
getting caught the economy would soon cease to function. (On the importance
of trust see Bok (1979); on the importance of trust in business see DeGeorge
(1982, p. 6) and Bowie (1982, pp. 61–4).)
In response to the argument that deception harms the social fabric, it might be objected that the moderate level of distrust fostered by advertising is desirable. Advertising helps to foster a healthy skepticism not only for the claims of other advertisers, but for the claims of politicians and government officials as well. A certain measure of distrust of others is prudent and advertising sometimes helps to instill this distrust. However, these considerations cannot justify deceptive advertising. One cannot justify unethical conduct on the grounds that it helps to warn others to be on guard against conduct of that very sort. A mugger cannot justify his actions on the ground that he causes people to be more cautious about where and how they travel. Similarly, a politician cannot justify lying to the public on the grounds that doing so will help instill a prudent distrust of politicians in the average person.

Because deceptive advertising harms consumers, competitors, and the social fabric, there is a presumption for thinking that it is morally wrong. Are there any conceivable justifications for deceptive advertising that might override this presumption? What about the benefits to the advertiser? Can a company justify deceptive advertising on the ground that the company and its various stakeholders benefit from it? This is possible. But such cases are very rare. In any given case, it is unlikely that the benefits derived by the seller outweigh the harms to others; deception not only harms consumers, it also harms competing sellers and diminishes the trust essential for a flourishing economy. Consider a case in which deception provides great benefits to a corporation and its employees and shareholders. A company that is on the verge of bankruptcy might be able to stay in business by deceiving the public about its products. Economic necessity is only very rarely an adequate moral justification for deceptive practices. A firm that needs to deceive the public about the nature of its goods or services in order to stay in business is of doubtful value to society – the resources it utilizes could be put to better use in some other way (on a very similar point see page 201). In the normal course of things, the benefit to the advertiser is likely to be counter-balanced by the harm to (honest) competitors and their employees and shareholders – to say nothing about harm to consumers and the social fabric. In cases in which one appeals to “economic necessity” as a justification for deceptive advertising the deception benefits the seller and harms buyers. We should remember that in such cases the alternative (or an alternative) is a mutually beneficial transaction between the buyer and some other seller who does not deceive the buyer.

Advertisers who practice deception violate the golden rule. They, themselves, are consumers and are not willing to have others deceive them in the marketplace or base their own economic decisions on false beliefs. As advertisers, they want consumers to trust advertising and give credence to the claims of advertising. They cannot be willing to have all advertisers practice deception; if deception in advertising were a universal practice, few people would trust advertising and it would be very difficult to gain an advantage by means of deceptive advertising (see pages 199 and 204 for more on the golden rule.)
In almost exactly the same way deceptive advertising fails to satisfy the requirements of Kant’s categorical imperative. The universal law version of the categorical imperative says that we must be willing to have everyone else follow the same principles that we act on. Kant (1993, p. 30) writes:

Act only according to that maxim whereby you can at the same time will that it should become a universal law.... Act as if the maxim of your action were to become through your will a universal law of nature.

To be willing that the maxim of one’s act be a universal law of nature means that one is willing to have everyone else in the universe follow the same principle that one follows in the action in question. Suppose that I create and run a deceptive ad for my own personal gain. Can I will that everyone else or every other advertiser make it a policy to do the same? Presumably not. In my own economic decisions I want to act on the basis of true information. Further, since I hope to profit by deceptive ads, I want the public to be trusting of advertising. If all advertisers engaged in deception the public would be less trusting. Those who intentionally engage in deceptive advertising treacherously invite others to trust and rely on their ads and at the same time betray that trust. If deceptive advertising were a universal practice, few people would trust advertising and no one could gain an advantage by means of deceptive advertising. I cannot will that all other advertisers follow the same principles (maxims) that I follow. I want to make a special exception for myself. (On the “self-defeatingness” of immoral business practices if their maxims were universally followed see Bowie and Duska, 1990, pp. 47–8.)

**Deception and Withholding Information in Sales**

*The common-law principle of caveat emptor*

According to the common-law principle of *caveat emptor*, sellers are not required to inform prospective buyers about the properties of the goods they sell. Under *caveat emptor*, sales and contracts to sell are legally enforceable even if the seller fails to inform the buyer of serious defects in the goods that are sold. Buyers, themselves, are responsible for determining the quality of the goods they purchase. In addition, English common-law sometimes called for the enforcement of sales in cases in which sellers made false or misleading statements about the goods they sold (Atiyah, 1979, pp. 464–5).

Currently, all US states, operate under the Uniform Commercial Code of 1968. Section 2–313 of the Code defines the notion of sellers’ warranties (Preston, 1975, p. 52). The Code provides that all factual affirmations or statements about the goods being sold are warranties. This means that sales are not valid or legally
Enforceable if the seller makes false statements about the goods s/he is selling. The American legal system has developed the concept of an “implied” (as opposed to an express or explicit) warranty. Implied warranties are a significant limitation on the principle of caveat emptor. According to the Uniform Commercial Code, any transaction carries with it the following implied warranties: 1) that the seller owns the goods he is selling and 2) that the goods are “merchantable,” i.e., suitable for the purposes for which they are sold (Preston, 1975, pp. 56–7). The implied warranty of merchantability does not apply to defects when the buyer inspects the goods and reasonable inspection ought to have revealed the defects. However, a buyer’s failure to inspect doesn’t negate implied warranties, unless the buyer refuses the seller’s demand that she inspect. Implied warranties can be expressly disclaimed by such statements as “all warranties express or implied are hereby disclaimed.” Such disclaimers of warranty are often made by used car dealers (Preston, 1975, pp. 59–60). Many local ordinances require that people who sell real estate inform buyers about all known serious defects of the property they sell. These ordinances are also a significant limitation on the traditional principle of caveat emptor.

Deceptive sales practices also fall under the purview of the FTC. The FTC prohibits deceptive sales practices [practices likely to materially mislead reasonable consumers] (FTC Statement, 1983).

Many salespeople take complying with the law to be an acceptable moral standard for their conduct and claim that they have no moral duty to provide buyers with information about the goods they sell, except for that information which the law requires for an enforceable sale.

**Holley’s theory**

Holley’s theory is based on his concept of a “voluntary” or “mutually beneficial” market exchange (Holley uses the terms “voluntary exchange” and “mutually beneficial exchange” interchangeably). He says that a voluntary exchange occurs “only if” the following conditions are met (he takes his conditions to be necessary conditions for an acceptable exchange):

1. Both buyer and seller understand what they are giving up and what they are receiving in return.
2. Neither buyer nor seller is compelled to enter into the exchange as a result of coercion, severely restricted alternatives, or other constraints on the ability to choose.
3. Both buyer and seller are able at the time of the exchange to make rational judgments about its costs and benefits (Holley, 1993, p. 463).

These three conditions admit of degrees of satisfaction. An ideal exchange is an exchange involving people who are fully informed, fully rational, and “enter into
the exchange entirely of their own volition” (Holley, 1993, p. 464). The conditions for an ideal exchange are seldom, if ever, met in practice. However, Holley claims that it is still possible to have an “acceptable exchange” if the parties are “adequately informed, rational and free from compulsion” (Holley, 1993, p. 464).

According to Holley, “the primary duty of salespeople to customers is to avoid undermining the conditions of an acceptable exchange” (Holley, 1993, p. 464). He makes it clear that, on his view, acts of omission (as well as acts of commission) can undermine the conditions of an acceptable exchange (Holley, 1993, p. 464).

Because of the complexity of many goods and services, customers often lack information necessary for an acceptable exchange. Careful examination of products will not necessarily reveal problems or defects. According to Holley, caveat emptor is not acceptable as a moral principle, because customers often lack information necessary for an acceptable exchange. In such cases, salespeople are morally obligated to give information to the buyer. The question then is: what kind of information do salespeople need to provide buyers, to insure that the buyer is adequately informed? Holley attempts to answer this question in the following passage in which he appeals to the golden rule:

Determining exactly how much information needs to be provided is not always clear-cut. We must in general rely on our assessments of what a reasonable person would want to know. As a practical guide, a salesperson might consider, “What would I want to know, if I were considering buying this product”? (Holley, 1993, p. 467)

This principle is very demanding, perhaps more demanding than Holley realizes. Presumably, most reasonable people would want to know a great deal about the things they are thinking of buying. They might want to know everything relevant to the decision whether or not to buy something – more on this point shortly.

**Criticisms of Holley**

First, when time does not permit it, a salesperson cannot be morally obligated to provide all information necessary to ensure that the customer is adequately informed (all the information that a reasonable person would want to know if she were in the buyer’s position). In many cases, reasonable customers would want to know a great deal of information. Often salespeople simply don’t have the time to give all customers all the information Holley deems necessary for an acceptable exchange. Salespeople don’t always know all the information that the buyer needs for an acceptable exchange. It cannot be a person’s duty to do what is impossible – the statement that someone ought to do a certain act implies that she can do that act. Further, in many cases, salespeople don’t know enough about the buyer’s state of knowledge to know what information the buyer needs in order to be adequately informed. A salesperson might know that the buyer needs certain information in order to be adequately informed but not know whether or not the
buyer possesses that information. One might reply that salespeople should know all the information necessary for an adequate exchange. However, on examination, this is not a plausible view. A salesperson in a large retail store cannot be expected to be knowledgeable about every product he sells. Often, it is impossible for realtors and used car salesman to know much about the condition of the houses and cars they sell or the likelihood that they will need expensive repairs.

Second, Holley’s theory implies that a salesperson in a store would be obligated to inform customers that a particular piece of merchandise in her store sells for less at a competing store if she knows this to be the case. (Presumably, she would want to know where she can get it for the lowest price, were she herself considering buying the product.) Not only do salespeople have no duty to provide this kind of information, (ordinarily) it would be wrong for them to do so.

Third, Holley’s theory seems to yield unacceptable consequences in cases in which the buyer’s alternatives are severely constrained. Suppose that a person with a very modest income attempts to buy a house in a small town. Her options are severely constrained, since there is only one house for sale in her price range. According to Holley, there can’t be an acceptable exchange in such cases, because condition 2 is not satisfied. However, it’s not clear what he thinks sellers ought to do in such cases. The seller can’t be expected to remove these constraints by giving the buyer money or building more homes in town. Holley’s view seems to imply that it would be wrong for anyone to sell or rent housing to such a person. This result is unacceptable.

Towards a more plausible theory about the ethics of sales

I believe that salespeople have the following moral duties regarding the disclosure of information when dealing with rational adult consumers (cases involving children or adults who are not fully rational raise special problems that I will not try to deal with here):

1 Salespeople should provide buyers with safety warnings and precautions about the goods they sell. [Sometimes it is enough for salespeople to call attention to written warnings and precautions that come with the goods and services in question. These warnings are unnecessary if the buyers already understand the dangers or precautions in question.]

2 Salespeople should refrain from lying and deception in their dealings with customers.

3 As much as their knowledge and time constraints permit, salespeople should fully answer questions about the products and services they sell. They should answer questions forthrightly and not evade questions or withhold information that has been asked for (even if this makes it less likely that they will make a successful sale). Salespeople are obligated to answer questions about the goods and services they, themselves, sell. However, they are justified in refusing to
answer questions that would require them to reveal information about what their competitors are selling. They are not obligated to answer questions about competing goods and services or give information about other sellers.

4 Salespeople should not try to "steer" customers towards purchases that they have reason to think will prove to be harmful to customers (financial harm counts) or that customers will come to regret.

These are *prima facie* duties that can conflict with other duties and are sometimes overridden by other duties. A *prima facie* duty is one's actual duty, other things being equal; it is an actual duty in the absence of conflicting duties of greater or equal importance – see Ross (1930, pp. 18–20, 28, 46; 1939, pp. 83–6) and Ewing (1948, p. 186). For example, my *prima facie* duty to keep promises is my actual duty in the absence of conflicting duties of equal or greater importance. 1–4 is a *minimal list* of the duties of salespeople concerning the disclosure of information. I believe that the following are also *prima facie* duties of salespeople, but I am much less certain that these principles can be justified:

5 Salespeople should not sell customers goods or services they have reason to think will prove to be harmful to customers or that the customers will come to regret later, without giving the customers their reasons for thinking that this is the case. [This duty does not hold if the seller has good reasons to think that the customer already possesses the information in question.]

6 Salespeople should not sell items they know to be defective or of poor quality without alerting customers to this. [This duty does not hold if the buyer can be reasonably expected to know about poor quality of what he is buying.]

I have what I take to be strong arguments for 1–4, but I'm not so sure that I can justify 5 and 6. I believe that reasonable people can disagree about 5 and 6. (I have very little to say about 5 or 6 in the present paper. See Carson (2001) for a discussion of arguments for 5 and 6.)

There are some important connections between duties 2, 4, and 6. Lying and deception in sales are not confined to lying to or deceiving customers about the goods one sells. Many salespeople misrepresent their own motives to customers/clients. Almost all salespeople invite the trust of customers/clients and claim, implicitly or explicitly, to be acting in the interests of customers/clients. Salespeople often ask customers to defer to their judgment about what is best for them. For most salespeople, gaining the trust of customers or clients is essential for success. Many salespeople are *not* interested in helping customers in the way they represent themselves as being. A salesperson who misrepresents her motives and intentions to customers violates principle 2. This simultaneous inviting and betrayal of trust is a kind of treachery. In ordinary cases, rules against lying and deception alone prohibit salespeople from steering customers towards goods or services they have reason to think will be bad for them. It is difficult to steer someone in this way without lying or deception, e.g., saying that you believe that a certain product
is best for someone when you don't believe this to be the case. Similar remarks apply to selling defective goods. Often it is impossible to do this without lying to or deceiving customers. In practice, most or many violations of rules 4 and 6 are also violations of rule 2.

**A justification for my theory**

1–4 yield intuitively plausible results in concrete cases and avoid all of the objections I raised against Holley. I also justify 1–4 by appeal to the golden rule.

Taken together, 1–4 give us an intuitively plausible theory about the duties of salespeople regarding the disclosure of information; they give more acceptable results in actual cases than Holley's theory. 1–4 can account for cases in which the conduct of salespeople seems clearly wrong, e.g., cases of lying, deception, and steering customers into harmful decisions. Unlike Holley's theory, 1–4 do not make unreasonable demands on salespeople. They don't require that salespeople provide information that they don't have or spend more time with customers than they can spend. Nor do they require salespeople to divulge information about the virtues of what their competitors are selling.

In addition, my theory explains why different kinds of salespeople have different kinds of duties to their customers. For example, ordinarily, realtors have a duty to provide much more information to customers than sales clerks who sell inexpensive items in gift stores. My theory explains this difference in terms of the following:

1. the realtor's greater knowledge and expertise
2. the much greater amount of time the realtor can devote to the customer
3. the greater importance of the purchase of a home than the purchase of a small gift and the greater potential for harm or benefit to the buyer, and (in some cases)
4. implicit or explicit claims by the realtor to be acting on behalf of prospective home buyers (clerks in stores rarely make such claims).

**The golden rule**  I think that the golden rule is most plausibly construed as a consistency principle (those who violate the golden rule are guilty of inconsistency). The following version of the golden rule can be justified:

GR: Consistency requires that if you think that it would be morally permissible for someone to do a certain act to another person, then you must consent to someone else doing the same act to you in relevantly similar circumstances.

**How the golden rule supports my theory**  Given this version of the golden rule, any rational and consistent moral judge who makes judgments about the moral obligations of salespeople will have to accept 1–4 as *prima facie* duties. Consider each duty in turn:
1 All of us have reason to fear the hazards about us in the world; we depend on others to warn us of those hazards. Few people would survive to adulthood were it not for the warnings of others about such things as oncoming cars, live electric wires, and approaching tornadoes. No one who values her own life can honestly say that she is willing to have others fail to warn her of dangers.

2 Like everyone else, a salesperson needs correct information in order to act effectively to achieve her goals and advance her interests. She is not willing to act on the basis of false beliefs. Consequently, she is not willing to have others deceive her or lie to her about matters relevant to her decisions in the marketplace. She is not willing to have members of other professions (such as law and medicine) make it a policy to deceive her or lie to her whenever they can gain financially from doing so.

3 Salespeople have questions about the goods and services they themselves buy. They can’t say that they are willing to have others evade or refuse to answer those questions. We want our questions to be answered by salespeople or else we wouldn’t ask them. We are not willing to have salespeople evade or refrain from answering our questions. [Digression. Principle 3 permits salespeople to refuse to answer questions that would force them to provide information about their competitors. Why should we say this? Why not say instead that salespeople are obligated to answer all questions that customers ask? The answer is as follows: A salesperson’s actions affect both her customers and her employer. In applying the golden rule to this issue she can’t simply ask what kind of information she would want were she in the customer’s position (Holley poses the question in just this way; see page 196). 3 can probably be improved upon, but it is a decent first approximation. A disinterested person who was not trying to give preference to the interests of salespeople, employers, or customers could endorse 3 as a policy for salespeople to follow. We can and must recognize the legitimacy of employers’ demands for loyalty. The role of being an advocate or agent for someone who is selling things is legitimate within certain bounds – almost all of us are willing to have real estate agents work for us. A rational person could consent to the idea that everyone follow principles such as 3.]

4 All of us are capable of being manipulated by others into doing things that harm us, especially in cases in which others are more knowledgeable than we are. No one can consent to the idea that other people (or salespeople) should manipulate us into doing things that harm us whenever doing so is to their own advantage. Salespeople who claim that it would be permissible for them to make it a policy to deceive customers, fail to warn them about dangers, evade their questions, or manipulate them into doing things that are harmful to them whenever doing so is advantageous to them are inconsistent because they are not willing to have others do the same to them.

They must allow that 1–4 are prima facie moral duties.
1–4 are only *prima facie duties*. The golden rule can account for the cases in which 1–4 are overridden by other more important duties. For example, we would be willing to have other people violate 1–4 if doing so were necessary in order to save the life of an innocent person. In practice, violating 1, 2, 3, or 4 is permissible only in very rare cases. The financial interests of salespeople seldom justify violations of 1, 2, 3, or 4. The fact that a salesperson can make more money by violating 1, 2, 3, or 4 would not justify her in violating 1, 2, 3 or 4 unless she has very pressing financial obligations that she cannot meet otherwise. Often salespeople need to meet certain minimum sales quotas to avoid being fired (Oakes, 1990, p. 86). Suppose that a salesperson needs to make it a policy to violate 1–4 in order to meet her sales quotas and keep her job. Would this justify her in violating 1–4? *Possibly.* But, in order for this to be the case, the following conditions would have to be met: a) she has important moral obligations such as feeding and housing her family that require her to be employed (needing money to keep one's family in an expensive house or take them to Disney World wouldn't justify violating 1–4) and b) she can't find another job that would enable her to meet her obligations without violating 1–4 (or other equally important duties). Those salespeople who can't keep their jobs or make an adequate income without violating 1–4 should seek other lines of employment.

*A defense of the version of the golden rule employed earlier*

My argument is as follows:

1 Consistency requires that if you think that it would be morally permissible for someone to do a certain act to another person, then you must grant that it would be morally permissible for someone to do that same act to you in relevantly similar circumstances.

2 Consistency requires that if you think that it would be morally permissible for someone to do a certain act to you in certain circumstances, then you must consent to him/her doing that act to you in those circumstances.

Therefore,

GR. Consistency requires that if you think that it would be morally permissible for someone to do a certain act to another person, then you must consent to someone doing the same act to you in relevantly similar circumstances. [You are inconsistent if you think that it would be morally permissible for someone to do a certain act to another person, but do not consent to someone doing the same act to you in relevantly similar circumstances.] (This argument follows that given by Gensler (1986, pp. 89–90).)

This argument is valid, i.e., the conclusion follows from the premises, and both its premises are true. Both premises are consistency requirements. Premise 1
addresses questions about the consistency of a person's different moral beliefs. Premise 2 addresses questions about whether a person's moral beliefs are consistent with her attitudes and actions. Our attitudes and actions can be either consistent or inconsistent with the moral judgments we accept.

Premise 1 Premise 1 follows from, or is a narrower version of, the universalizability principle (UP). The UP can be stated as follows:

Consistency requires that, if one makes a moral judgment about a particular case, then one must make the same moral judgment about any similar case, unless there is a morally relevant difference between the cases.

Premise 1 is a principle of consistency for judgments about the moral permissibility of actions. The UP, by contrast, is a principle of consistency for any kind of moral judgment, including judgments about what things are good and bad.

Premise 2 How shall we understand what is meant by "consenting to" something? For our present purposes, we should not take consenting to something to be the same as desiring it or trying to bring it about. My thinking that it is morally permissible for you to beat me at chess does not commit me to desiring that you beat me, nor does it commit me to playing so as to allow you to beat me. Consenting to an action is more like not objecting to it, not criticizing, not resenting, the other person for doing it. If I think that it is permissible for you to beat me at chess then I cannot object to your beating me (Gensler, 1996, pp. 63–4). I am inconsistent if I object to your doing something that I take to be morally permissible. If I claim that it is permissible for someone to do something to another person, then, on pain of inconsistency, I cannot object if someone else does the same thing to me in relevantly similar circumstances. The gist of my application of the golden rule to sales is that since we do object to salespeople doing such things as lying to us, deceiving us, failing to answer our questions, we cannot consistently say that it is morally permissible for them to do these things.

Examples

I will discuss several cases to illustrate and clarify my theory.

Example A I am selling a used car that I know has bad brakes; this is one of the reasons I am selling the car. You don't ask me any questions about the car and I sell it to you without informing you of the problem with the brakes.

Example B I am selling a used car that starts poorly in cold weather. You arrange to look at the car early in the morning on a very cold day. I don't own a garage so the car is out in the cold. With difficulty, I start it up and drive it for thirty
minutes shortly before you look at it and then cover the car with snow to make it seem as if it hasn't been driven. The engine is still hot when you come and the car starts up immediately. You then purchase the car remarking that you need a car that starts well in the cold to get to work, since you don't have a garage.

Example C While working as a salesperson I feign a friendly concern for a customer's interests. I say "I will try to help you find the product that is best suited for your needs. I don't want you to spend any more money than you need to. Take as much time as you need." The customer believes me, but she is deceived. In fact, I couldn't care less about her welfare. I only want to sell her the highest priced item I can as quickly as I can. I don't like the customer; indeed, I am contemptuous of her.

In example A, I violate duty 1 and put the buyer and other motorists, passengers, and pedestrians at risk. In example B, I violate duties 2 and 5. In example C, I violate duty 2. In the absence of conflicting obligations that are at least as important as the duties I violate, my actions in examples A–C are morally wrong.

Example D: A Longer Case [true story] In 1980, I received a one-year Fellowship from The National Endowment for the Humanities. The fellowship paid for my salary, but not my fringe benefits. Someone in the benefits office of my university told me that I had the option of continuing my health insurance through the university, if I paid for the premiums out of my own pocket. I told the benefits person that this was a lousy deal and that I could do better by going to a private insurance company. I went to the office of Prudential Insurance agent Mr. A. O. "Ed" Mokarem. I told him that I was looking for a one-year medical insurance policy to cover me during the period of the fellowship and that I planned to resume my university policy when I returned to teaching. (The university provided this policy free of charge to all faculty who were teaching.) He showed me a comparable Prudential policy that cost about half as much as the university's policy. He explained the policy to me. I asked him to fill out the forms so that I could purchase the policy. He then told me that there was a potential problem I should consider. He said roughly the following:

You will want to return to your free university policy next year when you return to teaching. The Prudential policy is a one-year terminal policy. If you develop any serious medical problems during the next year, Prudential will probably consider you "uninsurable" and will not be willing to sell you health insurance in the future. If you buy the Prudential policy, you may encounter the same problems with your university policy. Since you will be dropping this policy voluntarily, they will have the right to underwrite your application for re-enrollment. If you develop a serious health problem during the next year, their underwriting decision could be "Total Rejection," imposing some waivers and/or exclusions, or (at best) subjecting your coverage to the "pre-existing conditions clause," which would not cover any pre-existing conditions until you have been covered under the new policy for at least a year.
If I left my current health insurance for a year, I risked developing a costly medical condition for which no one would be willing to insure me. That would have been a very foolish risk to take. So, I thanked him very much and, swallowing my pride, went back to renew my health insurance coverage through the university. I never bought any insurance from Mr. Mokarem and never had occasion to send him any business.

I have discussed this case with numerous classes through the years. It usually generates a lively discussion. Most of my students do not think that Mr. Mokarem was morally obligated to do what he did, but they don’t think that what he did was wrong either – they regard his actions as supererogatory or above and beyond the call of duty.

My view about example D On my theory, this is a difficult case to assess. If 1–4 are a salesperson’s only duties concerning the disclosure of information, then Mr. Mokarem was not obligated to inform me as he did. (In this case, the information in question was information about a competing product – the university’s health insurance policy.) If 5 is a prima facie duty of salespeople, then (assuming that he had no conflicting moral duties of greater or equal importance) it was his duty, all things considered, to inform me as he did. Since I am uncertain that 5 can be justified, I’m not sure whether or not Mr. Mokarem was obligated to do what he did or whether his actions were supererogatory. This case illustrates part of what is at stake in the question of whether 5 is a prima facie duty of salespeople.

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