Gambling and Lotteries

• Gambling is illegal in most states, or at least illegal, except in parts of the state where it’s specifically allowed.
  – Advertising gambling where it’s illegal is, of course, not allowed.
• Federal law does allow advertising, however, for some limited forms of gambling, including:
  – Lotteries
    • A lottery is defined as:
      – A prize
      – That could be won or lost by chance
      – That requires consideration to “play
    • Advertising for lotteries used to be illegal, but Congress subsequently allowed advertising where it is legal.
    • The Supreme Court upheld a federal ban on advertising gambling by stations licensed in states where gambling is illegal.
Gambling and Lotteries (cont.)

- **Contests**
  - A contest is basically anything that does not contain all three “lottery” elements; i.e.,
    - Anything whose winning is based on skill;
    - Anything the contestants don’t have to pay to enter.
  - Contests, and advertising them, are legal as long as the ads are not deceptive.
  - Certain disclosures for contests are also required in some cases.

- **Money**
  - The government can and does regulate the manner in which money itself may be pictured in advertisements.
Miscellaneous Advertising Rules

• Children’s Television is heavily regulated, including:
  – A 1990 law limited the amount of advertising in children’s shows.
    • This only applies to shows aimed at young children.
  – “Program length commercials” are not generally affected by this law.

• Broadcasters generally need to identify all companies that buy advertising in programs.
  – However, FCC rules allow “sponsors” of programs to remain anonymous, as it is not selling advertising spots in exchange for the program.

• Advertising for many tobacco products have been banned.

• Advertisers of prescription drugs must provide viewers with “adequate provisions” for finding out more important info.
Media and Advertising

• In general, media outlets can choose what ads to publish.
  – The Court struck down a rule requiring papers to publish responses from “attacked” political candidates.
  – However, collusion by media outlets to refuse ads may be an antitrust violation.

• Many media groups themselves impose curbs on their own advertising based on decency standards.
  – There are limits on tobacco advertising, which was part of a settlement between the tobacco industry and many states.
  – The “National Advertising Division” was established to monitor claims in advertising for truthfulness.

• The media industry established the self-regulating “NAB.”
  – However, some self regulation can be, and has been found to be, a violation of anti-trust laws.
Securities Transactions

- Securities rules have an enormous impact on what companies can and cannot advertise, especially in relation to publicly traded stocks and other securities.
  - These rules are primarily designed to force full disclosure.

- Mandated Disclosure rules for Securities:
  - These are based on:
    - The 1933 SEC Act, which deals mainly with registration of securities that will be sold publicly; and
    - The 1934 SEC Act, which deals with rules relating to trading securities.
  - Both acts have been amended many times since, but the fundamental concepts remain.
Securities Rules (Cont.)

• Registration
  – Before a company “goes public” it must register with the SEC.
  – This applies also if an already public company makes a new stock issuance.
  – A company may not seek purchasers of its stock in advertising until it has been registered with the SEC.
  – The SEC requires that the company put out a “prospectus” which is mainly a disclosure instrument.

• Trading Securities
  – Public companies must file reports and must send out disclosure reports to shareholders.
  – Annual Meetings are required and shareholders must be invited to participate through proxy solicitations.
  – Various levels of disclosure are also required in the process of takeover bids.
Fraud Rules in Securities Transactions

• Federal law makes it a crime and imposes special federal causes of action to deceptive or manipulative tactics in securities transactions.
  – “Material” facts about the company must be disclosed to stockholders.
    • This includes anything that would be important in making the decision as to buy or sell the stock.
  – These include:
    • Sharp changes to a company’s earnings;
    • Imminence of a major transaction;
    • Possible merger; and
    • Possible bankruptcy.
Fraud Rules (cont.)

- The major fraud Rule (10-b-5) applies only to statements or omissions “in connection with a sale.”
- Fraud includes:
  - Misstatements which have been held to be fraud when:
    - Overstating profits to convince people to buy stock;
    - Conclusions drawn by management without adequate basis; and
    - Predictions for future performance without proper warnings that past performance doesn’t guarantee future results.
  - Omission, Including:
    - Failing to disclose a conflict of interest in management;
    - Failing to disclose the quality of raw materials the company has mined (the TGS case); and
    - Failing to disclose payments the company receives for giving publicity to another product or company.
Some Other Securities Rules

• There is an affirmative duty to correct public misstatements attributed to the company, even if made by a third party.
  – This also applies to statements that were once true but changed circumstances make it no longer true.
  – There is no duty to correct gossip or outside analysis.

• Insider Trading
  – When insiders purchase securities, there are often very strict disclosure requirements and the SEC makes these records available to anyone.
    • You can get most of this info off Yahoo! Finance or a similar source!
  – Some forms of insider trading (e.g., tipping secret information) is illegal whether or not it’s disclosed.
Securities Rules (cont.)

- Using “insider” information to make a trade is illegal, even if the person is not an insider.
- “Tipping” is also illegal for “quasi-insiders” like law firms working for the company.
- Investment advisers have a fiduciary duty of disclosure to their clients.
- Investment bankers, financial journalists and similar people who are not insiders but have info based on their jobs, also are bound by some insider trading rules and may not use this secret information to base trades.
- Where required, disclosure must be made in a manner that is public and timely to avoid running afoul of the securities laws.