

## REGULATING GENDER STEREOTYPES IN ADVERTISING: WHEN PERSUASION REINFORCES INEQUALITY\*

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### Abstract

Advertising is *information* that aims to *persuade*. The phenomenon of advertising connects the professional supplier (*creator*) and the consumer (*receiver*) under particular market dynamics and within the framework of a specific social and cultural context that reveals the complexity and significance of the act of consumption. However, the regulation of advertising has been mostly focused on the professional supplier's *duty to inform*, on the one hand, and on the consumer's *access to information*. In this article, I argue that in order to assess the scope of the impact of the phenomenon of advertising in our society and, in particular, of advertising that conveys gender stereotypes, we must abandon the simplified construal of advertising as *information*, of the professional supplier as *informant*, and of the consumer as *informed sovereign*. Such representations that completely disregard context can hardly help in the tasks of rethinking regulation of current advertising and proposing legal responses that are more sensitive to advertising's *persuasive* aspect and thus better suited to deal with the problem of stereotyped advertising in our society.

**Keywords:** *advertising, gender stereotypes, abusive advertising, cognitive biases, market manipulation, persuasive advertising, subliminal impact, gender identity, gender equality.*

### I. INTRODUCTION

The regulation of advertising has generally been approached from the perspective of its *creator*, with emphasis on the duty that falls on the professional supplier *to inform* the consumer in a truthful, clear, and detailed manner of everything that relates to the essential characteristics of the goods and services that she provides

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and to the conditions of its commercialization. With regard to the *receiver* of advertising, regulation has focused on the consumer's *access to information*. It has thus generally offered tools to protect her against potentially false, misleading, or abusive advertising that may lead the receiver to draw erroneous conclusions regarding the product or service in question, that is, breaches of the professional supplier's duty to provide accurate information.

Accordingly, from the legal point of view, *advertising* has mainly been conceived as *information*, and the *consumer* as a *rational agent* who carefully processes information in order to reach the consumption decisions that are more beneficial to her. By consequence, protection is warranted only against false, misleading or abusive information that might lead to *error* about the essential contractual terms. In other words, on one side the focus is on whether the supplier offers the information owed and, on the other, on whether the consumer has sufficient access to that information.

This perspective can only provide a partial view of the behavior of the supplier and the consumer and of the effects of advertising on the latter. This particular way of addressing the problematic issues surrounding advertising not only ignores the inherent complexity of market dynamics and consumer behavior, but also ignores the way in which professional suppliers and consumers relate to each other within that context. On the one hand, this approach avoids the fact that the professional supplier, rather than *informing* the consumer, is mainly pursuing the goal of marketing her product or service and attracting as many consumers as possible. In other words, what the supplier seeks is to *persuade* the consumer of the advantages and benefits of the product being offered in order to remain competitive, and to that aim she invests resources and efforts so as to understand the consumer's behavior. On the other hand, the approach we are analyzing puts forward a narrow, mainly economic, understanding of the consumer as the rational actor that processes information and only seeks to consume in order to meet their individual needs ("sovereign consumer"). It fails to take notice of the fact that the consumer suffers from cognitive biases that influence her consumption decisions, and that the act of consumption takes place in certain cultural context, and that it has *meaning* for the consumer that goes beyond the act of consumption itself ("socially situated consumer").

From all this it follows that, in order to assess the scope of the impact of the phenomenon of advertising in our society and, in particular, of advertising that contains gender stereotypes, we must abandon the simplified construal of advertising as *information*, of the professional supplier as *informant*, and of the consumer as *informed sovereign*. Representations that completely disregard context can hardly help in the tasks of rethinking regulation of current advertising and proposing legal responses that are better suited to deal with the problem of stereotyped advertising in our society.

The paper is structured as follows. Section II gives an account of the dynamics that characterize the context of the market in which the act of consumption takes place, which is presented as a complex communicative act inseparable from the phenomenon of advertising. Following lessons learned from the fields of behavioral economics and social psychology, this Section explores peculiarities of consumer

behavior (i.e., cognitive biases and the influence of social context) and of the professional supplier (i.e., exploitation of the consumer's cognitive biases to her own benefit). Section II also examines the relationship in which consumers and suppliers engage with each other, with the market, with advertising, and, in particular, with stereotyped advertising. On the basis of these observations, Section III critically examines the classical understanding of advertising as information and brings to the fore the predominance of its persuasive character. Along these lines, this Section presents evidence of the influence of advertising on the gender stereotypes that are present in a society, and of the subliminal impact that it has on the general welfare and individual autonomy of its receivers. Section IV offers a critical analysis of the traditional regulatory responses to advertising as information, and proposes regulatory alternatives that are more sensitive to its persuasive function in general, and, in particular, with regard to gender stereotypes. To this end, the regulation of advertising in Argentina is especially, although not exclusively, reviewed with the simple purpose of illustrating a problem that manifests itself in similar ways at the regional as well as global levels. The choice of the Argentine case is motivated, first, by the movement for the removal of gender stereotypes that has recently gained significant momentum in the government, civil society, and social associations. The recent Proposed Draft Reform of the Consumer's Defense Law (2018), which in some way responds to this movement by proposing novel regulation showing sensitivity to gender in the field of consumer relations, is also relevant. Section V presents a succinct summary.

## II. MARKET DYNAMICS

In order to understand the phenomenon of advertising and the alternatives for its regulation, it seems necessary to first understand the relations that link the relevant market actors, the market, and advertising. Thus, I will analyze, on the one hand, the behavior of the consumer, as a receiver of advertising, as an imperfectly rational agent that makes consumption decisions in a given social context; and, on the other hand, the behavior of the professional supplier of goods and services as creator of advertising, and her relation to the necessary manipulation that takes place in the market.

### 2.1 The behavior of the consumer: Cognitive biases and social context

The empirical evidence is strong enough to prove that people usually, when making decisions, do not behave as a *homo economicus* or a perfectly rational agent.<sup>1</sup> On the contrary, as imperfectly rational agents, their behavior deviates from what rational choice theory predicts. People have bounded rationality because our cognitive abilities are finite. This admits that in certain contexts we may behave according to the postulates that economics has historically assumed.<sup>2</sup> It also means that sometimes we deviate from that model and may act using mental shortcuts and

1 JOLLS *et al* (1998).

2 JOLLS *et al* (1998), p. 1477.

alternative cognitive processes that are unrelated to logic or to standards of rational decision-making. The responsibility for this behavior lies with the heuristics of intuitive thinking and cognitive biases.<sup>3</sup> Psychologists and economists have identified a large catalog of cognitive biases based on experiments and hypotheses, such as availability, confirmation, and *status quo* biases, and the bandwagon effect, among others.<sup>4</sup>

Due to *status quo* bias, we tend to prefer the current state of affairs and believe that the default option was chosen for some reason already agreed upon, settled, or accepted in society. We thus adapt to it and make little effort to change it, even when faced with more advantageous alternatives.<sup>5</sup> For its part, the relevance of the bandwagon effect is also evident when we do something that we justify on the fact that others do it as well.<sup>6</sup> This bias is very common, especially in adolescence, when the need for inclusion and in-group acceptance leads to mimicking the attitudes and behaviors of others (e.g., adopting a fashion that the rest of the class follows). In relation to gender stereotypes, the *status quo* bias explains our tendency to maintain and embrace widespread beliefs about the specific roles and characteristics of each gender that are entrenched in society. For its part, the bandwagon effect explains how boys, girls, teenagers, and adults are also susceptible to a “desire to belong,” and thus succumb to social pressure and control in order to avoid isolation by trying to conform to beauty standards and observing and living according to the entrenched expectations of feminine and masculine models. The cognitive biases that make us vulnerable to social pressure explain the challenges we face when making daily consumption decisions.

Daniel Kahneman explains that the human mind has two modes of thought, which he calls System 1 and System 2.<sup>7</sup> Both are present at all times, yet whenever one is dominant, the other remains latent. System 1 works almost silently and includes all activity performed unreflectively. By contrast, System 2 refers to everything we do not do spontaneously, but rather deliberately and with effort. Thus, System 1 refers to fast and intuitive thought. It comprises, in general, all the mental operations that we perform automatically: heuristics, intuitive mental activity, and expert intuition. On the other hand, System 2 is characterized by managing a slow and effortful way of thinking. Thus, it refers to everything that is done not intuitively, but only with attention and focus. For example, we activate System 2 in order to read complex texts or to perform a mathematical calculation.

In day-to-day life, System 1 normally operates on autopilot and System 2 is in battery-saver mode.<sup>8</sup> Attention is a scarce resource and it makes no sense to use it if the activity to be carried out does not actually require effort. Because System 2

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3 *The concept of heuristics and biases* was originally proposed by TVERSKY and KAHNEMAN (1974). See also KAHNEMAN (2011), KOROBKIN and Ulen (2000), RACHLINSKI (2011).

4 JOLLS *et al.* (1998).

5 See KAHNEMAN *et al.* (1991), pp. 197-199.

6 KAHNEMAN *et al.* (1991), pp. 197-199.

7 KAHNEMAN (2011), pp. 19-58.

8 KAHNEMAN (2011), pp. 24-25.

is deliberate, we do not activate it for easy and comfortable tasks.<sup>9</sup> The problem is that, sometimes, because of our biases and heuristics, we fail to activate it when we should. Thus, System 2 only occasionally takes the reins of our mind while System 1 usually prevails, almost unconsciously, with little or no effort. System 1 is much more prominent and influential than we are aware and more than we would like. Despite these facts, most of us identify with System 2. When we think of ourselves, we think of a rational, conscious person who decides what to think and what to do.<sup>10</sup> Although trust in our intuition is warranted, since most of our hunches and actions are appropriate most of the time, we construe ourselves in a way that is not consistent with the reality of how we think and decide. The rational person narrative is more comfortable than admitting that we make the majority of our consumption decisions intuitively and under the influence of cognitive biases.<sup>11</sup> Moreover, the logic of System 2, which defines a rational, thinking and autonomous being, constructs a narrative that aligns with the backbone of our legal system: the autonomy of the will.

In this process, there is one more aspect that we must not neglect: the consumer must satisfy her consumption preferences within a specific cultural context. In fact, according to Douglas Kysar, social context influences consumers' preferences, beliefs, values and lifestyles, and that context is both shaped by the producers' and the consumers' own decisions (e.g., by the creator of advertising that present unattainable ideals for female bodies associated with a particular brand or product).<sup>12</sup> This suggests that the act of consumption is much more complex than the mere satisfaction of the individual needs of that rational consumer.<sup>13</sup>

Following Kysar, the act of consumption is "a messy communicative act that combines pleasure-seeking with elements of self-definition and social expression."<sup>14</sup> The consumer defines her values, aspirations, expectations, and identities in relation to the products that she consumes (e.g., a style of clothing, certain beauty products, a brand or type of car, etc.) and the recreational activities in which she takes part (e.g., playing soccer, boxing, dancing, etc.). The consumer generally does not choose just any product, but rather the one that has a *meaning* for her, and at the same time that meaning is defined by the creator of the product, by its users, or by those who influence the *social significance* of that product.<sup>15</sup>

9 KAHNEMAN (2011), p. 23.

10 KAHNEMAN (2011), p. 21.

11 KAHNEMAN (2011), p. 52 (arguing that "the notion that we have limited access to the workings of our minds is difficult to accept because, naturally, it is alien to our experience, but it is true: you know far less about yourself than you feel you do").

12 KYSAR (2002), p. 858.

13 KYSAR (2002), p. 857 (arguing that "debate over legal protection of consumers tends to be about market power, cost minimization, and access to information, with no attention to consumption as an event carrying significance beyond the mere satisfaction of individual needs.").

14 KYSAR (2002), p. 890.

15 KYSAR (2002), p. 892. For example, a widespread understanding that cosmetics or anti-aging cream are for "women", while choosing what kind of car to buy corresponds to "men".

In this way, our consumption preferences are to some degree socially constructed: that is, producers construct, for example, different lifestyles and ideal body types for men and women that partly shape our desires or preferences as consumers. According to Kysar, this does not mean that consumers are unable to resist social influence or that their preferences are *always* mediated by suppliers that attach a certain social meaning to their products, but rather that consumers and suppliers are intertwined in a constant process of defining and redefining, for social context itself is built upon our own contributions.<sup>16</sup>

Hence, an understanding of the consumer as someone who suffers from cognitive biases that make her completely vulnerable and subject to constant manipulation by suppliers is not fully accurate. This is because that notion ignores the contributions of the consumers in the construction of the social context in which they make their consumption decisions, for suppliers do not construct the context on their own. It seems clear at this point, as well, that an understanding of the consumer as a rational actor that processes information adequately in order to meet her individual preferences is completely unsatisfactory. Only a richer understanding of the act of consumption and what it involves, that accounts for the fact that consumer preferences must be satisfied within a given social and cultural context, can give us a more realistic look at consumer behavior and its meaning. This will allow us to better understand the impact of advertising in general and, on the reproduction, reinforcement and perpetuation of gender stereotypes in particular.

## 2.2 The behavior of the professional supplier: Exploitation of cognitive biases

Imbalance is the characteristic feature of a consumption relation.<sup>17</sup> In addition to the asymmetry of bargaining power and information, another dimension of the inequality that characterizes the supplier-consumer relation involves the imbalance caused by the consumer's cognitive vulnerability: she predominantly makes decisions under System 1.<sup>18</sup> This expert-layperson relation extends its influence to all aspects of the contractual relationship, including advertising. Suppliers invest resources and effort (using, for example, neuromarketing techniques) in order to understand the cognitive biases of consumers better than consumers themselves, which increases the asymmetry we have noted.<sup>19</sup> Furthermore, suppliers in competitive markets who are not willing to exploit the cognitive limitations of consumers will be supplanted by

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16 KYSAR (2002), p. 894.

17 BAR-GILL (2014).

18 KAHNEMAN (2011).

19 See AKERLOF and SHILLER (2015), pp. 52-54 (describing how advertisers use, through trial and error, persuasive techniques to secure and increase sales of their products). Neuromarketing is the study of consumer behavior that makes use of neuroscientific techniques in order to obtain data on a person's consumption behavior and habits. For example, cameras, sensors, and wristbands are used to record expressions, changes in speech, and even the consumer's heart rate.

those who are willing to do so: thus, according to Jon Hanson and Kysar, manipulation becomes an inescapable requirement to remain in a competitive market.<sup>20</sup>

According to George Akerlof and Robert Shiller, advertising is one of the most fertile fields for catching ‘phools’.<sup>21</sup> Phools are consumers who, due to the way the human mind and particular thought-processes work, can be manipulated serving the interest of the ‘phisherman’ rather than their own, thus making decisions that do not benefit them.<sup>22</sup> The human mind naturally thinks in narrative terms.<sup>23</sup> Thus, the stories that people tell themselves play a role in their decisions. This is why the development of advertising often involves advances in different modes of storytelling.<sup>24</sup> Our market decisions depend not only on our narratives, but also on the influence that others exert on those narratives in order to serve their own purposes.<sup>25</sup> Advertising is successful whenever the narrative presented in the advertisement inserts itself into the consumer’s own narrative.<sup>26</sup> The job of advertisers is to elicit those narratives in order to attain their goal: making the sale.

In this process of convincing and persuading, gender stereotypes are used by advertisers as any other tool for product placement. Targeting certain groups of consumers (e.g., women) with certain images (e.g., ideals of female beauty, success in predominant social roles of women such as family or home care, and so on) does not simply reflect to already existing characteristics within that group, but also confirms, reinforces, and redefines those characteristics. It is a feedback dynamic that ends up perpetuating the stereotypes. The brand reinforces a certain ideal of beauty or a certain social role that resonates or is consistent with our lifestyle, our beliefs, and our attitudes. At the same time, our aspirations and self-esteem are subtly shaped and limited by the social context. For example, advertising that portrays women as in charge of household chores and family care influences the elaboration of women’s aspirations of enter a labor market represented as primarily masculine. In the same way, advertising that presents unattainable female ideals of beauty affects the self-esteem of girls and teenagers from an early age, as well as the expectations of femininity that are built around them.

The supplier is aware that through advertising she attaches a certain *meaning* to the product (i.e., lifestyles, attitudes, beliefs, etc.) that the consumer notices and

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20 See HANSON and KYSAR (1999); and HANSON and KYSAR (2001) (focusing on the cigarette industry as a paradigmatic example of market manipulation strategies).

21 AKERLOF and SHILLER (2015), pp. 1-11.

22 AKERLOF and SHILLER (2015), pp. xi-xii.

23 AKERLOF and SHILLER (2015), p. 46.

24 AKERLOF and SHILLER (2015), pp. 47-52 (describing three historical examples of successful advertising narratives of the twentieth century).

25 AKERLOF and SHILLER (2015), p. x (arguing that “insofar as we have any weakness in knowing what we really want, and also insofar as such a weakness can be profitably generated and primed, markets will seize the opportunity to take us in on those weaknesses”).

26 AKERLOF and SHILLER (2015), p. 53.

associates with it. Consequently, the supplier has an interest in preserving and cultivating the meaning (or narrative) that attracts consumers of the product in that particular social context. From all this it follows that, although we cannot exclusively blame advertising for the gender stereotypes that are entrenched in our society, we cannot consider it innocuous either because, as we shall see, it plays a fundamental role in the reproduction, reinforcement, and perpetuation of those stereotypes.

### III. UNDERSTANDING ADVERTISING: BALANCING INFORMATION AND PERSUASION

Throughout the twentieth century, when modern consumer relations developed, advertising was developed as a means to increase sales.<sup>27</sup> It served the purpose of promoting products while presenting the consumer with information about their features and uses.<sup>28</sup> That is, although advertising originally emerged to deliver information about risks, uses and features of the product or service being offered, it always contained a *persuasive* element intended to convince and attract buyers.<sup>29</sup> In fact, the line between informing and persuading has been, from the beginning, a thin one which has changed alongside the changes in the needs of the relevant market actors and the social contexts in which their sales strategies are developed. In fact, as market dynamics and new technologies grew more complex, the *persuasive* component of advertising gained greater prominence than its *informational* aspect.<sup>30</sup>

Currently, and increasingly, thanks to the internet, social media, new forms of advertising that make use of “influencers” and “youtubers”, and targeted advertising over online platforms, advertising is not so much *information* as it is *persuasion*. Advertisers appeal to consumers’ cognitive weaknesses to direct their behavior in a way that benefits their business.<sup>31</sup> In fact, these new advertising formats are characterized by their use of personalized targeting. They aim directly at exploiting System 1 decision-making of specific individual consumers, attempting to persuade them through empathy by presenting them with experiences that insert easily into those consumers’ internalized narratives.<sup>32</sup> Consumers are influenced by the stories

27 See LORENZETTI (2009), p. 156 (“the consumer, in many cases does not buy because of need nor is it need that creates the supply; it is the other way around, supply creates the need. One buys because one saw a good ad, because one wants a particular status to which the product is associated”).

28 See KEMELMAJER DE CARLUCCI (1996), p. 141 (claiming that “advertising is what attracts the potential user or consumer; it enters, penetrates, is internalized, because it uses a technique for capturing, suggesting, and convincing; the good or service is wanted on the basis of what is shown, of what has been heard, perceived in this way, by the senses”).

29 See KUENZLER (2017), pp. xvii-xxi (showing how advertising from its beginnings served a dual purpose of informing and persuading).

30 See MIK (2017) (analyzing the phenomenon of persuasive advertising over the internet).

31 See DAVIDSON (2017) (describing how advertisers use Facebook and other online platforms to target advertising at teenagers in moments when they are vulnerable).

32 See SUSSER *et al.* (2018) (who analyze the manipulation practices enabled by new information technologies).



contained in ads and actually take part in the narratives created by the *marketing* companies.<sup>33</sup> Through brief stories, advertising suggests, with varying degrees of subtlety –and many times, with none at all– the kind of people we are or should be according to our social class, our age, and our gender status.<sup>34</sup>

### 3.1 Advertising and gender stereotypes: Subliminal impact

In addition to convincing consumers to make purchases, advertising is designed to send specific messages, which in most cases are so imperceptible that their impact is subliminal. The empirical evidence strongly shows that advertising influences the gender stereotypes that are present in a society: it reinforces, confirms, reproduces, accentuates, and perpetuates them.<sup>35</sup> Gender stereotypes are widespread beliefs about the roles and specific characteristics that are projected upon people by virtue of their male, female, or any other non-binary identity.<sup>36</sup> The media, and especially television, are a powerful instrument in the construction of these stereotypes and the strengthening of the social expectations. Reinforcement in the media can lead the audience to believe the stereotypes are objective, true, unquestionable, and permanent. In this way, rigid beliefs are reproduced and strengthened in society.

Advertising reproduces and reinforces the gender stereotypes present in society in order to attract consumers. Ultimately, advertisers wish to associate the advertised products with cultural values with which the spectator feels comfortable. Ads purposefully take advantage of the fantasies, myths, and particular fears of each gender.<sup>37</sup> Thus, stereotypes are designed and constructed according to the gender of the intended audiences. For example, ads for cleaning products overwhelmingly represent women performing household chores and show how the product will make their lives easier while car ads often target men by focusing on the effect of the vehicle on attractive women in addition to the technical specifications that most interest potential buyers.<sup>38</sup>

Advertising is one of many sources of input for the construction of social meanings.<sup>39</sup> Like media in general, advertising helps establish the boundaries of what is mainstream, legitimate, “normal” and “debatable.” In deciding what is relevant, it necessarily shuts down, silences, or makes invisible other actors, other life plans, other

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33 AKERLOF and SHILLER (2015), p. 53.

34 FAUR and MEDAN (2010).

35 See the studies referenced throughout this section.

36 SANTORO (2018).

37 CRAIG (1992), p. 199.

38 For the relation between Artificial Intelligence (AI) and gender stereotypes, see SPECIA (2019) (stating that UNESCO reported that Alexa and Siri reinforce problematic gender stereotypes by using female names, and female and submissive voices).

39 FAUR AND MEDAN (2010).

possible ways of thinking or explaining reality.<sup>40</sup> Advertising educates consumers about the private lives of others. Advertising, according to Sonia Santoro, functions as a mirror of the society in which we live, reinforcing representations of the world – particularly through repetition – and acting as a socializing agent by establishing the values, habits and trends that people must follow in order to belong.<sup>41</sup> Advertisements usually convey images of what is feminine or masculine, and the expectations placed on women and men, and thus influence how people conceive and pursue their life plans and socialize.<sup>42</sup>

According to Jordi González y Paredes,<sup>43</sup> if we look at the characteristics of gender relations represented in advertising, we notice the following: (i) they appear to represent all members of society by virtue of being publicly transmitted; (ii) the individuals represented seem to accept the gender dynamics and thus validate the roles described; (iii) roles and attitudes of men and women in society are portrayed in ways that shape social expectations and also serve to educate the viewer about acceptable and unacceptable behavior; (iv) they develop a model of our social world; and (v) the constant and systematic propagation of gender stereotypes contributes to the consumers' perception that these beliefs are objective, true, unquestionable, and permanent. In other words, advertising plays an important part in making beliefs that are socially constructed seem natural and unquestionable.

Different empirical studies that have analyzed the content of advertising aimed at adults and children reveal patterns of stereotyped representations of men and women.<sup>44</sup> They show how adult women are generally represented as emotional, sexual and attractive, oriented toward the private space, dependent, self-effacing, eager to please, maternal, family-oriented, emotive, and sentimental. In contrast, the adult male is mostly represented as rational, energetic and aggressive, self-centered, oriented toward public spaces, determined and independent, self-confident, stately and dominant.<sup>45</sup> For their part, girls are represented as shy, passive, weak, affectionate and emotive; they play games centered on make-believe cooking, ironing and

40 FAUR and MEDAN (2010), p. 57.

41 SANTORO (2007).

42 SANTORO (2007).

43 GONZÁLEZ y PAREDES (2004).

44 See FURHAM and MAK (1999) (who conducted a study on the role of gender stereotypes in television commercials comparing and contrasting 14 studies conducted on five continents –specifically in the following countries: United States, Australia, Denmark, France, United Kingdom United, Hong Kong, Indonesia, Italy, Kenya, Mexico and Portugal). For recent studies in Argentina, see RAMÍREZ BARAHONA (2018), p. 31 (showing, among other aspects, that 91% of ads display young women; 41% place women in domestic settings; and in 70% of them women are characterized by emotional aspects such as love, imagination and happiness).

45 See MELO and ASTORINO (2016), pp. 38-39 (who show examples in Argentina of ads, such as that of diaper rash ointment Hipoglós, in which the role of the “house husband” is ridiculed as a way of expressing how unusual these activities or spaces are for fathers/males).

childcaring; they like dolls, dresses and the color pink.<sup>46</sup> Little boys, in turn, are portrayed as autonomous, energetic and aggressive, dominant, and creative; they play soccer, rugby, and extreme sports; they like cars, trains, planes, and light blue.<sup>47</sup> A telling example of how advertising directs the preferences of child consumers based on stereotypes is a campaign for Kinder chocolate eggs in Argentina. It involved packaging differentiated by gender (pink for girls and light blue for boys), which signaled the kind of toy the eggs contained (a toy car or a soccer player for light blue; dolls or flowers for pink). All this shows how advertising influences the construction of gender stereotypes and the role they play in the transmission and propagation of gender-differentiated social expectations and demands.

Other studies, more focused on the impact of stereotyped advertising that is directed at our subconscious, attempt to decipher the potential correlation between the gender stereotypes represented and reinforced in advertising and possible adverse effects for women (and others).<sup>48</sup> One example reveals that (i) advertisements that show unattainable ideals of female bodies are a cause of diseases such as bulimia and anorexia in female adolescents and, at the same time, distort the way women see themselves and how others perceive them. This creates problems of low self-esteem and insecurity because attaining the ideals of beauty and youth instilled by advertising is nearly impossible, and low self-esteem restricts their potential life choices.<sup>49</sup> Another example identifies (ii) correlations between sexist advertisements that repeatedly objectify and demean women and the incidence of sexual harassment at work, street harassment, as well as physical and symbolic violence directed toward adult and adolescent women.<sup>50</sup> Yet another shows (iii) the relation between advertisements that represent women in charge of household chores and childcare

46 In a similar vein, the Advisory Council on Audiovisual Communication and Children of the Argentine Government has warned that advertisements for toys, cars or superhero action figures are addressed exclusively to boys, use male voiceovers, fast-paced editing that highlights action, sounds of engines, blows, and explosions, accompanied by strong colors such as red or blue. Meanwhile, girls are offered various types of collectible dolls –princess shows, stamps of different colors and perfumes, stuffed animals– in ads in which female voiceovers and melodic jingles with soft voices are predominant, as well as pastel colors.

47 See MELO and ASTORINO (2016), p. 18 (showing that “advertising of children’s products constitutes another instance of symbolic violence against women, since a number of models of what “being a woman” is, associated with domestic/private chores, submissiveness, passive roles in society, among others, are perpetuated and opposed to models of “being male” anchored to active roles, strength, superiority, public activities, etc.”)

48 See FEMENIAS (2013), pp. 102-103 (arguing that “historical appellatives to women in terms such as: immature, emotional, frigid, fastidious, diva, frivolous, inconsiderate, vulnerable, incompetent, whiny, crazy, etc., have had appellative and performative efficacy [above all] if social discourses validate it”).

49 See MONGE-ROJAS *et al.* (2015) (showing the correlation between gender stereotypes and unhealthy eating habits of adolescents, which in many cases lead to disorders such as bulimia and anorexia in Costa Rica).

50 See ARIAS (2015), p. 378, and ALONSO (2015), p. 153 (showing the close link between the female stereotypes reproduced and reinforced by the media, and violence against women in Argentina).

and a discourse that excludes them from certain activities that are represented as predominantly masculine (e.g., playing soccer, occupying executive and decision-making positions, etc.). This impacts the aspirations and expectations of women at work and in society in general (e.g., settling for administrative and bureaucratic work, accepting a secondary role when expressing opinions or positions in work meetings, etc.).<sup>51</sup> To give one last example, another study shows that (iv) stereotyped advertising messages aimed at children reinforce inequality between adult men and women by influencing their socialization (i.e., the process by which they incorporate the values and customs of the society in which they live in order to adapt to their environment by differentiating the acceptable and the unacceptable in their behavior). This influences their way of seeing the world, relating to others, and the forming of a view about themselves from an early age.<sup>52</sup>

Out of recognition of these effects, the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) has denounced gender stereotypes as an obstacle to gender equality and the empowerment of women in society.<sup>53</sup> Likewise, a great variety of empirical studies worldwide show that stereotyped advertising effectively crystallizes and normalizes gender inequality, and expresses mediated violence toward women.<sup>54</sup>

51 See, e.g., SUÁREZ VILLEGAS (2013), p. 247 (arguing that “motherhood is often extolled as the most authentic way of life for women and, frequently, as the only one. Advertising discourses contribute decisively to the consolidation of ideas of the feminine as the permanent caretaker of family offspring, because women are the ones that exclusively appear in the different scenarios related to their upbringing and care”). A recent study by Unilever in China, India and Indonesia revealed that only 2% of advertisements show women in aspirational and leadership roles. See more at <https://www.scmp.com/lifestyle/health-wellness/article/2168711/how-gender-stereotyping-adverts-bad-women-and-men-and-why>. For an analysis of the relationship between gender stereotypes and their influence on the problems faced by women in leadership positions, see GARCÍA BEAUDOUX (2015).

52 See MELO and ASTORINO (2016), and COLÍN (2017) (who work on the problem of the lack of a gender perspective in school curricula in Mexico).

53 See the 1979 CEDAW: “States Parties shall take all appropriate measures: (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women [...]” (Art. 5); and “States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women: [...] c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods [...]” (Art. 10).

54 See, e.g., MELO and ASTORINO (2016), and HERNÁNDEZ and FERNÁNDEZ DE LA VEGA (2016). For a definition of “media violence” see, for example, the text of Law No. 26.485 of 2009: “Media violence against women: the publication or dissemination of stereotyped messages and images through any mass media, which may directly or indirectly promote the exploitation of women or their images, libel, defame, discriminate, dishonor, humiliate, or offend the dignity of women, as well as the use of women, adolescents, and girls in pornographic messages and images that legitimize their unequal treatment or construct sociocultural patterns which reproduce inequality or cause violence against women” (Art. 6, subsection f).

Due to the cognitive biases in our decision-making (particularly *status quo* bias and the bandwagon effect) and the influence of the social context in which we make decisions, the influence of stereotyped advertising in our society is greater and more serious than we tend to acknowledge. It is important to demystify the widespread idea that the main impact of advertising is whether the consumer actually decides to buy a particular product or service (which in many cases she does not need). In fact, advertising produces a generally unnoticed *subliminal impact*: while reproducing, normalizing, and strengthening expectations about the feminine and the masculine in a binary and dichotomous manner, it invalidates and makes invisible other actors, life plans, and ways of thinking or explaining reality outside that heteronormative model. This *subliminal impact* of advertising, which goes beyond the act of consumption itself, concretely manifests itself by affecting self-esteem, personal confidence, and people's hopes for their chances and plans in life, which decreases their general well-being and impacts their individual autonomy.<sup>55</sup>

#### IV. LEGAL RESPONSES: THE ARGENTINE CASE

Once we understand the behavioral dynamics of the relevant market actors, the importance of the social and cultural context in which the phenomenon of advertising takes place and the scope of its impact on the receivers, we are better positioned to analyze the regulation of advertising.<sup>56</sup> Certainly, when regulating advertising and laying down the rules of the game for its creators, several contested issues arise. What is clear is that given the undeniable imbalance in the professional consumer-supplier relationship, the law must intervene in order to address the inequality produced with active measures that provide the consumer with knowledge and protective instruments.<sup>57</sup> It makes sense to seek this response through the law and not from the professional supplier of goods and services, since the latter is subject to collective action pressures that are a disincentive for such initiative.<sup>58</sup>

However, the law has not been sensitive to the degree of shifting of the balance between informing and persuading in the context of modern market dynamics that has occurred. The regulation of advertising has primarily addressed its *informative* aspect while the need to provide consumers with the tools to protect themselves against

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55 The idea is that to make autonomous decisions we require a social context that enables us to do so by presenting a variety of alternative options and possibilities.

56 In Argentine law, advertising is defined in Law No. 26.522 of 2009: "Any form of message that is published through an audiovisual communication service in exchange for a remuneration or similar consideration, or for self-promotion purposes, by a public or private company, or a natural person in relation to a commercial, industrial, artisanal, or professional activity with the purpose of promoting, in exchange for a remuneration, the provision of goods or services, including goods, immovables, rights and obligations" (Art. 4).

57 WAJNTRAUB (2017); STIGLITZ and HERNÁNDEZ (2015).

58 BAR-GILL (2014).

its *persuasive* face has been relegated to the background.<sup>59</sup> Thus, most legislations prohibit *deceptive*<sup>60</sup> and *unfair* advertising,<sup>61</sup> which mainly aims to protect the consumer against false advice or comparisons of goods and services that may mislead or induce to *error* regarding essential elements of the product or service.<sup>62</sup>

This traditional regulation of advertising as *information* presents at least two problems with significant practical consequences. First, it restricts the analysis of prohibited advertising to an objective test of truth/falsehood that cannot capture the persuasive element. Persuasiveness is precisely characterized by finding a fuzzy boundary between the false and the true and, most of the time, even lies outside those categories.<sup>63</sup> Second, it assumes that the impact of advertising on the consumer goes no farther than the mere act of acquiring a particular product or service (which is often not needed). It does not consider the *meaning* of the act of consumption or the *subliminal* impact that advertising produces on the receiver and the society or group of consumers in general that was described in the previous section.

One reason why the law has not shown much concern for regulating the persuasive face of advertising could be that “persuasion” broadly understood as “making someone change her opinion” seems acceptable, while deceiving or forcing someone to do something clearly is not.<sup>64</sup> The underlying idea seems to be that

59 See, e.g., the regulation of the duty to inform in Law No. 26.994 of 2014 (Argentina): “The supplier is obliged to provide information to the consumer in a certain and detailed manner, regarding everything related to the essential characteristics of the goods and services that she provides, the conditions of its commercialization, and all other circumstances relevant to the contract. The information must always be free of charge for the consumer and provided with the clarity necessary for its understanding” (Art. 1100); and Law No. 24.240 of 1993 (Argentina): “Information. The supplier is obliged to provide to the consumer in a certain, clear and detailed manner everything related to the essential characteristics of the goods and services that she provides, and the conditions of its commercialization” (Art. 4).

60 See, e.g., the regulation of “deceptive advertising” in Law No. 26.994 of 2014 (Argentina): “Any advertising that contains false indications or indications of such nature that they lead or may lead the consumer to error is prohibited, when they refer to essential elements of the product or service” (Art. 1101 subsection a).

61 See, e.g., the regulation of “unfair advertising” in Law No. 26.994 of 2014 (Argentina): “All advertising that makes comparisons between goods or services is prohibited, when they are of such the nature that they lead the consumer to error” (Art. 1101 subsection b).

62 See IBÁÑEZ (2019), p. 360 (arguing that what the statute seeks “is to prevent advertising from causing misinformation or confusion, that is, deception”), BAROCELLI (2016) (arguing that when determining the aptness of advertising to deceive or lead to error the condition of structural hypervulnerability of consumers in the market must be taken into account).

63 See KUENZLER (2019), p. 265 (arguing that the issue that legal doctrine faces is how to apprehend those cases in which advertising “presents information that is neither completely false or deceptive nor entirely correct.”).

64 See SANTARELLI (2016), p. 710 (claiming that “it is lawful for advertising to be disinterested in informing and to concern itself with other kind of message; as long as it seeks to attract, suggest, motivate, the consumption of an object, a brand, etc. Even in these cases, advertising cannot infringe the principle of transparency, that is to say, lead to confusion or error regarding the components of

the law may require *truthfulness* from the professional supplier but not *impartiality*.<sup>65</sup> However, identifying the actual workings of the persuasive aspect of advertising and the scope of its impact on our society requires a change of attitude. It should matter to us, and it is something to which the law should attend by offering more concrete solutions. Instead, legislators seek refuge in the abstract potential impact on the “freedom of expression” of the creator that could occur, for example, by prohibiting that type of advertising—a classic argument repeatedly used to avoid regulating it.<sup>66</sup> The truth is that the right to freedom of expression of the supplier is not absolute. It should therefore be balanced with the right to information and to a fair and dignified treatment of consumers and users, for both rights possess equal constitutional rank.<sup>67</sup>

Recently, some Latin American legislation has progressed in this regard by regulating *abusive* advertising. Its intention is the prohibition of all advertising that is “abusive, discriminatory or that induces the consumer to behave in a manner that is harmful or dangerous to their health or safety.”<sup>68</sup> Through the word “induce,” the regulation of abusive advertising creates a space that breaks the tight restraints of the truth/falsehood dichotomy, and begins to bring under scrutiny some of the persuasive aspects of advertising and its possible impact on the receiver that go beyond the act of consumption itself.

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the product or its forms of commercialization”); and PASQUAU LIAÑO (1992), p. 143 (arguing that “advertising may lawfully be partial, persuasive, inciting, even—in a way—manipulative, but it must always be truthful [...] below the boundary of truthfulness, one enters the domain of the illicit, and of legal intervention”). For an analysis of the differences between persuasion, coercion and manipulation, see SUSSER *et al.* (2018).

65 See ACCIARRI and TOLOSA (2009), pp. 20-21 (arguing that “although advertising is a very valuable means of transmitting information to consumers, it is not strictly equivalent to truthful, let alone complete, information. Advertising characteristically tends to hide unfavorable aspects of the product and to exacerbate certain positive traits, and it is never impartial or verifiably truthful”).

66 For an analysis of the relationship between abusive advertising and freedom of expression, see PERAL (2019), pp. 216-220, AND LORENZETTI (2009), pp. 182-183 (arguing that the commercial purpose of advertising messages makes the protection of freedom of expression much more tenuous). See TAMBUSI (2015), p. 773 (arguing that subliminal advertising should be prohibited by legislation for “entering into the consumer through psychological manipulation, for being imperceptible to the conscious mind of the person who receives the message, violently affecting her freedom of choice, privacy, and dignity, vitiating consent and impacting good faith. Due to the way the message enters or arrives, the consumer has no chance to repel the attack, because she does not detect it”).

67 See Constitution of the Argentine Nation, Art. 42 and the International Human Rights Treaties that have constitutional rank according to Art. 75 subsection 22.

68 See Law No. 26.994 of 2014, Art. 1101 subsection c) (Argentina). Similarly, see Law No. 8078 of 1990 (Brazil): abusive advertising is “discriminatory advertising of any nature, that incites violence, exploits fear or superstition, takes advantage of the deficiency of judgment and inexperience of children, harms environmental values, or that is capable of inducing the consumer to behave in a way that is harmful or dangerous to her health or safety” (Art. 37.2).

The recent Proposed Draft Reform of the Consumer's Defense Law of Argentina (2018) proposes to move forward even further in that direction by expanding the category of abusive advertising to cover cases that "undermine the fundamental right to health of children and adolescents, gender identity, and those that in any way affect environmental or cultural goods."<sup>69</sup> This regulation of *abusive advertising* is in turn complemented with the proposal to regulate *abusive practices*, understanding as such behaviors "that directly or indirectly stereotype, promote or incite socio-cultural patterns dependent on gender inequality and relations of power over women."<sup>70</sup> Accordingly, suppliers that make use of stereotyped advertising in order to publicize products or services commit abusive practices.<sup>71</sup>

The description of the behaviors proscribed in both legal proposals follows the language of the National Law on Integral Protection of Women (Argentina). This law guarantees and regulates the rights recognized by the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and the American Convention on Human Rights to the prevention, punishment, and eradication of violence against women that have constitutional rank. Accordingly, the regulation that prohibits stereotyped advertising in the area of consumer law is an expression of the obligation of the Argentine government to adopt measures that actively guarantee equality and eradicate gender stereotypes in our society while setting a reasonable limitation on the exercise of the supplier's freedom of expression.<sup>72</sup>

This novel proposal to expand the scope of the regulation of abusive advertising, along with its articulation of abusive practices, seeks to capture the subliminal impact that it produces on boys, girls, adolescents and adults and provide some kind of response. Regarding the content of stereotyped advertising, although it does not concretely specify which gender stereotypes are prohibited, as recent

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69 See Proposed Draft of the Consumer Defense Act of 2018: Art. 45 (Argentina). In a similar vein, see Law No. 26.522 of 2009 (Argentina): "Advertisements will not discriminate on the basis of race, ethnicity, gender, sexual orientation, ideology, socio-economic status or nationality, among others; they will not infringe human dignity, they will not offend moral or religious convictions, they will not induce behaviors that are harmful to the environment or the physical and moral health of children and adolescents" (Art. 81 subsection i).

70 See Proposed Draft of the Consumer's Defense Act of 2018: Art. 26, subsection 2 (Argentina).

71 See ARIAS AND TRIVISONNO (2019), p. 308, and CHAMATROPULOS (2019), Vol. 1, p. 443 (arguing that advertisements that encourage or incite the deepening of structural gender inequalities will be considered abusive advertising).

72 ARIAS AND TRIVISONNO (2019), at 309. Similarly, see PERAL (2019), p. 220 (considering stereotyped advertising as illegal).



legislative reforms in the United Kingdom,<sup>73</sup> France,<sup>74</sup> Australia,<sup>75</sup> and other global initiatives do,<sup>76</sup> it addresses stereotyped advertising more inclusively by prohibiting any advertising that threatens *gender identity* or that *stereotypes, promotes or incites socio-cultural patterns dependent on gender inequality and relations of power over women*.

To be clear, both proposals for the regulation of gender stereotypes in advertising are valuable, since they both consider in some way the subliminal impact of the persuasive aspect of advertising. However, I understand that the regulation that aims to prohibit the promotion of “gender inequality” and harm to “gender identity” is perhaps more sensitive to the root of the problem: advertising should represent the diversity of our social and cultural context. That is to say, we must not only be concerned with eradicating negative feminine and masculine stereotypes that are entrenched in advertising. We must also encourage advertising that reflects the diversity of the society in which we live such that it includes and makes visible other life plans or other ways of thinking, portraying reality outside the heteronormative dichotomy (e.g., ads that represent people of the LGBT community, diverse family structures, diverse female bodies, etc.).<sup>77</sup>

In other words, regulation that prohibits certain stereotyped content (e.g., ads that objectify women, or present them as sexual objects, or that promote unhealthy body ideals, among others) is certainly valuable and constitutes important progress toward giving legal responses to the problem of stereotyped advertising. Such a prohibition on its own, however, is not enough to address the root of the matter.

73 See SAFRONOVA (2019) (who mentions examples of stereotyped advertisements that are banned in the United Kingdom since 2019, namely: men incapable of changing diapers, women cleaning while men sit resting in an armchair, women having difficulties parking a car, ads that link physical appearance to success in love or in social spheres, that ascribe stereotyped personalities to boys and girls, such as bravery for boys and tenderness for girls, that suggest that mothers must prioritize their physical appearance and cleanliness at home over emotional health, that ridicule men for being bad at stereotypically feminine activities, such as vacuuming, washing clothes or taking care of the family, among others). In a similar vein, the author mentions that countries such as Belgium, France, Finland, Greece, South Africa and India each have some statute or code which, with variations, prohibit gender discrimination in advertising. Norway, for example, has a statute that prohibits sexism in advertising since 1978. In the United States, on the other hand, the focus is rather on stereotyped advertising aimed at children.

74 In France, since 2017, advertisements that use images of digitally altered bodies without including a warning label may be fined €37,500 or up to 30% of the production cost of the advertisement, see more at <https://www.independent.co.uk/life-style/fashion/photoshop-models-france-ban-2017-october-a7975351.html>.

75 In Australia, recently enacted statutes prohibit advertising that reinforces or promotes negative gender stereotypes; that objectifies women or presents them as sexual objects; or that promotes unhealthy body ideals.

76 For example, [globaldemocracy.org](http://globaldemocracy.org) promotes the requirement of explicit warning labels by advertisers informing consumers that the bodies depicted in photos have been manipulated with Photoshop.

77 For example, recently, Nike introduced in its London store mannequins of all shapes and sizes that represent different types of sportswomen’s bodies. Other examples are magazines *Elle*, *Cosmopolitan* and *Vogue*, which have recently chosen “plus size” models for their covers.

The challenge is getting advertising creators to think about media representations outside the heteronormative model. They should consider diverse family models, sexual orientations, and gender identities, which would allow for more plurality.<sup>78</sup> Advertising must represent all the alternatives that are present in society as a kind of mirror in which each member of the community can feel represented, and in this way vehicle a commitment to a more egalitarian society.<sup>79</sup>

Despite the existence in Argentina of a rich regulatory framework that provides some (limited) protective legal instruments,<sup>80</sup> the media has shown very timid progress in that regard.<sup>81</sup> Recent empirical studies carried out in Argentina show important movement toward the removal of gender stereotypes by the government,<sup>82</sup> society,<sup>83</sup> and civil associations,<sup>84</sup> as well as denunciations of the lack of a commitment to overcome gender stereotypes by advertisers.<sup>85</sup> Save for isolated exceptions,<sup>86</sup>

78 For related Argentine proposals that complement existing regulations, see the 2018 Protocol for Non-Sexist and Diverse Action in Advertising that aims to “promote the transformation of advertising discourse [in Argentina] from a non-sexist and diverse communication approach,” and proposes as guiding principles, among others, the following: “To promote characterizations and/or representations of characters that display diversity in the ways of being a woman, in physical figures and in lifestyles”; “To represent men in a diversity of masculinities (gays, trans men) and to avoid constructing characterizations exclusively from a hegemonic heterosexual masculinity, showing them as persons who must not express affection or emotions and must always be sexually available.”

79 For example, the 2018 Protocol for Non-Sexist and Diverse Action in Advertising indicates that, in Argentina, only a few cases of transgender participation in advertisements have been recorded, which constitutes a practice in itself discriminatory because it makes them invisible.

80 The main regulations in force in Argentina regarding gender and advertising: Law No. 26.485 of 2009, Law No. 26.522 of 2009, Law No. 26.743 of 2012.

81 See MELO and ASTORINO (2016), p. 22.

82 In Argentina, some advertising monitoring experiences for gender stereotypes were carried out by the Public Defender of Audiovisual Communication Services. See more at: <http://defensadelpublico.gob.ar/lineas-de-accion/publicidad/>. One example is the work regarding the advertising for beer company Andes and its “Hurricanes” campaign. After action by the agency, the company decided to pull the campaign off the air: <http://defensadelpublico.gob.ar/Cases-resolved/hurricanes-de-la-cerveza-andes/>. Similarly, see the discussion with sports channel TyCSports regarding its “Putín” campaign, for the 2018 World Cup in Russia: <http://defensadelpublico.gob.ar/reunion-con-tyc-sports-y-la-agencia-publicitaria-mercado-mccann/>. Also, the cases of advertising for Asepxia involving skin problems and stereotypes: <http://defensadelpublico.gob.ar/luego-de-las-denuncias-el-compromiso-de-cambiar-la-publicidad/> <http://archivo.defensadelpublico.gob.ar/es/resolucion-no-129-2013>. Moreover, the Observatory for Discrimination on Radio and Television on Discrimination against Women in Audiovisual Media (INADI, Argentina) is tasked with identifying sexist advertisements, analyzing them, and applying the appropriate sanctions.

83 See *infra* footnote 91.

84 For example, the Civil Association Communication for Equality, the Foundation for the Development of Sustainable Policies (FUNDEPS), Publicitarias.org, among many others.

85 See RAMÍREZ BARAHONA (2018), p. 35 (noting that “from the point of view of the business environment, efforts to eradicate sexist stereotypes do not appear as a common interest in the [Argentine] advertising industry, but are limited to isolated and sporadic actions”).

86 In Argentina, some companies, exceptionally and on their own initiative, began to incorporate more inclusive and diverse characterizations of the different ways of being and the lifestyles of

advertisers largely strive to maintain the *status quo* and resist updating the content of advertisement so it aligns with normative developments, gender-sensitive public policies<sup>87</sup> and the cultural and social processes<sup>88</sup> that have taken place in Argentine society in recent years. That is, in general, the creators of advertising in Argentina continue to contribute to the reproduction of gender stereotypes that are in some way obsolete.<sup>89</sup>

Of course, the prohibition of stereotyped advertising is one possible instrument that the law can offer, although not necessarily the only one; for example, the administrative penalty of corrective advertising [*contrapublicidad*] may work as an effective complement.<sup>90</sup> Assuming that prohibiting advertising that presents

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women and men in their campaigns. For example, the brand of cleaning products Mr. Músculo [Mr. Muscle], traditionally represented by a male character characterized as a superhero that provides cleaning solutions to women, released an ad in 2016 in which the man is in charge of house cleaning chores, and caring for his little daughter, in addition to keeping a job. Historically, this brand ascribed to women almost exclusive responsibility for caretaking and cleaning tasks that result in a double working day, both formal and domestic. The change thus constitutes a new outlook and positioning for the product line. In the same year, a home textile store, Arredo, promoted a social media campaign that included same-sex couples sharing the bed. For its part, the flavored water We of the Ser brand released a commercial titled “Life is a wonderful mix” that portrays two animated women kissing while the voiceover explicitly mentions “equal marriage” [*matrimonio igualitario*]. Levité, a competitor in the flavored waters market, released the ad called “Free yourself”, with voiceover by Lizy Tagliani, a renowned transgender actress and comedian. See more examples in Communication for Equality: <http://www.comunicarigualdad.com.ar>.

87 Examples of statutes enacted and state agencies created in recent years in Argentina that relate to gender issues: Law No. 26.485 of 2009, Law No. 26.522 of 2009, Law No. 26.743 of 2012, Law No. 26.618 of 2010, known as the “Equal Marriage Law”, Observatory for Discrimination on Radio and Television (created in 2006 under the purview of the former Federal Broadcasting Committee), the former Federal Audiovisual Communication Services Authority created by Law No. 26.522 (2009–2015, 2012 currently the National Communications Agency), the Public Defender of Audiovisual Communication Services created by the same law and which began its activity in (2011) and the Sexual Services Advertisements Monitoring Office (2011), Law No. 2018, of 2018, known as the “Micaela Law” (which imposes mandatory training on gender issues and violence against women for all persons who work in public service at all levels and hierarchies in the executive, legislative and judicial branches of the Argentine Republic). This list is not exhaustive as there are other statutes and offices in Argentina that apply to and cover various aspects related to gender, sexism, and violence against women. For more details on the statutes and government offices that began to address with special dedication issues of gender and communications, see CHAHER AND PEDRAZA (2018).

88 For example, in 2015, the “*Ni una menos*” [“Not one (woman) less”] movement revolutionized the hermetically sealed compartments of the Argentine patriarchal society.

89 See PUTRUELE (2019) (explaining that 76% of women consumers and 71% of men believe that advertising represents them in an utterly outdated manner).

90 See, e.g., Proposed Draft of the Consumer’s Defense Law of 2018 (Argentina) that proposes introducing as a complementary measure the administrative penalty of corrective advertising: “Corrective advertising [*Contrapublicidad*]. Notwithstanding the [...] order to cease the advertisements or messages, the administrative penalty of corrective advertising may be imposed on the offender who, through the information or advertisement, commit deceptive or abusive practices. Likewise, the Enforcement Authority may publish at the expense of the offender, according to the criteria dictated by the former, the ruling of conviction or a summary of the facts that originated it, the type of infraction committed and the penalty applied, in a newspaper of large circulation, which must

“negative gender stereotypes” or that threatens “gender identity” or “gender equality” will solve the problem is certainly utopian. In a context in which the law itself has in a way enabled the perpetuation of stereotyped advertising practices, it seems clear that by itself its capacity to provide effective responses is limited if they are not accompanied by other structural changes in the dynamics and behavior of the actors involved. Along with proper regulation (and ideally other complementary legal instruments), advertisers, who have a great capacity to promote social change, must be trained and engaged as partners. Work will be necessary to achieve any profound cultural change. Adopting structural measures that promote an inclusive and diverse advertising discourse will be crucial. These measures must ensure, for example, the equal participation of women and other genders in all areas of work, and especially in decision-making positions within companies and advertising agencies,<sup>91</sup> and introduce issues of gender across educational programs and, in particular, in advertising and communication schools.<sup>92</sup> On the other hand, some answers come from society itself: in the context of new technologies, we cannot ignore the amplifying role that social media play as channels for the expression of the voices of consumers, and as informal mechanisms for some citizen control over the stereotyped contents of advertising.<sup>93</sup>

## V. CONCLUSION

Advertising is *information* that aims to *persuade*. The phenomenon of advertising connects the professional supplier (*creator*) and the consumer (*receiver*) following market dynamics and within the framework of a specific social and cultural context. Understanding advertising as a tool isolated from context and eminently informative

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be chosen on a rotating basis. The regulation will establish the guidelines for the rectification of advertising in a manner capable of removing the effects of the infraction, and that will be circulated by the Enforcement Authority or the person responsible [for the infraction], at the expense of the latter, in the same manner, with the same frequency and dimension, and preferably by the same means, on the same place, space, and time slot” (Art. 158).

91 A positive experience in Argentina that emerged from civil society in 2016 is the initiative Pulicitarias.org, a community of women advertising professionals that aims to encourage the participation and leadership of women in the industry. For its part, the 2018 Protocol for Non-Sexist and Diverse Action in Advertising reports that in Argentina women creative directors in advertising agencies are almost completely lacking.

92 In Argentina, the 2018 Protocol for Non-Sexist and Diverse Action in Advertising reports that of the nine bachelor’s and technical degrees programs in advertising highlighted, none contain specific courses related to gender approaches in communication nor is this subject matter present in other courses. For an interesting study on who teaches and what is taught in advertising, design, and marketing schools in Lima (Peru), see MENDOZA CUÉLLAR (2012), p. 154-158.

93 In Argentina, there have been recent cases of individual consumers who have condemned stereotyped advertisements in social media and filed complaints with state agencies denouncing it. An example is the advertising by Carrefour Argentina for Children’s Day 2018 that announced differentiated toys for boys and girls: boys as champions and builders, and girls as cooks and vain. Due to the reaction on social media Carrefour had to recant, apologize and pull the advertising from its stores.

not only hides its persuasive face but also impedes accurate evaluation of the impact it has on the transmission of beliefs, values, messages, and meanings that go beyond the mere act of consuming to satisfy individual needs. Recent regulation of stereotyped advertising constitutes a step forward in this regard: it takes into account the persuasive role of advertising in the reproduction, reinforcement, and perpetuation of gender stereotypes and the subliminal impact it has on the construction and deconstruction of the cultural and symbolic matrix that represents the different genders in our society.

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Law No. 24.240 of October 13, 1993, Consumer's Defense.

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Law No. 26.743 of May 9, 2012, Gender Identity.

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Law No. 26.618 of July 15, 2010, Civil Marriage.

Proposed Draft Reform of the Consumer's Defense Law of December 6, 2018.

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**Brazil:**

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**CEDAW:**

Convention on the Elimination of All Forms of Discrimination against Women,  
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