

# Signs of Inequality: Constructing Disability in Antidepressant Drug Advertising

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## Abstract

Drug advertising constructs our understanding of disability. Drug ads use imagery to represent drugs, the disease conditions for which they are intended, the doctor-patient relationship, and the people with the condition. This imagery, understood through semiotic analysis, draws upon existing values held by the viewers to create perceptions of the product being marketed for the condition. Through this process, drug advertising for psychiatric conditions replicates and constructs stereotypes about mental disabilities.

In this article we examine advertising placed in medical journals to promote antidepressants to assess the way disability is constructed through the ad process. As background to this analysis, we will examine the legal framework and structures through which advertising to professionals takes place. The way in which disability is constructed through advertising has effects that should be of concern. Because of its use of stereotypes, advertising has the potential to replicate and extend inequalities already present in the system of drug innovation and research.

## Introduction

Drug advertising reproduces stereotypes about socially disadvantaged groups and promotes a medicalized and decontextualized view of disease. The primary purpose of drug advertising is promotion and as a result, information conveyed in ads is structured to achieve that goal. Ads for drugs used to treat mental illness construct disability in particular ways and engage doctors in the process of perceiving these limited views. Ads also create views of disease, cure, patients, doctors and drugs consisting of an interventionist view of medical treatment, false certainties about cures, and a diminished role for doctors and patients in the healing process. Physicians and consumers who view drug ads need to be educated about

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the means by which messages are transmitted so that they can guard against these hidden motivators.

The focus of this article is drug advertising directed at psychiatrists to promote anti-depressant drugs, and in particular, the best-selling selective serotonin reuptake inhibitors (SSRIs), Prozac, Zoloft and Paxil. These drugs are advertised in professional journals as a primary means of communicating with prescribing professionals, who have the power to prescribe drugs for patients. Even as the United States has embraced and viewers in Canada have been exposed to direct-to-consumer advertising, the industry still spends a significant portion of its advertising budget promoting its products to doctors. In 2001, the expenditure on journal advertising alone in the U.S. was \$425 million U.S.<sup>1</sup> Overall, the rate of spending on pharmaceutical products has accelerated so that, in the United States, it “is now the fastest growing component of the health care budget”, as reported by Meredith Rosenthal and colleagues in the *New England Journal of Medicine* in February 2002.<sup>2</sup> They found that even though direct-to-consumer (DTC) advertising of almost \$2.5 billion had grown disproportionately to other promotional efforts, it made up only 15 per cent of drug promotion.

Arnold Relman and Marcia Angell, both former editors-in-chief of the *New England Journal of Medicine*, have made a powerful argument for reform of the pharmaceutical industry, in a recent article in *The New Republic*.<sup>3</sup> They state:

Far from being a ‘research-based industry’, as it likes to call itself, the pharmaceutical industry now devotes most of its resources to functioning as a vast marketing and advertising enterprise whose best products were discovered and often partially developed elsewhere – usually at public expense. And this industry is hardly a model of free enterprise. It may be free to decide which drugs to develop and to set its own prices, but its lifeblood is government-granted monopolies – in the form of patents and FDA-approved exclusive marketing rights...Moreover, its sales are not determined primarily by price or by consumer choice, but by the physicians who prescribe drugs.<sup>4</sup>

In support of their argument that the industry makes a relatively small contribution to research, Relman and Angell cite an unpublished National Institutes of Health document that analysed the top five drugs in 1995 sales, a group that included Zantac and Prozac. Sixteen of the 17 key research papers leading to these drug developments came from outside the industry and 85 per cent of all relevant

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<sup>1</sup>Allan Rubin, “Prescription Drugs and the Cost of Advertising Them”, online: [www.therubins.com <http://www.therubins.com/geninfo/advertise.htm>](http://www.therubins.com/geninfo/advertise.htm).

<sup>2</sup>Meredith B. Rosenthal *et al.*, “Promotion of Prescription Drugs to Consumers” (2002) 346 *New Eng. J. Med.* 498 at 498, n. 1.

<sup>3</sup>Arnold S. Relman & Marcia Angell, “How the drug industry distorts medicine and politics: America’s Other Drug Problem” *The New Republic* 227:25 (16 December 2002) 27.

<sup>4</sup>*Ibid.* at 28.

published research came from labs supported by public funds or foreign labs and, even taking into account the greater incentive for academics to publish, they conclude that publicly funded research rather than the pharmaceutical industry is the major source of innovation.<sup>5</sup>

The antidepressant drugs known as selective serotonin reuptake inhibitors, SSRIs, had their genesis in Scandinavian labs in the mid-1970s and the first paper on the subject of paroxetine (Paxil) was published in 1975.<sup>6</sup> This class of drugs replaced the tricyclic drugs, which had significant adverse effects, including the tics and uncontrollable movements of tardive dyskinesia. The new drugs promised effectiveness in a daily dose, which minimized the “compliance” problems of patients failing to take all the prescribed pills. When Astra’s SSRI zimelidine reached the market, five years before Prozac, it was found to be associated with a serious autoimmune disorder in some patients and had to be withdrawn from the market.<sup>7</sup> In early 1988, Eli Lilly Corp. introduced fluoxetine – Prozac – to the market after year-end approval by the FDA, and at this point the new class of antidepressants emerged into public consciousness. Prozac became a news story, “an emblematic product, a happiness pill that became a panacea for the world’s ills”<sup>8</sup>, making the cover of *Newsweek* on March 26, 1990 as a “breakthrough drug for depression”.<sup>9</sup> Paroxetine was introduced soon after, as Paxil in North America and Seroxat in Europe.

Though there were early highly publicized reports of violent behaviour, suicidal ideation and other serious side effects<sup>10</sup> and litigation started based on particular incidents of violence<sup>11</sup>, the sales of these new antidepressants soared. Global sales figures compiled by the multinational health information company

<sup>5</sup> *Ibid.* at 30. They state that the internal document was obtained by Public Citizen through the *Freedom of Information Act*.

<sup>6</sup> Simon Garfield, “The chemistry of happiness (part two)” *The Observer Magazine* (28 April 2002), online: The Observer <<http://www.observer.co.uk/magazine/story/0,11913,706299,00.html>>.

<sup>7</sup> David Healy, *The Antidepressant Era* (Cambridge, Mass.: Harvard University Press, 1997) at 138.

<sup>8</sup> Garfield, *supra*, note 6.

<sup>9</sup> Geoffrey Cowley *et al.*, “The Promise of Prozac” *Newsweek* (26 March 1990) 42.

<sup>10</sup> M.H. Teicher, C. Glod & J.O. Cole, “Emergence of Intense Suicidal Preoccupation During Fluoxetine [Prozac] Treatment” (1990) 147 *Am. J. Psych.* 207; and other articles discussed in Joseph Glenmullen, *Prozac Backlash: Overcoming the Dangers of Prozac, Zoloft, Paxil and Other Antidepressants with Safe, Effective Alternatives* (New York: Simon & Schuster, 2000) at 135-36. The Teicher *et al* article led to academic controversy, including criticism. Andrew E. Falsetti, “Fluoxetine-Induced Suicidal Ideation: An Examination of the Medical Literature, Case Law, and the Legal Liability of Drug Manufacturers” (2002) 57 *Food & Drug L.J.* 273 at 275-78.

<sup>11</sup> Joseph Wesbecker, who had been taking Prozac for his psychiatric problems, shot 20 people with an AK-47 semi-automatic assault rifle at the printing plant where he worked, killing 8 fellow workers, and committed suicide. The high profile trial in 1994 resulted in a jury verdict for manufacturer Eli Lilly Corp., after family member plaintiffs entered into a secret deal with the defendant for payment of a seemingly large, although still unknown, sum of money, precluding introduction of evidence damaging to the company. Glenmullen, *ibid.* at 22-3, 165-186. See *Potter v. Eli Lilly* 926 S.W. (2d) 449 (S.C. Kentucky, 1996). Glenmullen outlined how the Wesbecker trial provided access to company documents and testimony about problems and processes at the clinical trials stage. (*ibid.* at 165-67)

IMS Health, in its World Review 2001, indicated that Prozac was 6<sup>th</sup>, Paxil 7<sup>th</sup> and Zoloft 10<sup>th</sup> of all drugs in global sales of pharmaceuticals over 65 key international markets in the year 2000.<sup>12</sup> Global sales of Prozac in that year were \$US 2.9 billion, of Seroxat/Paxil were \$2.4 billion and of Zoloft were \$2.2 billion.<sup>13</sup> By the following year Paxil had increased by 19% to \$2.8 billion, and Prozac and Zoloft had dropped off the top 10, while global sales of antidepressants as a class grew in 2001 by 20 per cent to \$15.9 billion.<sup>14</sup> By the year 2000, only 12 years after the big three SSRIs began to be marketed, the global market for antidepressants totaled \$13.4 billion,<sup>15</sup> with much of this market concentrated in North America.

Depression, a disease that is more common in women than in men, is a major cause of disability in North America.<sup>16</sup> The lifetime risk of major depression has been reported as 20 to 26 per cent in women and 8 to 12 per cent in men<sup>17</sup> and this difference occurs throughout the life cycle from adolescence to old age. Prior to the development of SSRIs and the potential for large pharmaceutical sales, women who experienced depression were either left to languish in their homes because of their inability to cope with life or, if they became suicidal or non-functional, would be hospitalized in mental institutions. Because many of the symptoms of depression such as insomnia, crying, and feelings of worthlessness overlapped with cultural expectations of femininity in the past, there was little incentive to understand the social and cultural roots of this disability.<sup>18</sup> Given this history, it is worth noting the success of the pharmaceutical companies in turning depression into a common, socially accepted condition of both sexes so that their product has a huge market.

The market for each of the SSRIs has increased as it has been approved for other forms of mental illness, some recognized by the Diagnostic and Statistical Manual IV and some not (yet) recognized. Since their initial launch as antidepressants, individual SSRIs have been approved for the treatment of the "diseases" of panic disorder, social phobia, post-traumatic stress disorder, generalized social anxiety disorder, obsessive-compulsive disorder and other anxiety-based conditions. In addition, prescription of SSRIs among children and elderly patients has vastly increased over the decade, adding significantly to these companies' profit figures.

<sup>12</sup>IMS Health World Review 2001, "Global Leading Products by Sales", online: IMS Health <<http://ww0.ne.imshealth.com/public/structure/discontent/1,2779,1343-1343-136463,00.html>>.

<sup>13</sup>*Ibid.*

<sup>14</sup>IMS, "IMS Reports 12 Percent Growth in 2001 Audited Global Pharmaceutical Sales to \$364 Billion", (April 26, 2002), Tables 2 & 3, online: IMS Health <<http://ww0.ne.imshealth.com/public/structure/discontent/1,2779,1341-1341-144056,00.html>>

<sup>15</sup>IMS Health, "Antidepressants", online: IMS Health <<http://secure.imshealth.com/public/structure/navcontent/1%2C3272%2C1034-1034-0%2C00.html>>.

<sup>16</sup>Mark Larson, "Depression" in Cynda Johnson *et al.*, eds., *Women's Health Care Handbook* (Philadelphia: Hanley & Belfus, Inc., 2000) 381.

<sup>17</sup>R.C. Kessler *et al.*, "Lifetime and 12 month prevalence of DSM-II-R psychiatric disorders in the United States: results from the National Comorbidity Survey" (1994) 51:8 Archives of General Psychiatry 8.

<sup>18</sup>Michelle Fine & Adrienne Asch, eds., *Women with Disabilities: Essays in Psychology, Culture, and Politics*. (Philadelphia: Temple University Press, 1988).

In *Prozac Backlash*, Dr. Joseph Glenmullen provided detailed analysis of data indicating problems associated with SSRIs: severe withdrawal symptoms, suicidal behaviour and other violence-inducing tendencies, sexual dysfunction, and neurological side effects including tics.<sup>19</sup> He concluded that “Drug advocates and advertisements that portray serotonin boosters as having only trivial, transient side effects are terribly misleading. We need more systematic, long-term monitoring of patients who have developed these side effects and more thorough research on how the drugs cause them. But while we are waiting for definitive answers that could take years, even decades, patients should know about these conditions sooner rather than later in order to make informed choices.”<sup>20</sup>

Litigation against the manufacturers of SSRIs has usually resulted in settlements or summary judgments for the manufacturers.<sup>21</sup> The Wyoming jury verdict in *Tobin v. SmithKline Beecham Pharmaceuticals* was an exceptional finding of causation and liability that resulted in an order of \$6.4 million damages against the manufacturers of Paxil for the murder of family members and suicide of Donald Schell.<sup>22</sup> The British Government announced creation of a government inquiry into the side effects of the SSRIs in December, 2002, following media scrutiny of the issues of suicide and withdrawal difficulties and in response to pressure brought by patients alleging serious withdrawal problems.<sup>23</sup> The BBC’s *Panorama* had broadcast a program “Secrets of Seroxat” in October 2002 which led viewers to send in 1,374 emails, and make 65,000 phone calls and 124,000 website hits, outlining their negative and positive experiences with the drug.<sup>24</sup> These responses have been analysed by Charles Medawar, Andrew Herxheimer, Andrew Bell and Shelley Jofre in an article published in 2002. With respect to withdrawal symptoms, they indicated that, “...reports of ‘electric head’, with linked ‘whooshing’ sensations were the most common, distressing, disabling and distinctive feature of withdrawal. Users identified this phenomenon as a main underlying cause of the dizziness that is characteristic of paroxetine withdrawal.”<sup>25</sup> The authors concluded that immersion in patients’ reports of their experiences with the drug gave them a different sense than would have been obtained through reading continuing reports of adverse drug reactions, and recommended collecting these experiences to enhance drug safety

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<sup>19</sup> Glenmullen, *supra* note 10.

<sup>20</sup> *Ibid.* at 65.

<sup>21</sup> Anne Thompson, “Paxil Maker Held Liable in Murder/Suicide” *Lawyers Weekly USA* (July 9, 2001), online: Baum, Hedlund, Aristei, Guilford & Schiavo <[http://www.baumheldlundlaw.com/media/ssri/Paxil\\_murder.htm](http://www.baumheldlundlaw.com/media/ssri/Paxil_murder.htm)>; Falsetti, *supra* note 10 at 283.

<sup>22</sup> *Tobin v. SmithKline Beecham Pharmaceuticals*, No. 00-CV-0025-Bea (D. Wyo. June 6, 2001), online: The Fitzgerald Law Firm <[http://www.fitzgeraldlaw.com/paxil\\_verdict.htm](http://www.fitzgeraldlaw.com/paxil_verdict.htm)>.

<sup>23</sup> Sarah Boseley “Drugs inquiry thrown into doubt over members’ links with manufacturers. Drugs inquiry links to makers” *The Guardian* (17 March 2003), online: The Guardian <<http://www.guardian.co.uk/Print/0,3858,4626619,00.html>>.

<sup>24</sup> BBC Panorama, “The Secrets of Seroxat” (13 October 2002), online: BBC Panorama <<http://news.bbc.co.uk/1/shared/spl/hi/programmes/panorama/transcripts/seroxat.txt>>.

<sup>25</sup> Charles Medawar *et al.*, “Paroxetine, Panorama and user reporting of ADRs: Consumer intelligence matters in clinical practice and post-marketing drug surveillance” (2002) 15 *International Journal of Risk & Safety in Medicine* 161.

and efficacy. The extraordinary response to the *Panorama* investigative report led to a follow-up program in May 2003 that analysed the reports of severe drug reactions, and unreported suicides of patients who had taken Seroxat.<sup>26</sup> David Healy has indicated that the program led a number of families to raise the issue at inquests and to seek re-examination of earlier inquest verdicts of suicide.<sup>27</sup> The manufacturer GlaxoSmithKline announced a change in the patient pamphlet removing the claim that the drug was not addictive.<sup>28</sup> These severe withdrawal symptoms have begun to be litigated in Canada and the U.S.<sup>29</sup>

The UK government Medicines and Healthcare products Regulatory Agency (MHRA) banned the use of Paxil in children and adolescents in June 2003, after analysis of data from clinical trials indicated that that the children taking this drug “may be more likely to self-harm or partake in suicidal behaviour”<sup>30</sup>. The report found that the drug was ineffective in treating depression in this group and that the risks outweighed the benefits. The MHRA also warned adults not to stop taking the drug suddenly. On June 19, 2003, the U.S. FDA issued a recommendation against the use of Paxil for patients under the age of 18, stating that it was reviewing “reports of possible increased risk of suicidal thinking and suicide attempts in children and adolescents under the age of 18 treated with the drug Paxil for major depressive disorder (MDD)” and although the review of the new study data had not been completed, “FDA is recommending that the drug not be used to treat MDD in these patients.”<sup>31</sup> The FDA referred to the absence of evidence of effectiveness in children or adolescents with major depressive disorder and noted that three “well-controlled trials” in this population failed to show that the drug was more effective than placebo.<sup>32</sup>

<sup>26</sup> BBC Panorama, “Seroxat: Emails from the edge” (11 May 2003), online: BBC Panorama <<http://news.bbc.co.uk/1/hi/programmes/panorama/transcripts/emailsfromtheedge.txt>> and <<http://news.bbc.co.uk/1/hi/programmes/panorama/2982797.stm>>.

<sup>27</sup> David Healy, “No surprise from the e-mails”, online: BBC Panorama <<http://news.bbc.co.uk/1/hi/programmes/panorama/3010853.stm>>.

<sup>28</sup> Sarah Boseley “Seroxat maker abandons ‘no addiction’ claim” *The Guardian* (3 May 2003), online: The Guardian <[http://www.guardian.co.uk/uk\\_news/story/0,3604,948620,00.html](http://www.guardian.co.uk/uk_news/story/0,3604,948620,00.html)>.

<sup>29</sup> *In re Paxil Litigation*, No. CV 01-07937 MRP, 212 F.R.D. 539 (2003, C.D.Cal.), 2002 WL 31375497 (C.D.Cal.), 2002 WL 1940708 (C.D.Cal.), For updates of the class certification proceedings, see Baum, Hedlund, Aristei, Guilford & Schiavo <<http://www.baumhedlundlaw.com/Paxil/paxilupdate.htm>>. In Canada, class certification proceedings have commenced in Ontario (*North v. GlaxoSmithKline PLC and GlaxoSmithKline Inc.*), Quebec (*Goyette c. GlaxoSmithKline Inc.*) and B.C. (*Beer v. GlaxoSmithKline Inc.*).

<sup>30</sup> BBC News, “Children ‘should not take Seroxat’ ” (10 June 2003) <<http://news.bbc.co.uk/1/hi/health/2976498.stm>>; Alliance for Human Research Protection, “UK Health Department/British Prime Minister/Issue Warning Statement No Paxil for Children”, online: Alliance for Human Research Protection <<http://www.researchprotection.org/infomail/0603/10.html>>.

<sup>31</sup> “FDA Public Health Advisory” (19 June 2003), online: Food and Drug Administration <<http://www.fda.gov/bbs/topics/ANSWERS/2003/ANS01230.html>>.

<sup>32</sup> The effectiveness of the SSRIs has been brought into question recently by analyses of clinical trials data comparing the drugs to placebo. Hypericum Depression Trial Study Group, “Effect of Hypericum perforatum (St. John’s Wort) in Major Depressive Disorder” (2002) 287 J. Am. Med. A. 1807; see in response, Klaus Linde *et al.*, (Letter) “St John’s Wort and Depression” 288 J Am. Med. A. 447. See also Irving Kirsch & Guy Sapirstein, “Listening to Prozac but hearing placebo: A meta analysis of antidepress-

Drug promotion in Canada takes place within the parameters established by the *Food and Drugs Act*<sup>33</sup> and the regulations<sup>34</sup> under it. This legislation prohibits the making of false, misleading or deceptive claims or any likely to create an erroneous impression about the product's composition, merit or safety (s. 9(1)). Canadian law prohibits transmission of certain types of information except through certain media to certain targets.<sup>35</sup> Advertising directed to doctors is the acceptable means of advertising.<sup>36</sup> No person is permitted to advertise drugs to the general public as a treatment, preventative or cure for a Schedule A disease – those requiring physician involvement, including such diseases as heart disease and cancer (s. 3(1)). No representations other than the drug's names, price and quantity may be advertised directly to consumers. Ads in professional journals appear in two parts: the visual image and supporting text appearing in the body of the journal, and the product monograph, which contains detailed information about product composition, indications, contraindications and drug interactions, appearing at the back of the medical journal. The federal government has been reviewing its health protection statutes, including the *Food and Drugs Act*, in order to create proposed new health protection legislation that deals with legislative authority over the review process for new drugs and other products and mechanisms to deal with advertising of health products, including the possibility of direct-to-consumer advertising.<sup>37</sup>

The *Food and Drugs Act* is federal legislation in the form of a criminal statute with a regulatory scheme set out under it. While occasional prosecutions have taken place, the primary vehicle of enforcement in this hybrid structure is voluntary compliance. In the drug approval process, government has authority to permit marketing of the drug after it has met safety and efficacy standards. The *Competition Act*<sup>38</sup> applies to marketing practices and prohibits misleading or deceptive representations in advertising. As well, the interpretive guidelines for this legislation require that claims of efficacy or performance be made on the basis of adequate

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sant medication" (1998) 1 Prevention & Treatment, online: Prevention & Treatment <<http://journals.apa.org/prevention/volume1/pre0010002a.html>> and the response by Donald F. Klein, "Listening to meta-analysis but hearing bias" (1998) 1 Prevention & Treatment, online: Prevention & Treatment <<http://journals.apa.org/prevention/volume1/pre0010006c.html>>. Such analyses raise important questions about the effectiveness of this class of drugs, particularly if evaluated in relation to the expectations raised by promotional activities.

<sup>33</sup> R.S.C. 1985, c. F-27.

<sup>34</sup> *Food and Drug Regulations*, C.R.C. c. 870.

<sup>35</sup> See the discussion of this issue in Barbara Mintzes et al., *An Assessment of the Health System Impacts of Direct-To-Consumer Advertising of Prescription Medicines (DTCA)* (Vancouver: University of British Columbia Centre for Health Services and Policy Research, 2002).

<sup>36</sup> A significant report to the New Zealand Minister of Health has recommended banning direct-to-consumer advertising in New Zealand. Les Toop et al., "Report to the Minister of Health supporting the case for a ban on DTCA, Direct to Consumer Advertising of Prescription Drugs in New Zealand: For Health or For Profit?", online: <<http://www.haiweb.org/campaign/DTCA/DTCAinNZcaseforaban2003.pdf>>.

<sup>37</sup> Health Canada, "Health Protection Legislative Renewal", online: Health Canada <<http://www2.itssti.hc-sc.gc.ca/HPCB/Policy/LegislativeRenewal.nsf/WebHome/575087A7>>. See Section B10.3 for the advertising proposals.

<sup>38</sup> R.S.C. 1985, c. C-34.

and proper testing that has been completed, with significant and meaningful results and reliable data.

Ads in Canada are vetted by the Pharmaceutical Advertising Advisory Board (PAAB), which is a non-government organization made up of representatives of the industry trade organizations (both the patent-holding companies, known as Rx&D, and the generics), doctors, pharmacists, advertisers, medical publishers, consumers. While Health Canada is not a member, it sends an *ex officio* observer/advisor. PAAB also deals with inter-company disputes through this process.<sup>39</sup> The respective roles of the federal government and PAAB were set out in a 1996 policy statement, currently available on their website.<sup>40</sup> The PAAB system of voluntary preclearance of ads and promotional materials is described as “an alternative to government authorization of advertising prior to use.”<sup>41</sup> Further, the PAAB Code is described as conforming to the Act, Regulations and applicable guidelines and policies. The government role is described as being “to set minimum standards to be met in drug advertising by developing appropriate regulations, guidelines and policies and by bringing these standards to the attention of the PAAB so that they may be incorporated in its Code.”<sup>42</sup> The government will review advertising directed to health professionals that contravenes the Act and Regulations when it “may present an imminent and/or significant health hazard” or when advertising that contravenes the Act or Regulations “arises from failure of the self-regulatory mechanism through willful nonparticipation with the self-regulatory system, or willful noncompliance with the PAAB Code.”<sup>43</sup> Advertising Standards Canada is another independent advertising preclearance agency given responsibility for preclearing consumer-directed broadcast and mass media print advertising for non-prescription drugs and other roles.<sup>44</sup>

Since preclearance of drug advertising directed to doctors is carried out by a non-governmental organization, the federal government’s authority to require

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<sup>39</sup>The pharmaceutical industry, through its organization Rx&D for the patent-holding companies, has adopted a Code of Marketing, has agreed under it to abide by the decisions of the PAAB, and has drafted them to reflect the global pharmaceutical manufacturers code, the International Code of the Pharmaceutical Manufacturers Association. The PAAB acts to monitor inter-company disputes, for instance about comparison ads. The PAAB checks ads for conformity with federal requirements and the Rx&D states that the federal government can ask for precleared materials to be held back if they pose a threat to health and the Rx&D will follow certain steps in response.

<sup>40</sup>Health Canada, “PAAB and Drugs [now Therapeutic Products] Directorate Roles and Consultation Related to Advertising Review” (11 January 1996), online: TPD – Web <[http://www.hc-sc.gc.ca/hpfb-dgpsa/tpd-dpt/paab-adv\\_e.html](http://www.hc-sc.gc.ca/hpfb-dgpsa/tpd-dpt/paab-adv_e.html)>.

<sup>41</sup>*Ibid.* at 1.

<sup>42</sup>*Ibid.* at 2.

<sup>43</sup>*Ibid.*

<sup>44</sup>Health Canada, Therapeutic Products Directorate, “Advertising Standards Canada and the Therapeutic Products Programme’s Roles and Consultation Related to Advertising Review and Complaint Adjudication” (22 January 2001), online: TPD – Web <[http://www.hc-sc.gc.ca/hpfb-dgpsa/tpd-dpt/advcaf\\_e.html](http://www.hc-sc.gc.ca/hpfb-dgpsa/tpd-dpt/advcaf_e.html)>; Health Canada, Therapeutic Products Directorate, “Therapeutic Comparative Advertising Directive and Guidance Document” (6 April 2001), online: TPD – Web <[http://www.hc-sc.gc.ca/hpfb-dgpsa/tpd-dpt/ther\\_comp\\_adv\\_mar-2001\\_e.html](http://www.hc-sc.gc.ca/hpfb-dgpsa/tpd-dpt/ther_comp_adv_mar-2001_e.html)>.

change is held up as a standard rather than being directly invoked except where a significant health hazard exists or the process is not being respected.<sup>45</sup> Assessment of ads prior to distribution to health professionals is an important means of ensuring that high standards of health promotion that form part of Health Canada's jurisdiction are protected through the drug marketing process. Intervention before an ad reaches the audience is critical. Otherwise the time lag creates the opportunity for misleading and harmful claims to reach and affect the target population. As the United States General Accounting Office reported in October 2002, the recently imposed requirements leading to an increase in time for legal enforcement of violations by direct-to-consumer ads found to be inaccurate, misleading or incomplete means that the regulator may not have issued a notice of violation until after the ad has finished airing.<sup>46</sup>

Canada has ratified several resolutions that call on governments to implement the 1988 World Health Organization's Ethical Criteria for Medicinal Drug Promotion.<sup>47</sup> Drug policy researcher Barbara Mintzes has argued that Canada needs to do much more to implement these standards.<sup>48</sup>

Several bases are available to claimants wanting to assert that they have been harmed through a manufacturer's inadequate disclosure. The failure to disclose action<sup>49</sup> has been the primary basis for legal actions in Canada including those

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<sup>45</sup> In the U.S. system, the issue of authority to hold advertisers to a standard in advance of distribution was raised in relation to the FDA in an article by David A. Kessler *et al.*, "Therapeutic Class Wars – Drug Promotion in A Competitive Marketplace" (1994) 331 *New Eng. J. Med.* 1350.

<sup>46</sup> United States, General Accounting Office, "Prescription Drugs: FDA Oversight of Direct-to-Consumer Advertising Has Limitations" (October 2002), GAO-03-177, online: General Accounting Office <<http://frwebgate.access.gpo.gov/cgi-bin/useftp.cgi?IPaddress=162.140.64.21&filename=d03177.pdf&directory=/diskb/wais/data/gao>>.

<sup>47</sup> World Health Organization, *Ethical Criteria for Medicinal Drug Promotion* (Geneva: WHO, 1988), online: World Health Organization <[www.who.int/medicines/library/dap/ethical-criteria/ethicalen.htm](http://www.who.int/medicines/library/dap/ethical-criteria/ethicalen.htm)>

<sup>48</sup> Barbara Mintzes, "Blurring the Boundaries: New Trends in Drug Promotion", online: Health Action International – Europe <<http://www.haiweb.org/pubs/blurring/blurring.intro.html>>.

<sup>49</sup> The pharmaceutical industry has a duty to disclose risks that are known or ought to be known and these risks are to be made known to the doctor, the "learned intermediary" between the manufacturer and the patient. The hierarchical nature of this relationship was acknowledged by the Supreme Court of Canada in *Hollis v. Dow Corning Corp.*, [1995] 4 S.C.R. 634, as it had been by the Ontario Court of Appeal in *Buchan v. Ortho Pharmaceutical (Canada) Ltd.* (1986), 54 O.R. (2d) 92 (C.A.) [*Buchan*] where the court analyzed the "enormous informational advantage" held by the manufacturer over the consumer and "indeed" over the doctors. The tort action for failure to warn provides a second parameter around the advertising activities of the industry. The issue in *Buchan* was the manufacturer's inadequate disclosure of the risk of stroke that caused Pauline Buchan's stroke. Justice Robins, for the unanimous five-member court, commented that the promotional activities should not undermine the risk disclosure. This comment indicates that disclosure should be assessed in the context of the overall promotional efforts directed at physicians – and now consumers. The *Buchan* court did this, examining the various means used by manufacturers to reach doctors and assessing the Canadian efforts in relation to the explicit warnings provided by the parent company in the U.S. The negligence action has been the primary vehicle for failures related to disclosure. Fraud and misrepresentation actions would also be available to focus on intentional masking of information and the inducement of reliance.

related to birth control pills and breast implants. Justice Robins for the five-member Court of Appeal in *Buchan* stated that the promotional efforts of the company must not undermine disclosure: the warning “should be in terms commensurate with the gravity of the potential hazard, and it should not be neutralized or negated by collateral efforts on the part of the manufacturer.”<sup>50</sup> Fraud and misrepresentation provide further bases for litigation where the facts warrant it.

Research indicates that the prescribing practices of doctors are influenced by exposure to advertising.<sup>51</sup> Many doctors resist this notion, and clearly some doctors do not read ads. However, drug companies believe that an expenditure of \$425 million U.S. on advertising in medical journals is justifiable.<sup>52</sup> Ads are supported by the promotional efforts of detailers, the pharmaceutical sales representatives who visit doctors, distribute samples and conduct direct sales campaigns. Promotional efforts take place in many other ways including sponsorship of continuing medical education events, in locations such as Whistler, and medical conferences which sometimes include freebies such as tickets to musicals for the doctor and family members. Advertising in medical journals has a particular role to play though, since the claims acquire a patina of legitimacy through their association with published peer-reviewed research and highly regarded editorial boards of established journals.

A question about a possible judicial role in review of ad content in the United States was raised in the California case, *In re Paxil Litigation*. U.S. District Court Judge Mariana Pfaelzer issued an order on August 16, 2002, enjoining GlaxoSmithKline “from airing TV commercials advertising Paxil treatment that state, orally or in writing, that ‘Paxil is non-habit forming.’”<sup>53</sup> The Justice Department asked for reconsideration, partly on jurisdictional grounds. The Justice Department stated that her decision was in conflict with federal law giving the FDA the sole jurisdiction over drug ads, that her order was inconsistent with “FDA’s scientific and carefully considered view of appropriate risk communication”, and that the case would lead to a multiplicity of labelling decisions on a state by state basis for nationally marketed products.<sup>54</sup> Judge Pfaelzer stayed her order, asked FDA for more information about their review of the Paxil ads prior to airing, and sub-

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<sup>50</sup> *Buchan*, *ibid.* at 101.

<sup>51</sup> M.S. Wilkes, B.H. Doblin & M.F. Shapiro, “Pharmaceutical Advertisements in Leading medical Journals: Experts’ Assessments” (1992) 1166 *Annals of Internal Medicine* 912; Joel Lexchin, “Enforcement of Codes Governing Pharmaceutical Promotion: What Happens When Companies Breach Advertising Guidelines?” (1997) 156 *Can. Med. A.J.* 351; J. Avorn, M. Chen & R. Hartley, “Scientific Versus Commercial Sources of Influence of the Prescribing Behavior of Physicians” (1982) 73 *Am. J. Med.* 4; Mintzes *et al.*, *supra* note 35.

<sup>52</sup> Rubin, *supra* note 1.

<sup>53</sup> *In re Paxil Litigation*, *supra* note 29.

<sup>54</sup> Associated Press “Fda Faults Ruling on Paxil Ads” (22 August 2002), online: IntelliHealth <<http://www.intelihealth.com/IH/ihtIH/WSIHW000/333/8014/354086.html>>; “Judge Bars Paxil Maker from Claiming Drug Is Not Habit-Forming” (2002) 18:5 *Pharmaceutical Litigation Reporter*, online: <[http://www.andrewspub.com/rptr\\_desc.asp?pub=PHA](http://www.andrewspub.com/rptr_desc.asp?pub=PHA)>; Ira Teinowitz “Feds Ask Judge to Reconsider Paxil Ad Ruling”, online: AdAge.com <<http://www.adage.com/news.cms?newsId=35800>>.

sequently reversed the order.<sup>55</sup> In the meantime though, GlaxoSmithKline had agreed to stop making the claim that they had studied Paxil in short and long-term use and that it was not associated with dependence or addiction, since they had not done such a study, and also agreed to stop claiming that Paxil “may cause mild, usually temporary, side effects in some individuals”.<sup>56</sup> This motion to require changes to advertising brings into the open the question of any government’s ability to monitor advertising before it affects its target audience. The General Accounting Office reported that only 5 FDA staff (with 2 vacant review slots) had responsibility for reviewing all the direct-to-consumer advertising.<sup>57</sup> The GAO Report also notes that, “Although FDA generally does not have the authority to preapprove advertisements before they are disseminated, companies may voluntarily submit their materials to FDA for advisory comments before launching an advertisement.”<sup>58</sup> Canadian staffing at Health Canada, significantly reduced in the cost cutting of the 1990s, would have little capacity to respond to complaints about advertising claims and most preclearance activity takes place indirectly through the PAAB.

## The Ad Process

Semiotic theory provides an analysis of the process by which advertising works, and allows us to move beyond the explicit claims to the implicit meanings called upon through the ad process itself. Drug ads convey conceptions of the drug and its effects on patients. Stereotypes and myths about social groups are used in the ads, which replicate inequalities in the social context.

Semiotic theory defines a sign as a material object – a person or a character – plus its value or meaning.<sup>59</sup> Another essential concept in the theory of signs is signification, the process of attributing meaning to an object. Once the meaning of the object is created, this value is transferred from the sign to the product to be consumed. In *Decoding Advertisements*, Judith Williamson illustrated this transfer of meaning in a Chanel No. 5 ad that showed the sign, Catherine Deneuve’s face, with a bottle of Chanel No. 5 superimposed in the bottom right-hand corner.<sup>60</sup> The viewer generates the meaning of the sign – beauty and elegance – and transfers this signifier to the Chanel No. 5. And finally to the consumer: we will be *femmes fatales*

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<sup>55</sup> “Judge Stays Her Paxil Ad Ruling At FDA Request” (10 September 2002), online: Adlaw by Request <<http://www.adlawbyrequest.com/inthecourts/Paxil091002.shtml>>. For a discussion of earlier litigation see Melinda Katz, “Prozac: Another Drug Wrongfully Attacked – What Can be done to Stop the Legal System from Driving Good Drugs Off the Market, While Protecting State and Federal Interests” (1992) 25 Akron L. Rev. 635.

<sup>56</sup> “Judge reconsiders Paxil Makers’ request to keep ads on air claiming the drug is non habit-forming”, online: Baum, Hedlund, Aristei, Guilford and Schiavo <<http://www.baumhedlundlaw.com/media/ssri/paxil/Injunction/troyfda.htm>>.

<sup>57</sup> United States, General Accounting Office, *supra* note 46 at 17.

<sup>58</sup> *Ibid.*

<sup>59</sup> Roland Barthes, *The Semiotic Challenge* (New York: Hill and Wang, 1988); Ferdinand de Saussure, *Course in General Linguistics*, trans. by Roy Harris (London: Duckworth, 1983).

<sup>60</sup> Judith Williamson, *Decoding Advertisements: Ideology and Meaning in Advertising* (London: Marion Boyars, 1978).

too if we use this product. Saussure referred to the material form as the signifier and the mental concept conveyed as the signified.<sup>61</sup> The meaning created in the ad is based on the viewer's pre-existing knowledge, and the ideological source of this meaning is called the referent system, a system of meaning operating within that cultural milieu.<sup>62</sup> The culture provides the meaning that will be attributed to the sign and transferred to the product and the advertiser constructs the ad to draw upon these cultural elements. Advertisers of consumer goods have made use of consumer awareness of these techniques by devising ads that are self-conscious and playful<sup>63</sup> and self-referential – like the cool bobsledding polar bears convincing us to drink (cool) Coke at the (cool/cold) Winter Olympics. They create ads specifically for the aware viewer to deconstruct, such as the television ad that shows a middle-aged woman, dressed in shorts and rubber boots, wading through the snow to turn on the air conditioner – an ad that seems to require some degree of awareness of hot flashes to assist the interpretive leap.

Advertisers use their expectations of what will work, drawn from their understanding of the value structure or referent system within which it is to operate, to power the ad. The advertiser appropriates the system of meaning from a segment of society for the purpose of targeting that group. The primary referent systems in drug advertising are social stereotypes and the medical political culture, reflected in the assumptions doctors are thought to make about their practices, professional self-images, patients, doctor-patient relationships, and the nature and expression of diseases. In the process of identifying and attributing meanings, alternative meanings are by-passed. Like the music in western or horror films that alerts the audience to the presence of danger, ads create pathways to conclusions for viewers.

## Ad Analysis

All of the ads selected for this study were published in the Canadian Journal of Psychiatry, the official journal of the Canadian Psychiatric Association. Ads for SSRIs were analyzed from 1989, when the earliest Prozac ad appeared in the Journal, until 2002.

An ad for depression medication from the Canadian Medical Association Journal in 1963 provides a background for analysis of current ads.<sup>64</sup> In this ad the doctor and the patient are depicted, both with their backs to the camera, slightly turned toward one another. This is the pre-*Reibl v. Hughes* doctor-patient relationship with the paternalistic doctor dispensing beneficence without patient efficacy or power. The doctor wears the symbol of authority – the white coat. She defers to

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<sup>61</sup> Signifier and signified are inseparable in Saussure's view.

<sup>62</sup> Robert Goldman, *Reading Ads Socially* (New York: Routledge, 1992).

<sup>63</sup> Doctors bring expertise to the interpretive task. They are experienced in reading the meanings of medical symptoms, the signs of disease.

<sup>64</sup> This ad was drawn to our attention by medical historian Dr. Jackie Duffin, who has assembled a collection of early ads.

him in her posture and in the set of her head.<sup>65</sup> The indications of her middle class status are present in her conservative hat and coat. She can rely on him. She is a female white patient with a male white doctor, reflecting the norm of the profession at that time and the typical patient for antidepressants.

### 1. Prozac (1989)

The earliest ad for Prozac was published in the *Canadian Journal of Psychiatry* in April 1989<sup>66</sup>. This ad covered three pages. The first part of the ad, on the first page, showed a side view of a stylized blue brain in section, with yellow lines intending to suggest the effect of Prozac. The text, in large font, says, “In the treatment of depression it’s time to follow a new course”. This first image, with its accompanying text, plants the idea that fluoxetine is acting bio-chemically on the central core of the brain to change chemical pathways. There is double meaning in the text as it not only suggests the way the drug works but also tells the doctor that it is time to use these drugs as a new way of treatment. The following page shows images of patients: a woman potting plants (used in subsequent ads), an older man showing a grandson how to putt, and a woman behind her desk working. This ad shows seemingly normal people doing everyday things. It’s a compression of the images of typical “before and after” ads since the people could be either or both. The normalization of depression, which we discuss below, and the biomedical model of depression are both portrayed in this first ad. On the third page of the ad is a picture of a doctor’s hand, indicated by the white sleeve, with fingers softly flexed, holding out a single yellow and green capsule. Soft drugs. It is an image of the doctor and the drug as rescuer. Take this and you’ll feel better is the message of this part of the ad.

### 2. Prozac (1992) Normalization Ad

This Prozac ad from 1992<sup>67</sup> focuses on two figures, a woman with a young girl, who is presumably her daughter, riding on her shoulders and being held by her mother’s hands. They are connected. Both look happy and carefree. The text on the opposite page asks in bold type: “What’s so extraordinary about this picture?” The text continues with the answer: “That it’s so wonderfully ordinary. A first goal of antidepressant therapy is to help a patient regain interest in the ordinary pleasures a healthy person takes for granted.” There is no doctor present in the ad itself. The ad explicitly raises the issue of normality since the woman, whom we presume has a condition requiring medication, is portrayed as being just like anyone else and not abnormal. The ad photo doesn’t distinguish between the woman before and after taking the drug, so that her normality appears to be part of both times.

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<sup>65</sup> Dale Spender, *Man Made Language*, 2<sup>nd</sup> ed. (London & Boston: Routledge & Kegan Paul, 1985).

<sup>66</sup> (1989) 34:3 *Can. J. Psych.* 187-89 (Eli Lilly Canada Inc.).

<sup>67</sup> (1992) 37:2 *Can. J. Psych.* 75-76. (Eli Lilly Canada Inc.).

This ad plays *against* the stereotype that people with mental illness are “other”.<sup>68</sup> It signifies that depression is a common disorder that can be experienced by anyone and suggests that depression is widespread and invisible. When treated, the person can enjoy ordinary pleasures such as family relationships again. The ad expands the target group for the medication and therefore the market. This strategy is consistent with efforts that have been made to increase the rate of diagnosis of depression by doctors.<sup>69</sup> David Healy has said that depression, as it is understood now, is “an extremely recent phenomenon, largely confined to the west. Its emergence coincides with the development of the selective serotonin reuptake inhibitors (SSRIs).”<sup>70</sup> In his opinion, “In many respects the discovery of antidepressants has been the invention of and marketing of depression...”<sup>71</sup> Charles Medawar, of the British public interest organization Social Audit, has noted that the Diagnostic and Statistical Manual (DSM-IV) definition of depression:

...is now identifiable in 300 manifestations (including manic depression), detectable through the expression of many commonplace symptoms and characterised by often familiar behaviours...In authenticating more and more diagnoses, the DSM process has helped to legitimise a dramatic increase in drug use (the dominant treatment mode) for conditions that become wider and wider in scope.<sup>72</sup>

After evaluating the DSM-IV symptoms, he concluded that the broad boundary of depression has coloured the question of whether antidepressants work and undermined one significant instrument of regulatory control since licensing for marketing permits marketing only for defined indications. Since marketing is linked to the symptoms of depression, and those symptoms are so loosely defined in the DSM-IV, marketing for antidepressants has wide scope and regulatory control is limited. Medawar illustrates this point through a 1993 Eli Lilly Prozac ad that lists “all nine symptoms of depression”: “Depressed mood” “Loss of interest” “Fatigue” “Sleep disturbances” “Weight/appetite change” “Lack of concentration” “Slowness/restlessness” “Guilt/feelings of worthlessness” “Thoughts of death”.<sup>73</sup> Elaine Showalter used the phrase “culturally contagious” to describe the spread of biomedical constructs of disease through stories in the various popular media, including “talk shows, patients support groups, internet

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<sup>68</sup> Kelley Johnston, *Deinstitutionalizing Women: An Ethnographic Study of Institutional Closure* (Cambridge: Cambridge University Press, 1998).

<sup>69</sup> Healy, *supra* note 7 at 103.

<sup>70</sup> David Healy, “Good Science or Good Business?” (2000) 30:2 *Hastings Center Report* 19 at 20. Healy added that Prozac has not been shown to be effective in classic depressive disorders, there is some evidence that antidepressants may actually increase the rates of suicide and disability associated with depression, and even though children and teenagers are given the drugs, the weight of evidence is against prescribing for this group.

<sup>71</sup> Healy, *supra* note 7 at 181.

<sup>72</sup> Charles Medawar, “The Antidepressant Web”, online: Social Audit <<http://www.socialaudit.org.uk/1.4.html>> at 2.4 and 2.5, originally published as Charles Medawar, “Secrecy and Medicines” (1996) 9 *International J. Risk & Safety in Med.* 133.

<sup>73</sup> *Ibid.* at 2.5.

chat rooms, and more”.<sup>74</sup> The marketing phenomenon associated with introduction of the SSRIs has played into the pill culture of North America and a lifestyle dedicated to self-improvement.

The ad also suggests that people with mental disabilities look like anyone else in society. The ad signifies that underneath they are not normal and need treatment. The ad signifies both normality and abnormality through its conjunction of the “normal” mother with daughter, along with the text connection to depression. Everyone can be disabled. We all need Prozac. You can appear “normal” and still need Prozac. Depression is more widespread than is apparent. Prozac makes you more normal and you won’t have to admit to a mental illness or receive psychiatric treatment. The suggestion to doctors is that the product can be used among patients who have less severe forms of depression and not only for severe forms. It is, then, suggesting itself as a substitute for the minor tranquilizers, although its approval was based on data indicating that it was better than a placebo for moderate depression. David Healy indicates that, “There is increasing evidence that patients with milder depressions do not always benefit from antidepressants.”<sup>75</sup>

### 3. Prozac (1992) Rescue Ad

The next ad for Prozac, appearing later in 1992<sup>76</sup>, is a rescue ad. It shows three people, two women and one man, all white adults. Each one is neatly dressed and groomed. The woman wears a dark coloured dress with a scoop neck, wide Peter Pan collar and polka dot bow that has all the sexuality of a maternity dress. Her blonde hair is neatly held back, she is wearing pearls – the symbol of the middle class patient – and she is seated in front of modern art. The older man wears glasses, has his hair groomed, is casually dressed in a turtleneck and is depicted outdoors (where men belong) against a lake. The younger woman is dressed in a pink print dress, her hair is wispy and she holds her head on her hand as she sits in front of what appears to be the lake. The signs for the disease are the glazed expression and averted gaze of each face. The text says, “For Patients Suffering From Depression” and a rope runs across the text.

They are in need of the line of the rescue illustrated by the life preserver and rope depicted on the second page of the ad. The rope from the first page connects to the life preserver, which has the word “PROZAC” on its side. The background colour is blue. Inside the life preserver floats a pill bottle labeled “Rx PROZAC 20 mg. TAKE 1 CAPSULE DAILY”. The text above this sign states, “PROZAC As your first line of action.” It is typical of rescue ads in clearly depicting the *drug* as the rescuer. In its presentation of three patients the ad indicates that depression affects a variety of people, although these three patients do not cover a wide

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<sup>74</sup> Elaine Showalter, *Hystories: Hysterical Epidemics and Modern Culture* (New York: Columbia University Press, 1997).

<sup>75</sup> Healy *supra* note 7 at 97.

<sup>76</sup> (1992) 37:10 Can. J. Psych. at A10-11 (before 671). (Eli Lilly Canada Inc.)

spectrum of a socially diverse society. The ad drives home the message that Prozac can help a range of depressed people who need to be rescued.<sup>77</sup> The medical model of disease<sup>78</sup> is applied to mental illness so that the mind is seen as amenable to biochemistry. Intervention *per se* is viewed positively, and particularly intervention through drug therapy. The absence of doctors from these ads (except semiotically) is indicative of the takeover of the heroic role of medicine by the drug.

Paul Longmore's analysis of television and movie imagery of people with disabilities found<sup>79</sup> the most common image was one of personal maladjustment. Disability was seen as:

...a problem of emotional coping, of personal acceptance. It is not a problem of social stigma and discrimination...Both fictional and non-fictional stories convey the message that success or failure in living with a disability results almost solely from the emotional choices, courage, and character of the individual.<sup>80</sup>

Similarly, Douglas Biklen analyzed the media treatment of the Baby Doe and Elizabeth Bouvia cases, both cases of individuals with severe disabilities and the prospect of dying. Not surprisingly, Biklen found that the popular print media failed to inquire into the situation of people with severe disabilities: "The prevailing framework for covering disabilities, a combination of charity, pity, tragedy, and 'overcoming disability' makes no place for this story."<sup>81</sup> In the movies, "actors who

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<sup>77</sup> At the bottom of the page, the ad specifies the benefits of Prozac: "Helps provide your patients with...[in bullet points] Effective relief from depression. Fewer therapy limiting side effects when compared to TCAs. Compliance through convenient once a day dosing. A wider margin of safety in overdosing than TCAs. Effective relief from the symptoms of anxiety and insomnia associated with depression. [all points footnoted]"

<sup>78</sup> Medicalization is defined by two Merck executives in this way:

Medicalisation refers to the theory that people seek to categorise life's normal vicissitudes as medical problems. The term is also used in medical sociology, to suggest that those with a pecuniary or territorial interest in ill health – not least doctors and the pharmaceutical industry – try to foster exaggerated anxiety about disease and potential disease, so as to encourage essentially healthy people to seek unnecessary medical products and services. In this latter sense 'medicalisation' has become a theory of social control and has been used as an argument against direct to consumer communication by pharmaceutical companies.

Silvia N. Bonaccorso and Jeffrey L. Sturchio, "Direct to consumer advertising is medicalising normal human experience: Against" 324:7342 *British Medical Journal* 910 at 910, nn. 1-2.

<sup>79</sup> Paul K. Longmore, "Screening Stereotypes: Images of Disabled People in Television and Motion Pictures" in Alan Gartner and Tom Joe, eds., *Images of the Disabled, Disabling Images* (New York: Praeger, 1987) 65 at 67. He found three common prejudices: "...disability is a punishment for evil; disabled people are embittered by their 'fate'; disabled people resent the nondisabled and would, if they could, destroy them." Longmore sees this as transference of fears and biases by the stigmatizer to the stigmatized. They are stigmatized as less than human and asexual or sexually menacing as in the *Phantom of the Opera* or *Whose Life Is It, Anyway?*

<sup>80</sup> *Ibid.* at 72.

<sup>81</sup> Douglas Biklen, "Framed: Print Journalism's Treatment of Disability Issues" in *ibid.* 79 at 87-88. See also Deborah Kent, "Disabled Women: Portraits in Fiction and Drama" in *ibid.* 47; Guy Cumberbatch & Ralph Negrine, *Images of Disability on Television* (London: Routledge, 1992).

play someone with a disability are heroic by proxy” commented reviewer Liam Lacey in assessing the 2003 Academy Awards.<sup>82</sup>

These portrayals are devoid of the political dimension of disability by which the disadvantage and prejudice shown in society comprise part of disability’s meaning. Deborah Kent described it this way in her study of more than thirty plays and novels portraying disabled women:

...As radically as these pieces differ in other respects, they are remarkably alike in their presentations of disabled women. Whether she is blind or deaf, facially disfigured or paraplegic, the disabled woman is typically shown to be incomplete not only in body, but in the basic expression of her womanhood. Frequently she is a victim...Most of these characters, at one point or another in their histories, express bitterness, despair, and self-loathing. Their anguish is generally seen as the inevitable outgrowth of the disability itself. Social stigma, which is in fact responsible for so much of the pain endured by disabled women in real life, is seldom explored or even acknowledged. The girl with a clubfoot is miserable because she cannot dance; the blind girl longs for the sunsets she will never see. They do not rebel against the world’s view that they are helpless, useless, pitiable, and undesirable.<sup>83</sup>

As Diane Pothier has commented:

The purpose of having protection against disability discrimination is not to give persons with disabilities a right to do things they cannot do. Rather, the dual purpose is to take proper account of what cannot be done owing to a disability as well as to give persons with disabilities the right to do things that they are able to do, notwithstanding any functional limitations, despite perceptions that they cannot do these things. Thus, protection against disability discrimination has everything to do with countering stereotypical perceptions of ability based on an able-bodied frame of reference.<sup>84</sup>

In these drug ads it seems that people with mental disabilities are unable to be heroic. Only the drug is assigned that role.

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<sup>82</sup> Liam Lacey “The Broadcast” *The Globe and Mail* (22 March 2003) R1.

<sup>83</sup> Deborah Kent, “In Search of a Heroine: Images of Women with Disabilities in Fiction and Drama” in *supra* note 16, 90 at 93.

<sup>84</sup> Diane Pothier, “Connecting Grounds of Discrimination to Real People’s Real Experiences” (2001) 13 C.J.W.L. 37 at 48.

#### 4. Zoloft (1992) Petals Ad

This 1992 ad<sup>85</sup>, the earliest ad for Zoloft in the Canadian Journal of Psychiatry, uses the before-and-after convention. Before, a woman is huddled inside the glass or plastic petals of a closed flower with drooping petals that suggests vulnerability and a response of hiding. Her face is weary and her eyes are rimmed with exhaustion. Because the flower in which the woman is enclosed looks like glass, has pointed petals, and appears to be swaying in the wind, the reader feels uncomfortable, thinking that it must feel insecure to sit inside that flower about to topple over. The text at the top of this page says, “Antidepressant Therapy That Causes Insomnia Can Prevent A Patient From Flourishing During the Day” and it continues on a subsequent page, “Night closes in and the insomnia of depression can be exacerbated by an antidepressant that causes agitation.... Zoloft, a new selective serotonin reuptake inhibitor (SSRI) had neither a sedative nor a stimulative effect at therapeutic doses....”

On the second page, the text says blandly, “Introducing Once-A-Day Zoloft”, perhaps because this page was used alone in the first issue in January 1992. Post-drug, the woman is the pistil in the middle of the now-awake and opened flower. She has not only blossomed but she has also sprouted wings – she’s taking flight – is she Tinker Bell? She’s wearing an unfortunate prom dress strongly reminiscent of the mid-1960s. Her eyes have awakened too and she has acquired eyeliner. With her long dark hair there is a suggestion of a fairy princess dressed for the ball. Since the pistil is the seed-bearing organ of the flower, there is an allusion to awakened reproductive capacity. Perhaps the flight imagery of the after shot is meant to suggest the soft drug image and high to be obtained from SSRIs.

This ad depicts a middle-aged woman as the patient with the disease. The early literature on medical advertising, developed through twenty years of observation of European, North American and Australian journals, found that most drug ads over-represented men, in a 2:1 ratio. The exception to this rule, apart from the obvious obstetrical/gynaecological ads, was psychiatric drug advertising where women were over-represented, even in relation to the higher level of diagnosis of mental disorders among women. Women’s incidence ratio for psychiatric illness is 2:1 in relation to men.<sup>86</sup>

Our examination of ads for SSRIs indicates that only *white* people seem to be affected by these psychiatric conditions. More diverse ads began to appear in the mid-1990s, for instance using a framing technique with portrayals of people from a variety of social classes, age groups, and both genders (but not race) in an ad for the anti-depressant Effexor<sup>87</sup>. The preponderance of white middle class people in the

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<sup>85</sup> (1992) 37:2 Can. J. Psych. A27-32 (after 136) (Pfizer Canada Inc.).

<sup>86</sup> Wanda Leppard, Shirley Matile Ogletree & Emily Wallen, “Gender Stereotyping in Medical Advertising: Much Ado About Something” (1993) 29 Sex Roles: A Journal of Research 829.

<sup>87</sup> (1996) 41:1 Can. J. Psych. A12-13 (Wyeth-Ayerst Canada Inc.).

antidepressant ads might reflect earlier views of the condition known as melancholy since Hippocrates. Sherwin Nuland writes that in 18th century England, melancholy was very common, and that “between those who had it, those who imagined it, and those who aspired to it because it was thought to confer a certain aesthetic superiority on its sufferers, the British began to think it was their disease.”<sup>88</sup>

IMS Health reported that the dominant market for SSRIs has been North America, which had almost 75 per cent of the sales in 2002, when antidepressants sold \$13.4 billion worldwide.<sup>89</sup> The World Health Organization “estimates that depression is soon to become the second leading cause of disability – behind ischaemic heart disease and ahead of road accidents...”<sup>90</sup>

## 5. Paxil (2002) Worry Ad

This current ad<sup>91</sup> portrays a woman in classical dress supporting a huge rock-like object with a crack in it. The woman is an Atlas figure, carrying the weight of the world on her shoulders. The rock is viewed through a cutout of the kind found in children’s books, where the readers puts a finger into the hole and finds something different and surprising. When the page is turned, the picture shows the rock/nut object being held between the thumb and forefinger of a hand, illustrating how manageable the lifting is. The cracks in the rock appear on the hand as well, and this crackling paint signifies its age. The text says: “Helping change the way your patients see the world.” Followed in smaller type by:

She presents with a host of physical complaints and other psychiatric disorders. Yet the greatest burden is her excessive, uncontrollable worry that the worst will happen – the “what if” worry of Generalized Anxiety Disorder (GAD). How can you help change her view of things?

With Paxil. The first and only SSRI indicated for GAD. The antidepressant with more indications than any other SSRI or SNRI.<sup>92</sup>

The weight of the world is the worry perceived by the woman. The sign includes the patient and the need for rescue from a great burden. The beneficent hand achieving the rescue is the signifier for the drug. Mental illness is a rock with crack defined as worry; it creates something burdensome that isn’t really there. It

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<sup>88</sup> Sherwin B. Nuland, *The Mysteries Within: A Surgeon Reflects on Medical Myths* (New York: Simon & Schuster, 2000) at 156.

<sup>89</sup> IMS Health, “Antidepressants”, *supra* note 15.

<sup>90</sup> Simon Garfield, *supra* note 6. The NHS is dispensing 60% more SSRI compounds than 4 years ago. He wondered whether they should be worried or grateful.

<sup>91</sup> (2001) 46:10 Canadian J. Psych. 901-03 (GlaxoSmithKline)

<sup>92</sup> Generalized *Social* Anxiety Disorder is defined in the ad as “(persistent fear; anxious anticipation or avoidance of multiple social situations and/or performance situations) – this diagnosis should not be made unless symptoms interfere significantly with a person’s routine, job or social life or cause marked distress”.

is difficult to move without a helping hand. The hand is of classical vintage and is – (incidentally?) male. A vulnerable female victim needing a male rescuer is a familiar myth. The rock and the hand both have cracks. Goldman and Montagne have pointed out advertisers' reliance on abstract visual metaphors of the mind and its relationship with medication. They say: "Note how these abstractions correspond to everyday metaphors for mental illness – 'I'm cracking up' or 'I am so in the dark' ".<sup>93</sup>

With the drug as rescuer, the condition of illness – the worry – is lessened so that it appears in its real size. The classical motif runs through Paxil advertising of this period. Use of this mythology has several purposes. It is intended to distance the viewer, so that the events appear to take place in a more objective way. Classical imagery provides legitimacy as it goes to the roots of our culture and draws on myths that remain vibrant. Using established myths to create new myths provides even more power to the ad from a semiotic point of view.

This ad illustrates the transition from marketing the drug as an anti-depressant to marketing it for other forms of mental illness. Manufacturers have sought approval for marketing for other purposes and have devoted ad copy to the other indications. For example, one Paxil ad made use of classical statues to indicate each of the new indications: "Look for the Paxil Spectrum in every patient." And the statues were labelled DEPRESSION, GSAD, PANIC DISORDER and OCD [obsessive-compulsive disorder].<sup>94</sup>

## 6. Effexor Xr (2001) Bees Ad

This October 2001<sup>95</sup> ad portrays mental disorder as a swarm of bees. Bees produce anxiety and this drug is targeted at Generalized Anxiety Disorder – "When Generalized Anxiety Disorder drives your patients to distraction, act fast.", the ad says. It's an exterminator image of drug action – drive away the anxiety with the drug. Anxiety is the current marketing target, replacing depression as the focus of SSRIs. The bees suggest something out of control but not catastrophic and therefore something amenable to solution. The speed of the drug is suggested in the reference to acting fast and this is also a call to doctors to move quickly to prescribe the drug. Punning, visual metaphors, and double meanings are all staples of semiotic construction. The image of a person standing still without visible hands while being swarmed by bees is improbable. It suggests a comparison of the anxiety scenario with reality in which no swarm of bees is actually present. In addition, like the pentimento ad, the bees ad suggests that mental disability is something external to the individual that can be quickly driven away.<sup>96</sup>

<sup>93</sup> Robert Goldman & Michael Montagne, "Marketing Mind Mechanics: Decoding Antidepressant Drug Advertisements" (1986) 22 Social Science & Medicine 1047 at 1057.

<sup>94</sup> (2001) 46:6 Canadian J. Psych 478 (GlaxoSmithKline).

<sup>95</sup> (2001) 46:8 Canadian J. Psych. 582-83 (Wyeth-Ayerst Canada Inc.).

<sup>96</sup> The swarm of bees ad shares certain characteristics with a 1996 ad for Zoloft, produced by Pfizer Canada, that we call the pentimento ad which shows a painting of a Renaissance beauty resting on an easel

Individualization and decontextualization are characteristic of drug ads. The individual is the locus of the disease, ignoring the important aspects of one's life that contribute to human health.

When other family members are present, they are there as victims of the patient's depression, needing her to return to the family, or happy beneficiaries of the drug's effects in "after" scenes. Elizabeth Ettore and Elianne Riska analyzed psychotropic drug advertising in *Gendered Moods*. Noting that tranquilizers were used for social control purposes and then began to be seen as a social problem, Ettore and Riska criticized the individual rather than socio-political approach: "Transgressing women and not the gender system are the focus of attention."<sup>97</sup>

Ads such as these ignore and downplay the inequalities experienced in people's lives. These factors are recognized as social determinants of health by the World Health Organization and health researchers but they are absent from the decontextualized view of disease.<sup>98</sup> Each of the factors of race, aboriginal status, gender, age, disability has a separate history of discrimination, prejudice, inequality that needs to be factored into any thorough understanding of the phenomenon of disease. Locating the disease within the individual serves the interests of drug companies. In their study of psychotropic drugs, Kleinman and Cohen concluded that ads for psychotropic drugs individualize responsibility by portraying abnormality and the ability to adapt to the mainstream as attributes of individuals<sup>99</sup>. The biomedical view of psychiatric illness carries with it the further idea that the condition is amenable to biomedical cure. The desirability of normality and the individual locus of disease were both evident in the second Prozac ad, which asked, "What's so extraordinary about this picture?" Under the individualized view, accountability is located in the individual, who is responsible to friends, family and workplace for the illness and for taking the cure. Returning to social roles is depicted in a guilt-inducing way – without acknowledgment of the contribution of the roles to the mental condition. This simplified portrayal underlies all the ads. For example, the swarmed worried woman should use the repellent to get rid of those bees.

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as a work to be restored. The painting is covered by a dirty surface, signifying the mental illness. Depression may be wiped clean by using the drug to restore the real patient who is underneath. The patient is shown in a passive way. The pentimento ad signifies that mental illness exists on the surface of an individual. The drug will act as a restorer to remove the surface layer of depression and uncover the person underneath. This ad was discussed in Patricia Peppin & Elaine Carty, "Innovation, Myths and Equality: Constructing Drug Knowledge in Research and Advertising" (2001) 23 *Syd. L. Rev.* 543 at 569.

<sup>97</sup> Elizabeth Ettore & Elianne Riska, *Gendered Moods: Psychotropics and Society* (London: Routledge, 1995) at 29

<sup>98</sup> Arthur G. Nikelly, "Drug Advertisements and the Medicalization of Unipolar Depression in Women" (1995) 16 *Health Care for Women International* 229.

<sup>99</sup> Daniel Lee Kleinman & Lawrence Jack Cohen, "The Decontextualization of Mental Illness: The Portrayal of Work in Psychiatric Drug Advertisements" (1991) 32 *Social Science & Medicine* 867 at 867.

## 7. Remeron (2001)<sup>100</sup> Dancing ad

A woman in her bathrobe and slippers is evidently experiencing depression, sitting in a chair while her partner sits apart from her, looking elsewhere. She looks into the camera, without expression. “When you’re depressed, a minute can seem like an hour, an hour like a week, and a week like a year”. “Foreshadow the future of depression” the ad tells us, and a shadow on the wall shows us the woman dancing with her partner. The drug will allow her to enjoy life and socialize, it suggests, and she can return to being a partner. When she is ill, she is alone. In this ad depression makes her “other” and not simply a version of normal. Once treated, time will return to normal.

Sexuality is largely absent from these ads depicting mental illness and while this is consistent with the way that people with disabilities are desexualized,<sup>101</sup> sexuality is largely absent from other types of drug ads too. In both cases, sexuality is alluded to in “doing things together” scenes. Unlike consumer ads, which can be more playful and make overt use of sexuality, drug ads usually strive for the more sober aura of legitimacy. In the portrayal of depression though there is also an implication of her failure to create desire. Featherstone has commented that in consumer culture the body is portrayed as a way of achieving pleasure,<sup>102</sup> and the more youthful, sensual and thin the body the greater its value.<sup>103</sup> The depressed body shown by this woman has failed to stimulate the interest of the man, whose gaze is averted. Sexual dysfunction is a side effect of SSRIs, and surprisingly, this was portrayed in an ad series first suggesting the problem and then indicating that a particular drug did not have this result. This ad was unusual in breaking out of the pack to suggest a general problem with this class of drugs – although the evident reason for this was the alleged solution found by this manufacturer.<sup>104</sup>

Ads over this period have rarely depicted people with depression and the Remeron ad is an exception to this trend. Mental illness is shown as a swarm of

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<sup>100</sup>(2001) 46:6 Can. J. Psych. 479-81 (Organon Canada Ltd.) Remeron (mirtazapine) was approved by the FDA as an anti-depressant in 1996; “Remeron cleared by the FDA for the treatment of depression” (19 June 1996), online: DG News <<http://main.pslgroup.com/news/content.nsf/MedicalNews/9000A0A9F704A6AB8525634F0058E35B?OpenDocument&id=>>.

<sup>101</sup>Kelley Johnson’s ethnography of deinstitutionalized women indicated that “...the evidence from my field work revealed that the perceived failure of the women to take up a position within discourses which frame our view of normality as applied to girls and women made it difficult for their families to identify who they were or their place within the family.” *Supra* note 54 at 61.

This led to confusion about who their daughters were and to removal of them from the family, making them “other” (*ibid.* at 62).

<sup>102</sup>Mike Featherstone, “The Body in Consumer Culture” (1982) 1 *Theory, Culture & Society* 18 at 21-22.

<sup>103</sup>Chris Shilling, *The Body and Social Theory* (Sage: London, 1983) at 3.

<sup>104</sup>This shows two people’s feet widely separated in bed followed in a subsequent ad showing the feet entwined. Another version showed a woman’s finger with hooker red lipstick on her long nail, held up to her lips in an “I’ve got a secret” gesture.

bees or surface layer of dirt, the threat of the Minotaur or being lost in a labyrinth. The classical statues and mythology used for Paxil, the normality and rescue ads for Prozac are indicative of unwillingness to give bodily form to depression. It is conveyed, though, in the sleepy hard stare of the Remeron woman and the absent expression of the Renaissance beauty in the painting. In contrast, an ad series that depicts how mental illness affects a person has appeared recently in the British Journal of Psychiatry portraying patients acting out some of schizophrenia's delusions. The first ad shows a young woman mutilating herself, cutting gashes into her stomach. The second ad shows a man protecting himself from alien invasion by covering all the surfaces of his apartment with tinfoil. These ads are in stark contrast to the antidepressant ads. If depression is a loosely defined category, as Healy has argued, this reluctance to give bodily form to the disease is significant.

### 8. Paxil (1997) "this Is Panic"

"This is PANIC" appears in bold type.<sup>105</sup> The ad tells us, "This is panic as expressed by R.B., a 43 year old patient with the disorder." Most of the page is painted red, with the upper right portion providing a blue background against which is painted a greenish brown flexed hand, outlined in white, with fingers spread out in a startled image. The captured instant has immediacy and force. The clash of colours and simplicity of the image carry emotional force. The disability literature includes references to the need to hear the voices of those with disabilities.<sup>106</sup> Developmentally disabled women and institutionalized people, for example, are rarely heard from. This ad presents us with a vivid illustration of panic attacks. Even though it appropriates the image for commercial purposes, it has a power that is missing in other depictions. The text following the illustration page begins, "THIS IS PAXIL" and continues by claiming that it is "highly effective at relieving the anxiety symptoms of panic disorder" and that "the most common adverse effects are those generally seen with the SSRI class (including nausea, somnolence and asthenia [lack of strength])." This ad illustrates the expansion of indications for SSRIs to include panic disorders.

### Conclusion

Advertising draws on social stereotypes in several ways. Stereotypes provide an ideological source for ads, which use commonly accepted characterizations to signify qualities to be associated with the product. We have seen the construction of disability in these ads: the normal patient who can be treated, the female Atlas imagining excessive worry, the sad trio waiting for a life-preserver, the huddled patient enclosed in a glass rose waiting for the drug to allow her to blossom and fly, the swarmed woman.

<sup>105</sup> (1997) 42:7 Can. J. Psych. 686-87 (SmithKline Beecham Pharma).

<sup>106</sup> See, for example, Pothier, *supra* note 84.

Ads create and replicate myths about the nature of any condition, the population with a condition, and the appropriate treatment. When stereotypes are used in the creation of such perceptions, then a disease will be perceived in a certain way and associated with a particular group. For example, the “normal” woman in the Prozac ad provides a pathway to the type of person who needs Prozac. The omission and under-representation of groups in visual imagery create and reinforce the image that certain diseases occur only or predominantly in certain groups. These include the possibility of overlooking the condition in one group, the risk of pursuing it more zealously in the other group, and the potential to miss the disease when it manifests differently in various social groups. Stimson suggested in an article almost thirty years ago that to the extent that doctors accept ad portrayals “they have lost control over their diagnoses.”<sup>107</sup> A simplified version of disease combines with stereotypes and unrepresentative patient populations to create false certainties about patients, diseases and cures.

Advertising that portrays disease in an individualized fashion pushes a partial conception of mental illness – one that calls for intervention through drugs. When the disease itself is constructed in a broad and expansive way, the market for the drug and number of patients exposed to the drug increase significantly. It diminishes the role of doctors as healers, and patients as active participants, and instead substitutes the curative power of drugs. It decontextualizes mental disability and suggests that drugs can simply remove the layer of mental illness or swarms of bees over the real person. The people in these ads fit the vulnerability approach to disability, which is tailor-made for drug promotion as rescuer. The value farthest from these ads is rights. These ads sell control over disease as constructed by the company, in the process bypassing the human being, their rights, the social determinants of health, and a healthy doctor-patient relationship.

These types of stereotyping show us how existing paradigms of social worth can be used by the drug industry to create perceptions of their products, with the intention of promoting sales. Unless government takes a more active role in regulating advertising, courts play a role in setting standards of review based in the fundamental values of equality and autonomy and ensuring that advertising does not undermine the duty to warn of product risks, and journalists bring public attention to ad portrayals, we are unlikely to see significant change. Doctors need to be aware of the processes used by the advertisers to create these perceptions and of their own contributions to the stereotypes and myths used to power these ads. Patients need to be aware of the distorting perceptions conveyed and created in the ad process. Only then will it be possible for doctors and patients to insulate themselves from the distorting impact of the myths.

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<sup>107</sup> Gerry V. Stimson, “The Message of Psychotropic Drug Ads” (1975) *Journal of Communication* 153 at 160. The diagnostic profile suggested by Stimson adds another layer to the medical symptoms that combine to provide a profile for diagnosis, and provides linkages that also may be partial or otherwise flawed. The fact that such linkages are made without being perceived by the viewer means that the control that might be exercised by medical expertise is unlikely to operate.