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The Fight to Keep 'Direct-to-Consumer Ads'

By STUART ELLIOTT

MADISON AVENUE, facing growing legislative threats to one of the advertising industry's most lucrative categories, is stepping up the fight to protect its freedom to pitch prescription drugs directly to consumers.

Drug companies, agencies and their media allies who have benefited handsomely from the flood of ads beat back one recent measure in the House of Representatives. But advocacy organizations on the other side of the issue vow to continue battling to limit or even eliminate such campaigns, and one senator has introduced legislation that would limit the pharmaceutical industry's tax deduction for such advertising.

The category of direct-to-consumer ads did not even exist until five years ago. Before 1997, broad curbs prevented pharmaceutical makers from mounting any significant efforts, and they aimed most of their spending directly at health care professionals.

But since the Food and Drug Administration loosened its strictures against those ads, primarily by making it much easier to promote drugs with commercials, the category has boomed. It has become an estimated \$2.5-billion-a-year business for the media. That exceeds the amount spent annually to advertise many drugs sold over the counter like analgesics and vitamins, according to CMR, a division of Taylor Nelson Sofres that tracks ad spending.

The spending for the direct-to-consumer drug campaigns, which come complete with the traditional trappings of brand advertising like celebrity endorsers, jingles, free samples and slogans, also exceeds the yearly outlays in mainstay marketing categories like insurance and real estate, apparel and alcoholic beverages.

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Agencies are anxious to keep that revenue flowing as they struggle to recover from the worst advertising recession in decades. They and their clients, the drug companies, are also eager to keep open a channel that has significantly stimulated demand and sales.

Indeed, in a survey last month by the Ipsos-NPD division of Ipsos, a marketing research company, 25 percent of respondents said they had been prompted by direct-to-consumer ads to call or visit a doctor to discuss the product being advertised. Moreover, 15 percent of respondents reported

requesting the very drug that was the subject of the ad.

That is one reason opponents castigate direct-to-consumer ads, decrying them as unfairly influencing important health care decisions about powerful medicines that ought not to be sold with the same sophisticated marketing ploys used to peddle movies, soft drinks or fast food.

"The stuff done to promote drugs works, and because it works, it's doing a disservice to the patient," said Sidney Wolfe, director for the health research group of Public Citizen, an advocacy organization in Washington. "The doctors are frequently as misled as the patients are," he added.

One doctor, J. Edward Hill — the new chairman of the American Medical Association in Chicago — offered another complaint. "We have no policy that opposes direct-to-consumer advertising, mainly because of freedom-of-speech issues," Dr. Hill said. "However, we do have some big concerns about advertising getting in the middle of the patient-physician relationship.

"It's sometimes even creating an adversarial relationship," he added, "when the patient insists on an advertised medicine but the doctor believes it's not the best or most effective medicine."

Dr. Hill called on the Food and Drug Administration and the pharmaceutical industry to finance "research that would definitely tell us whether this improves the quality of care enough to make it worth the increased costs of the medicines being advertised."

A bill before the House of Representatives, to provide a Medicare prescription-drug benefit to the elderly, had included a provision directing the General Accounting Office, the investigative arm of Congress, to conduct such a study. But by the time the House passed the bill on June 28 and sent it to the Senate, the provision had been deleted.

"The bill is absolutely devoid of anything to do with advertising," said Dick O'Brien, executive vice president of the American Association of Advertising Agencies and director for the Washington office, who has led the Madison Avenue effort.

"It was serious, really serious," Mr. O'Brien said of the attempt by the critics to urge limits on direct-to-consumer campaigns. "We had to go into overdrive to explain that the role advertising plays is really a very beneficial one," centered on "empowering consumers to talk with their doctors as equals and opening discussions that otherwise would not have taken place."

The agencies are being joined by lobbyists for media that would lose ad revenue if Congress tightened rules for direct-to-consumer ads. At one time, some magazine and newspaper publishers perceived television and radio as rivals for ad revenue from makers of prescription drugs, but the media are now working together.

"This is certainly the one issue we're looking at right now," said Rita Cohen, senior vice president for legislative and regulatory policy of the Magazine Publishers of America.

"We have to be diligent about all potential Congressional action that might be negative," she added. "So we've been visiting the key people on Capitol Hill and showing them ads from magazines, letting the ads talk for themselves, so they can understand the benefits of advertising."

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Another charge raised by opponents is that most of the prescription drugs promoted directly to consumers in magazines, on television and elsewhere are the newest, most expensive products and thus offer their makers the most profits.

"American taxpayers should not have to subsidize excessive advertising that only leads to higher prices at the pharmacy counter," said Senator Debbie Stabenow, Democrat of Michigan. She recently proposed that the tax deductions taken by drug makers for advertising — which is currently a fully deductible business expense — cannot exceed the tax deductions they take for research and development. Senator Stabenow is seeking to have her Fair Advertising and Increased Research Act become part of the Senate version of the bill the House passed last month.

"She is very well meaning, but this raises very serious issues," said Dan Jaffe, the executive vice president of the Association of National Advertisers who runs the Washington office of the organization, which represents the nation's marketers. "It would create an enormous precedent way beyond prescription drugs, affecting research on energy conservation by oil companies, fuel efficiency by automakers, health benefits by food companies.

"The advertising community and the media community worked very hard on the House side" to assure there would be no advertising limits in the bill passed there, he said.

"We need to work very hard on the Senate side," he said. "This is an issue that will not go away."