

# Welcome to the Mises Blog

## Contributor Account Access

Login is enabled for registered blog Contributors, Editors, and Administrators

## Account Help

To contact the webmaster about your account [click here](#)

## Member Login

Username:  Password:   Remember me

[Lost your password?](#)

## Registration is closed

Sorry, you are not allowed to register yourself on this site at this time. Subscriber accounts may be available soon.

You may apply to become a Contributor to the Mises Economics Blog by contacting [the Editor](#).

- [Log In](#) | [Register](#)

**Mises Economics Blog**  *Proceeding ever more boldly against evil.*

Source link: <http://blog.mises.org/12647/cei-abandons-free-market-principles-for-publicity-stunt/>

## CEI Abandons Free Market Principles for Publicity Stunt

May 6, 2010 by [S.M. Oliva](#)

### SHARE IT:

[Share](#)

2 retweet

 [Digg This](#)

 [reddit this!](#)

 [Stumble](#)

[Email This](#)

“There’s a fine line between clever and stupid,” David St. Hubbins once said. Sam Kazman and Hans Bader, two lawyers with the [Competitive Enterprise Institute](#), thought they were being clever when they prayed to the Gods of the Federal Trade Commission to smite

General Motors for spreading blasphemy in its recent television advertising:

The Competitive Enterprise Institute (CEI) hereby requests that the FTC investigate a television advertising campaign by General Motors Company (GM) entitled “GM Repaid Government Loan Ahead of Schedule.” In its ad, GM’s Chairman and CEO, Ed Whitacre, declares that “we have repaid our government loan in full, with interest, five years ahead of the original schedule.”

That claim gives the false impression that GM has used its own funds to pay back all the bailout money that it received from the federal government. *In fact, GM has only repaid a fraction of those funds—barely ten percent.* Moreover, GM apparently repaid its loan *by using other federal funds.* (Italics in original)

This isn’t exactly news. GM’s advertising claims have been widely debunked. CEI’s complaint even cites dozens of news articles and Internet reports explaining why GM is full of B.S. Apparently that’s not sufficient for CEI, which wants the FTC to protect consumers from *hypothetical* fraud:

GM’s statements are “likely to affect a consumer’s choice or conduct regarding” its products. As one leading scholar on advertising law has noted, there is a “well established principle ... that advertisers be held responsible for implied, as well as express, misrepresentations.” In evaluating the truthfulness of ads, “the proper way to analyze [their] overall impact is to see the ads as consumers see them ... rather than the way they might be technically analyzed.”

Most consumers would reasonably interpret GM’s ads as meaning both that GM has paid back all the money that it received from the government, and that those repayments were made with its own funds rather than with other government funds. Neither of these interpretations is accurate. While GM might argue that its ads are literally correct, they are deceptive within the meaning of the FTC Act because they leave a misleading impression with consumers.

Unfortunately, CEI fails to establish that any actual consumer was injured. In following a typical FTC script, CEI thinks government intervention is justified because individuals *might* be misled; it’s unclear why the plethora of anti-GM commentary is insufficient to warn consumers about the deceptive nature of the company’s advertising. CEI’s complaint is especially silly when you consider an FTC action can take months — if not years — to produce any results. Sure, two or three years from now the FTC might issue an order banning GM from making any “deceptive” claims *in the future*, but by then, the impact of the present ad will have completely dissipated.

CEI also fails to consider the precedent that might be set, as the Cato Institute’s Walter Olson noted in his own criticism of the GM complaint:

Free-market advocates have generally argued that whatever the merits of laws or regulations banning misleading advertising in garden-variety commercial contexts, there are special dangers to the First Amendment and to robust debate generally in letting agencies and courts second-guess the content of “issue ads” and speech on topics of public controversy. To begin with, it encourages advocates to turn to the law to silence disagreeable speech rather than muster their best arguments to rebut it. In one grotesque example, MoveOn.org and Common Cause actually petitioned the FTC to institute a complaint against Fox News over its use of the slogan “Fair and Balanced”, since (they said) the network was neither.

Despite its current dependence on government, GM is in every relevant legal sense a private company, so any precedents forged against it will wind up applying to every other private enterprise that might wish to advertise on matters of public controversy. Which makes it a concern that CEI’s complaint cites with seeming enthusiasm broad FTC interpretations of authority — for example, its authority to suppress speech that might not be in itself false but could leave a potentially misleading impression.

I’d add that the FTC also bans *truthful* speech that it deems potentially harmful to consumers — such as the Commission’s longstanding ban on physicians exchanging information about contract offers from insurance companies. And in the majority of its “consumer protection” cases, the FTC’s self-determined burden of proof isn’t whether it can prove a speaker’s statements are false or misleading — the FTC simply presumes the speech is false and places the burden on the speaker to prove it is true; of course, the FTC is the sole judge of whether any evidence of such truth is admissible.

CEI neglects to mention any of this, which would seem to make its own complaint “false and misleading” to individuals who were unaware of FTC operations. Indeed, it’s impossible to reconcile *any* complaint to the FTC with CEI’s self-described status as a

public interest group dedicated to free enterprise and limited government. We believe that the best solutions come from people making their own choices in a free marketplace, rather than government intervention

CEI’s Kazman seemed to abandon that mission statement when he defended his FTC complaint to me in an email:

One of the basic functions of government in a free society is to protect citizens from force and fraud. GM's ads are fraudulent, and the FTC is one government entity that's supposed to deal with such fraud. The fact that the FTC has screwed many people does not make it illegitimate for us to petition them, just as the fact that police abuses occur does not make it illegitimate to call 911 when there's a robbery occurring. And all this, of course, begs the issue of whether GM, 60 percent of which is government owned, can even be viewed as a private entity that possesses the right of speech.

So if I understand Kazman, there is no amount of illegal, unconstitutional, or anti-free market activity the FTC could engage in that would cause them to lose their legitimate status as a "police" agency with a monopoly right to identify and punish "fraud." That's a pretty sweeping statement. He's basically commanding us to ignore any evidence of FTC abuses of power, because it's more important to punish General Motors from publishing an ad that nobody believed anyway.

As for his "calling to the police to report a robbery" analogy, that would hold *if* the police arrested the robber, tried him before a judge hired *by* the police, deprived the accused of his right to a jury trial, abolished the presumption of innocence, and permitted outright coercion in order to obtain a confession. Because that's how the FTC does business. Somehow, Kazman forgot to mention any of that in his complaint or the subsequent public statements defending his action.

And to reiterate, despite Kazman's claim of "fraud," his complaint does not allege a single incident where a consumer was actually misled into purchasing a GM vehicle as a result of the challenged advertisement. CEI is substituting its own judgment for that of consumers, and demanding the FTC do the same through force.

But, hey, if GM actually starts breaking into people's houses and robbing them, then by all means call the police. Just don't call the FTC.

Related posts:

1. [For courts, some types of speech are more free than others.](#)
2. [The Battle of the Bottles](#)
3. [IPWatchDog Patent Lawyer Sued by Invention Submission Corporation](#)
4. [FL Student Tasered After Asking John Kerry a Question](#)
5. [Monopoly Is in the Eye of the Regulator](#)
6. [Thoughts On An Antitrust World](#)

[Subscribe to comments on this post via RSS](#)

---

[Ludwig von Mises Institute](#) • 518 West Magnolia Avenue • Auburn, Alabama 36832-4528

Phone: 334.321.2100 • Fax: 334.321.2119

[contact@mises.org](mailto:contact@mises.org) • [webmaster](#) • [mises.org sitemap](#)

