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The legal dematerialization of enchantment: prizes, brands and the magical economics of something-for-nothing

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ABSTRACT

This article brings together cultural studies and legal history to address a particular mode of historical enchantment, namely, the economic magic of something-for-nothing. Considered within the early history of mass advertising in Britain, the magic appears to have migrated: it appeared in materialized form in the somewhat forgotten history of nineteenth-century prize and gift advertising, which was gradually superseded by a dematerialized form found in brand advertising. The article examines the process of dematerialization, suggesting that it was unwittingly encouraged by law, which is read here as a public debate about the possibility of getting something for nothing in the market. Legal responses to prize- and brand advertising reveal a marked divergence. They were far more prohibitive toward the former, and thus created conditions in which it made sense for advertisers to dematerialize the benefits they offered, and for consumers to seek dematerialized windfalls. This history reframes the periodization of advertising's modernization, its mood, and the place of law in the history of brand capitalism.

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Introduction

This article brings together cultural studies and legal history of the late nineteenth- and early twentieth centuries to address a particular mode of historical enchantment, namely, the economic magic of something-for-nothing – a descriptive category that I invoke to explore efforts to bypass the logic of equivalence assumed to govern market exchange. I am particularly interested in this magic in the context of consumer exchange relationships, where it implied that it was possible to regularly exceed market expectations by attaining a benefit that was disproportionally greater than the consumer's investment. This vision of magical economics has been associated with gambling (e.g. Harwood 2024; Lears 2003), which, in the period examined here, challenged popular perceptions of economic value as a product of labour, discipline and skill, as I discuss below. However, this article suggests that something-for-nothing had a broader application, and was in fact central to advertising and therefore to the consumer market, including in particular brand capitalism, where something-for-nothing assumed a dematerialized form.

Considered within the early history of mass advertising in Britain, the magic appears to have migrated. Its materialized form appeared in the somewhat forgotten history of nineteenth-century prize and gift advertising, which invited commodity buyers to pursue windfalls as a regular feature of their consumption. This mode of something-for-nothing was gradually eclipsed by brand

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advertising, which offered a dematerialized windfall through techniques of differentiation that associated business entities and products with content exceeding their observable qualities.[1] While prizes never disappeared and arguably even proliferated, a new capitalist culture was coming into view in which nonmaterial benefits were increasingly central to consumer experience. It consequently attracted and continues to attract immense critical attention and marketing efforts.

Brand advertising, as an offering of nonmaterial benefits, is often understood as part of the modernization of the advertising industry. The familiar historical account includes a few notable elements. One is periodization, which tends to identify the interwar- and occasionally postwar era as the beginning of modern advertising, while the prewar years are often disregarded or marginalized, even as historians have acknowledged the presence of modern advertising techniques and the expansion of branding in the eighteenth and nineteenth centuries. This is explicit in some histories. For example, in an influential essay, Raymond Williams (1980) argued that 'true "psychological" advertising' was hardly in evidence before the war, while postwar advertising began to attach symbolic meanings to objects and became what Williams termed a 'magic system.' However, prewar advertising is also significantly underplayed in narratives of modernization simply in terms of historiographical attention. A second element in the story of modernization is an interpretive tendency to treat the psychological turn in advertising, typified by an industrial focus on consumer minds, as the product of an increasingly confident industry that learned to harness scientific insight to the service of capital. This account implies a celebratory mood among advertisers, and a significant break from a pre-professional past.

I have elsewhere provided an alternative account of modern advertising's development, which periodizes advertising theories of the mind earlier than is usually accepted, to the late nineteenth century, and suggests that the industry began to focus on the nonrational mind in response to attacks on its field; far from a confident capitalistic imperialism, this was an uncertain search for terms of expertise that would not fall into cultural pitfalls, in dialogue with decades of cultural anxieties about the spread of advertising and the commercialization of British culture (Rosenberg 2022, ch. 7; for additional critiques of the dominant narrative see, for example, McFall 2004; Richards 1991; Schwarzkopf 2011; Church 2000). In this article, I would like to shed light on two additional reasons to rethink common views about advertising's modernization, which focus on branding. First, branding cannot be considered a break from a less professional or less modern past in so far as there was a conceptual continuity between prize advertising and branding as economic offerings of the magic of something-for-nothing. The continuity suggests a longer periodization and a more incremental, less dramatic shift in the role of enchantment in advertising's development and impact in capitalism. Second, set against this continuity, an overview of key legal responses to prize and brand advertising provides reason to think that the rise of branding was encouraged by legal prohibitions on prize offerings. As this article shows, law could more easily identify and forbid something-for-nothing in materialized forms, and therefore unwittingly created conditions for the magic's dematerialization and the rise of modern branding. Therefore, branding is less modern than is usually acknowledged in terms of the magic it offered, and in the underlying conditions for its emergence, which were responsive to prohibitions and therefore backward more than forward-looking, and in some senses timid.

No less interestingly, the historical conditions of branding were more infused with legality than has been acknowledged. Law is widely considered to have been almost silent on the topic of branding until the late twentieth century. Legal history has shown the creation and expansion of trademark protections in the period under discussion, but that is different from brand protections (e.g. Bently 2011; Richardson and Thomas 2012, ch. 8; Mercer 2010; Higgins 2010; and review and discussion in Rosenberg 2022, ch. 7). As Stefan Schwarzkopf (2010) argues, with brands the idea was to build up their total value in the minds of consumers, rather than simply put a trademark in front of them (see also Jobling 2005, ch 1). This latter process, and specifically the role of advertising in turning trademarks into brands, was not a central theme in discussions of law in the nineteenth and early twentieth centuries. This article too shows a legal silence on branding itself, yet normative silences are rarely neutral and should always be investigated for their meanings and implications. In this case, the silence on branding should be read within its continuity with legal responses to prize advertising, so that the apparent silence becomes part of a broader picture of the legal environment. The broader picture suggests that law was historically central to branding's cultural presence, in active rather than passive terms.

Part I explains the waning fortunes of prize advertising in the first decades of branding's rise to dominance. It unpacks the continuity in the magic of something-for-nothing between these advertising forms despite the difference in the benefits they offered, which has eluded scholarship. In this context, I discuss economic and branding theories that both explain the continuity, and the reasons that it has disappeared from view. Part II reviews legal responses to prize- and brand-adverts to explain the difference in the legal approach to material and nonmaterial windfalls. I conclude by considering the growing salience of the latter as a dematerialization of the magic of something-for-nothing.

Before moving to history, I would like to acknowledge at the outset two conceptual arguments promoted in this article that are far from intuitive, perhaps even counterintuitive for some readers. One is that branding relies on an inherent disproportion between the consumer's payment and the promised benefit, which is why I argue that it drew on the magic of something-for-nothing. A second is that the distinction between material and nonmaterial benefits offered by prize- and brand adverts, respectively, is legal rather than having to do with the benefits' characteristics. Nonmaterial benefits are not strictly ideational, but rather benefits that do not constitute an independent property, while material benefits do constitute property, even if they involve ideational elements, as most things do.

I will do my best to explain and justify both arguments, but at this point, it bears emphasis that both stem from a specific characteristic of modern capitalist culture: this is a culture in which the trade in certain things is either denied or deeply contested, namely, those that constitute the modern self, such as her bodily integrity, sexuality, feelings, professional success, social relationships, and status. There are, of course, markets for all of these, but they exist amid profound controversy and widespread denial due to perceptions that the trade – to the extent it admits to directly trading in such things – is morally wrong. Contestation and denial mean that the market prices for such things are widely conceived not as adequate and fair substitutions, but rather as the outcomes of imperfect realities. For example, trade in sex is widely considered to be a product of harmful social structures and painful personal circumstances; trade in clean air is considered a symptom of global inequality, trade in professional positions is considered a problem of corruption, and so forth. In this sense, these things are ideologically, if not realistically, priceless. As cultural critic Noam Yuran (2014; 2024) argues, capitalism can be usefully understood through the economic category of things that money cannot (read: should not) buy. Promising things that constitute the self in brand adverts is therefore, by definition, promising more than you pay or ever could pay for with money: ideologically, they would never be reducible to the brand price nor the brand itself, however costly it is, nor to any aggregate of branded goods. Their value is perceived as something more than money could represent.

The things that constitute the self are also nonmaterial because branding does not offer them as tradeable property and does not admit to their tradability, but rather construes them as benefits attached to an advertised commodity that is acceptably tradeable.

All of this will become clearer through the discussion.

Prize and brand adverts in the formative era of mass advertising

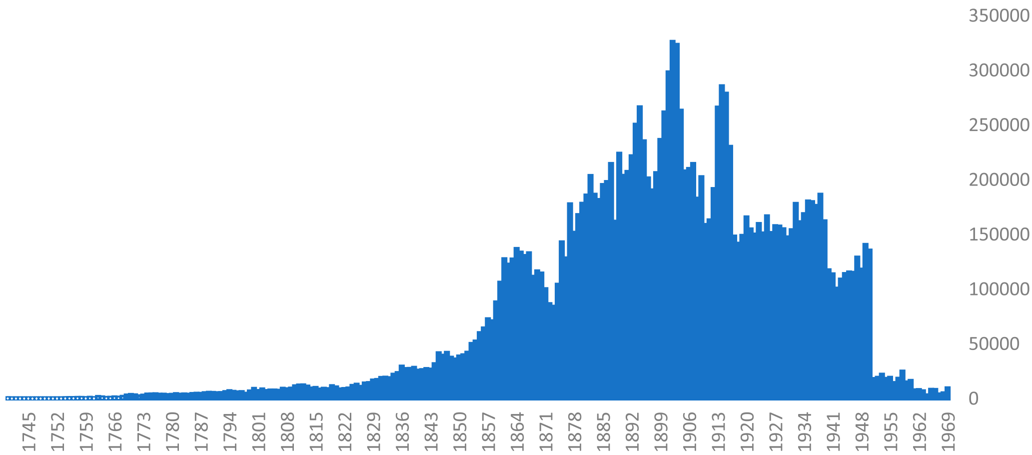
From prizes to branding

The history discussed in this article belongs to the formative era of mass advertising in Britain. Between the 1840s and 1914, advertising became a mass phenomenon and an immersive experience in Britain. Its geographical and social penetration beyond urban centres and below the middle classes, was unprecedented, as was its material enveloping of multiple environments, and its routinization as a feature of everyday life. Many features of advertising circa 1840–1914 were new, including the dominant advertisers, who were manufacturers and service providers rather than wholesalers and retailers as in earlier decades; a new variety in style, with a growing sophistication and overall occurrence of images, and experimentation in rhetoric, colour, size, and layout; new coverage of a seemingly endless expanse of commodities and services; and new media, which diversified and deepened the reach of adverts with the commercialization and growth of the press, the expanding use of chromolithography and the rapid building of towns for poster hoardings, the expansion of post office services and railway for the spread of the press and ephemera, and a performative culture that supported imaginative modes of nonprint advertising, from musical marches, through balloons, to drop curtain and more. These all made advertising a presence that captivated and disturbed observers across social divides. Advertising tropes, images, and gestures entered the languages of political and social debate, satire and caricature, fiction, poetry, painting, and photography. Comments and rhymes about advertising, and sustained efforts to theorize and historicize it, multiplied. It emerged as a field as well as a profession, with training options, dedicated publications, an internal division of labour, trade associations, social clubs, and expanding international networks.

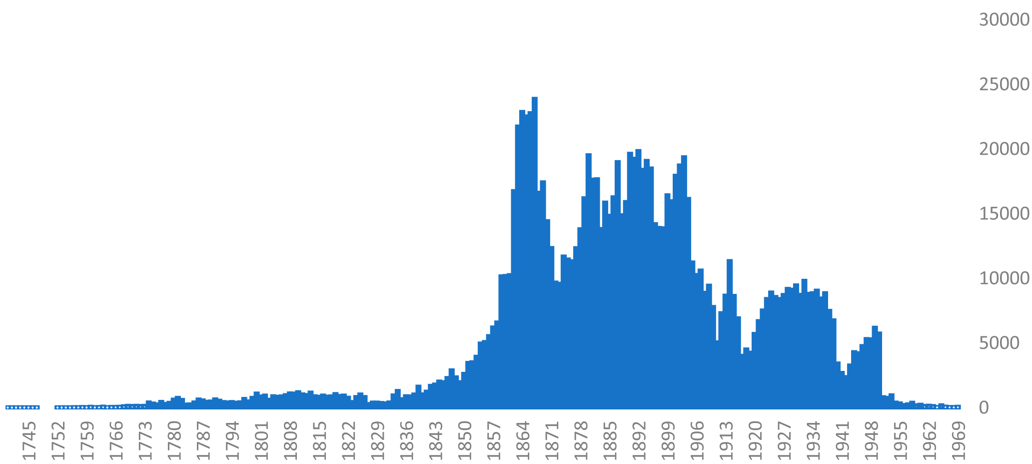
During these years, prize and 'free gift' advertising was a raging scene. A wide range of commodities, such as newspapers, tea, flour, tobacco, bicycles, medicines, and entertainment, were advertised with gift and prize schemes. (There was no clear distinction between gifts and prizes. While gifts implied an automatic rather than contingent reward, they required some form of consumer participation similar to some prize schemes. I use the more prevalent 'prize' from now on.) The adverts involved a creative variety of competitions, games, and challenges, from simple questions through treasure-hunts, picture-puzzles, missing words, storytelling, predictions of future data such as business sales, state revenues, demographic change, or the results sport matches, estimations of current data like the Bank of England's gold coinage, as well as consumer involvement such as collecting proof of previous purchases, obtaining new customers for the advertiser, and finally, simple draws.

Prize advertising was experimental and extremely popular. One famous example of its popularity was *Pearson's Weekly's* missing-word prize competition of 1891–1892. Press magnet-to-be Arthur Pearson's idea was simple: the newspaper published a paragraph with a missing word, which was deposited in advance with an accountant. Readers could cut out the coupon in the paper, write the word and send it with a 1*s.* postal order to the newspaper. The money collected became the prize and was distributed to winners. Entries gradually grew, until at its height the competition became an economic storm with close to half a million entries. By the close of 1892 Pearson claimed to have given – or, more fairly, redistributed, £175,000 in prizes (over £18.5 million in 2024). Other newspapers soon followed suit. As stories about mass participation and dream prizes circulated, this scene also attracted extensive commentary.

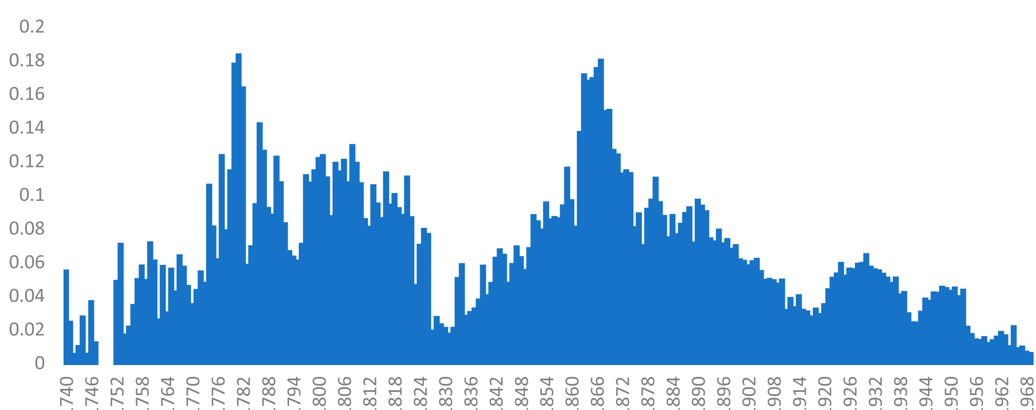
There is a certain gap between the cultural salience of prize schemes and formal newspaper data of the late nineteenth century. Press data suggests that the high tide of prize advertising occurred in the era of mass advertising as Graph 1 (advert numbers over time) and Graph 2 (prize advert numbers over time) show. Prize advertising had outgrown the general rise in advert numbers in the 1860s but afterward fluctuated in correlation with changes in advertising, rising and falling with the volume of the total as far as the data can tell us: adverts containing the term 'prize' plus those containing both 'free' and 'gift' rose and fell in significant correlation to the bulk of advertising. For the period 1720-1969, the Pearson correlation coefficient (ranging from −1 to +1) is 0.859711. Moreover, as an advertising strategy, prize adverts appeared to be losing favour with newspaper advertisers after the 1860s, as Graph 3 (percentage of prize adverts in the total volume of advertising) shows. In other words, in the period of mass advertising, press advertisers reduced the part that prize advertising took up in the whole, from almost a fifth of advertising during the 1860s hype, to 7–8% on average in the 1880s and 1890s, just over 5% on average in the 1900s, and less than 4% by the First World War.



Graph 1. Numbers of advertisements. British Newspaper Archive data May 2023.



Graph 2. Numbers of prize & free gift advertisements. British Newspaper Archive data May 2023.



Graph 3. Percentage of prize & free gift advertisements out of all advertising. British Newspaper Archive data May 2023.

The data is from the British Newspaper Archive and should be treated with caution given its significant limitations. There is no information on the consistency of newspaper scanning by the database, on the criteria for the categorization of publications as 'advertisements' used for the search, or on the scope of false negatives and positives in search results. In addition, the total number of adverts reflects results for adverts that do not contain an invented term ('dvirgolnos'), because the search function does not allow an empty search or generic terms. This is as close as we can get to the total, but the failures that this search method may trigger are unclear. Moreover, the data was obtained by searching specific terms in adverts ('prize,' 'free' and 'gift,'), but there were variations. Therefore, it should be used to identify trends rather than numbers, assuming a consistency in mistakes or their absence in all these variables for all the years examined. If this assumption is correct, the data suggests that prize advertising was significant, but it was not growing as we might have expected given its cultural salience and popularity with consumers. Of course, the data cannot account for other media and their relationship to newspapers, for example, leaflets, circulars, insets, and posters in the nineteenth century. We do know that prize schemes were often based on ephemera.

Given the above evidence, the general conclusion that can be drawn is that the popularity of prize advertising was waning as the long nineteenth century drew to a close, but it still enjoyed peaks of public attention that were not necessarily correlated with quantitative usage by advertisers as a group. This stands to reason, given that even if prize advert numbers could be correctly estimated, advertising's impact and cultural presence for any sector, commodity, or advertising strategy, have never had a linear relationship to numbers.

Meanwhile, in the late decades of the nineteenth and early twentieth centuries, brand advertising was becoming more visible, as brand competition was expanding. For example, while in mid-century the five brands of advertised soap were mostly all-purpose, by 1900 there were about thirty soap brands, with differentiated purposes (Loeb 1994, 32). Branding techniques introduced imaginative and symbolic content attached to commodities, services and business identities. As historian Lorie Loeb puts it, the advert was becoming a creature of fantasy rather than need (Loeb 1994, 7). This content could include, for example, cultural belonging, emotional value, sensory awakening, social mobility, the metamorphosis of identities, a regeneration of body and soul, imaginative transport, transcendent meaning, aesthetic pleasure, and animism. Writing in the early twentieth century, the American political economist Thorstein Veblen described these in his theory of the nature of capital as habits of life, of a non-technological character. As a commentator in Britain observed, imagination now ruled the world (Veblen 1908, 21–22).

In the language of contemporary theory, brands were creating social life and economic value through consumer minds, by addressing aesthetic, emotional, and social qualities. Historians have examined the cultural implications of brand symbolism of the era in terms of social and political categories such as gender, race, class, nationalism, imperialism, and modern subjectivity, and more generally in terms of a consumerist culture of spectacle (e.g. Rappaport 2017; Iskin 2014; Jobling 2005; Leiss et al. 2005; Lewis 2008; Loeb 1994; Ramamurthy 2003; Richards 1991; Strachand and Nally 2012; Thornton 2009; Wicke 1988). Today, sociologist Jens Beckert (2016) argues, it is impossible to understand the markets for most of the products that create economic growth without attending the imaginaries associated with those products (see also Arvidsson 2006, Introduction).

Leading brands have been widely studied for their innovations in content, but their emergence was perhaps most influential in accumulation. *En masse*, they had a profound impact on consumer culture and beyond it on perceptions of modernity. Poster hoardings, which spread spatially and demanded increasing attention in outdoor life, challenged the boundary between advertising and art and led to heated debates about modern aesthetics and their impact on progress. Brand posters gained particular attention in this context, which was disproportional to their relative numbers on the hoardings. This was partly a result of the involvement, willing or unwilling, of a handful of established artists. A well-known example was *Bubbles*, an oil painting by John Everett Millais, *Bubbles* (originally titled *A Child's World*), which Pears Soap used for an advert in 1886, adding the brand name and a soap bar to the image of dreamy innocence (Figure 1).

The image's popularity manifested in a variety of ways: thefts, secondary markets in posters, and even educational initiatives in which posters could become appropriate school decorations (Local Government Board Nineteenth Report 1889–90, 155). However, cultural attention was also the result of popular success that was not limited to so-called artistic posters. Advertising characters were becoming familiar household names in a culture of commercial animism and infiltrated mundane experience. For example, Nestlé's cats were described by one commentator as the 'never too familiar White Cat and Brown Cat, who discuss their feline gastronomy in every station,' and alleviate your misery when you miss the train (*Billposter* March 1901, 90 (quoting the *Daily News*)). The cheery brand offered silky soundness to its consumers (Figure 2).

Prize schemes did not disappear. As a technique for sales promotion and product differentiation, they remained part of advertisers' toolkit. What this history points to, instead, is a shift in in emphasis toward branding that led to the presence and cultural centrality of nonmaterial benefits as a definitive element of consumer experience.

Branding rose to dominance with new developments in advertising theory. From the late nineteenth century, advertising professionals were redefining their expertise in terms of the mind, and turned their attention to mind-management. In so doing, they recast the goals of advertising. Until the last years of the nineteenth century, 'effective' advertising typically meant sales, and occasionally a more tailored consumer response to an advert, for example a follow-up request for information or samples. Advertisers were thus looking for an observable response. The sales framework – today

Figure 1. John Everett Millais, (artist), A. & F. Pears Ltd (publisher), *Bubbles*, c.1888 or 1889. © Victoria and Albert Museum, London, E.224-1942.

Figure 2. Nestlé's cats advertisement, c.1890s. © Bodleian Library, University of Oxford: John Johnson Collection: Food 2 (30) © 2009 Proquest.

known as a modelling approach that measures effects on an aggregate level of inputs (expenditure) to outputs (sales), was gradually replaced by a paradigm of mind-management. Professionals began to argue that their goal was long-term effects rather than immediate consumer responses. Impressing the brand name on memories, creating desire, and encouraging a structure of feeling in favour of commodities became new terms of art, which required a focus on the consumer no less, and increasingly more, than the product. Today this is known as a behavioural model, yet long before academics formalized models, professionals began to develop them (Rosenberg 2022, ch. 7).

A continuity of magic

Set against the background of changing theoretical approaches, the rise of branding might appear to be an alternative to prize advertising that captured the move from sales to mind management as the governing paradigm in the advertising industry. After all, prize schemes fitted the sales framework, and were indeed paradigmatic in being short-term and geared to an immediate consumer response. By contrast, branding required advertisers to inhabit uncertainty while slowly shaping minds to create brand loyalty. However, I propose that there was in fact an important continuity that, to the best of my knowledge, has not been discussed by scholars. Both strategies relied on the same magic of something-for-nothing. They were not otherwise equivalent, but whatever else each advertising strategy offered, whichever dreams, fantasies, and imaginaries each strategy triggered, however it worked to differentiate the commodity or business, in both cases the specifically *economic* logic from the perspective of consumers, was a disproportion between the consumer payment and what she was offered in return.

The point of prize advertising was the disproportion between the consumer's investment and the benefit she could attain. The expansion of cheap commodity markets over the nineteenth century habituated buyers to the easy accessibility of commodities, such that cheapness itself, which was sometimes discussed as 'something for nothing,' would not have been experienced as magical economics that violated market expectations, but rather as the very logic of the consumer market. In these conditions, a formal prize was useful in order to invoke a sense of magic. Prize advertising was bound with the dream of receiving more than the market equivalence of the consumer's money, indeed something out of the reasonable range and often also outside the thematic realm of what was being advertised – a fantastic windfall, and drew hundreds, thousands, and sometimes tens or hundreds of thousands of responses. Prizes, gifts and free things were all languages of windfall tied to this logic. Occasionally the formula of something-for-nothing itself appeared, as in Figure 3.

Brand advertising too relied on disproportion. The imaginative value offered by branding had limitless plasticity. While it did not depend solely on images, their expanding use opened up new possibilities. Veblen indeed reflected on nonverbal marketing practices as promising more than anyone would want to commit to in words (Veblen 1908, 118). The offered value was understood to exceed the specific functionality of product design, or as one early branding professional put it, 'having only an indirect relation to the quality of soap or cocoa.' As such, a brand was and is capable of offering nonspecific and often utopian value (Veblen 1908, 118; *Billposter* October 1905, 294–295). I have suggested in the introduction that brand values touched on the ideological category of priceless things. As Yuran (2024, ch. 5) puts it, they offered the impossible. They therefore exceeded the commodity's price, even when that price was high as was the case with successful brands.

While prize- and brand adverts drew on something-for-nothing, they differed in the benefit they offered, which was typically material in the former, and nonmaterial in the latter. As noted in introduction, by 'material' and 'nonmaterial' I do not mean tangible as opposed to intangible, or real as opposed to ideal. Rather, I mean a specific legal quality: a material benefit is a distinct property, a formally tradeable asset. It is an object that a person can own and therefore also exchange or give away, rather than a function of the commodity or business advertised. A nonmaterial benefit (which I prefer over the familiar use of 'immaterial'), which branding offers, is inseparable from the

Figure 3. Something for Nothing advert. *Nottingham Evening Post*, February 21, 1908, 8.

commodity, and becomes attached to the consumer who uses or engages with that commodity. It is therefore typically, but not necessarily, ideational. This ideational quality explains why brand theory focuses on the consumer's mind as the locus of branding, and considers the use value of branded goods as experiential. However, to reiterate, the experiential or ideational quality is not what distinguishes prize from brand advertising. After all, material benefits too involve ideational elements. Money itself is supremely ideational in a capitalist economy; as the universal equivalent as Georg Simmel (2004) called it, it stands for unlimited possibilities, hence the power of gambling schemes and of many advertising campaigns that drew on their logic. Concurrently, some nonmaterial benefits involve embodied or physical elements, for example in the case of health or wellbeing, which I discuss in Part II. Therefore, I propose to observe the formal legal difference between an independent property obtained by the consumer, and its absence.

Notwithstanding the difference in benefits, something-for-nothing was embedded in both prize and brand adverts. Sociologist and media theorist Adam Arvidsson refers to brands as virtual real estate. By using the analogy he means to compare the value appropriated by brand owners in the minds of consumers to the value appropriated by landowners, an influential idea in branding since the 1970s. As Veblen (1908, 121) explained, tangibility is not a determining quality of assets since 'assets' are not a physical but rather a pecuniary concept, expressed as monetary value (see also Arvidsson 2006; Holt 2004, 15). From this perspective, the ability to compare real estate and virtual estate is clear. However, the analogy also inadvertently captures something else, namely, the continuity in the value experience of consumers between material and nonmaterial benefits. This is perhaps less obvious because the ultimate value sought by consumers is not necessarily capital gain. From a consumer perspective, values could be more diverse and need not be turned into money. Nonetheless, seeking such benefits had an economic meaning that was part of their magic, namely, disproportional return. Consumers sought the disproportion offered by brand adverts just as they did with prize adverts.

The continuity between prize and brand advertising was arguably consistent with changes in economic theories. The shift from objective to subjective theories of value – from classical to neoclassical economic thought, created a conceptual space for changing forms of the same magic. In its material form, the magic was appropriate for the environment of classical economics. The magical element of prize advertising was clear precisely because it promised that a property could be had for nothing, while mainstream economic thought assumed that a property had an objective value. When subjectivist economic theory arose, the magic in its dematerialized form, as offered by brand advertising, could resonate just as well, despite veering away from the category of property, because economic thought legitimized consumer experience as supremely valuable. Yet, subjectivism also hid from view the disproportion between payment and return by internalising all benefits into the idea of subjective utility.

Indeed, economic thought may be the reason that branding's dependence on the magic of something for nothing is far less obvious today than the case of prize adverts. With the rise of marginalism, mainstream economics conceptualized any buyer motivation, including nonrational ones, as part of her private utility function. Dreaming about windfalls became one of many subjective utilities from products, theoretically reflected in willingness to pay. From this perspective, in a competitive market, a price was necessarily equivalent to whatever was offered, as would appear to be confirmed by the fact that branded goods typically cost more than nonbranded ones. However, this does not imply that the benefit offered by the brand could be fully priced. For example, joy, success, or health would not have an acceptable price tag in modern capitalist culture, even as they could be bought and sold. When the ideology of priceless things was internalized into a theory of subjective utility, the magic of something-for-nothing disappeared from view as a driver of exchange that would otherwise challenge the theory.

The economist Albert Hirschman indeed speculated that the formalism of marginalist theory was a survival strategy that allowed economics to evade the nonrational (Hirschman 2013, 209; see also Gagnier 2000). It effectively hid the significance of expecting a gain beyond normal exchange, when mass advertising was turning this enchanted premise into the basis of normal exchange.

Another reason that something-for-nothing is not obvious as an account of branding may be contemporary brand theories that suggest that consumers pay for some brands with more than their money. Theories of brand communities and the social formation of brands argue that consumers (and other stakeholders) might co-create and even dominate brand values through their engagement, knowledge exchange, networking, narratives, and uses of the brand. The community effectively shares dreams, hopes and fears that give rise to the meanings and experiences that make the brand. Marketing researcher Douglas Holt stresses the collective nature of brand formation. Various 'authors' – consumers included, tell stories that eventually emerge in common understandings (Holt 2004, 3). From such theoretical perspectives, and despite their varieties of nuance, consumers are seen as endogenous to brand value, particularly when that value involves elements of identity. On an abstract level, then, part of the price consumers pay is their investment of nonmaterial elements intertwined with their selfhood. When this is the case, the gap between price and return that creates the windfall dream arguably narrows down and might be non-existent.

Many researchers consider co-creation as a new branding paradigm (Hatch and Schultz 2010). Despite its relative theoretical newness, and despite the role attributed to the affordances of digital media in rendering co-creation central to contemporary branding, we should not rule out the explanatory relevance of these accounts for the late nineteenth- and early twentieth centuries, when the developments discussed in this article took place. The period's archives reveal significant occasions of collective activities around brands and a mass participation in the production of imaginaries. Moreover, as Holt observes, mass print media enabled brand stories. Some of these cases touched on key cultural tensions, from empire to war to domesticity, in line with Holt's theory of cultural branding (Holt 2004; Rosenberg 2022).

At the same time, and critically for this article's historical argument, the idea of co-creation or co-authorship was not typically echoed in the self-understandings of contemporaries. Consumers often participated in co-creation in ways that blurred the lines between production and consumption, but they did not in consequence view themselves as giving something away, thus *paying* with a token of identity. Likewise, advertisers did not conceptualize the co-creation of brand imaginaries despite having a sophisticated understanding of consumer agency and an acknowledged dependence on consumer response. Instead, they viewed themselves as unidirectionally exciting consumers' imaginations via media to get them to engage with commodities, and credited successes to their own expertise in the mind. In other words, consumers' non-monetary investment, while critical to their experience of advertising, was not typically viewed as an element of economic exchange (Rosenberg 2022). This point aligns with Merz, He, and Vargo (2009), who argue that marketing theories of the 1900s–1930s treated brand meanings as embedded in the production process. This is crucial because it suggests that the dominant (if not necessarily exclusive) contemporary view was that a branded product involving nonmaterial benefits, was offered in exchange for the consumer's money rather than other types of consumer investment, whether or not that was in fact the case. Herein lay the element of inherent disproportion between investment and return, which speaks to windfall dreams.

I thus propose that in advertising's formative period the magical formula of something-for-nothing operated in prize adverts as well as the ever-diversifying dreams of branding. An early advice book on advertising and the mind identified 'the desire to get something for nothing' as one of many psychological inclinations that modern advertisers had to tap into. It was listed with vanity, curiosity, fear, hope, sympathy, fashion, imitation and more (*Advertisers' Pocketbook* 1913). Yet, something-for-nothing was in fact more fundamental, because it was an economic perspective that suggested how every other kind of desire or drive on that list might be satisfied or enhanced, without proportion to the consumer's investment. This represented an economic perspective in radical misalignment with standard expectations from exchange.

The legal life of windfall promises

While something-for-nothing was the enchanted economic premise of both prize and brand advertising, the former often met with legal challenges, precisely because it had a material element. It faced criminal prohibitions in anti-gambling laws and the law of fraud, and related limitations in civil law. The following sections explain them briefly. However, my interest is not in legal mechanisms, but rather in law as a public conversation about the possibility of gaining something for nothing in the consumer market. The discussion shows that this possibility was denied when it came to material windfalls by punishing or otherwise making life uneasy for advertisers who suggested such a possibility, and for consumers who pursued this magic. The dematerialized windfalls offered by brand adverts were ridiculed in law, but did not face the same prohibitive responses. This approach created an environment in which it made more sense to advertise and to pursue dematerialized windfalls via branding.

Prize advertising and law

The most significant limitations on prize advertising were rooted in a theory of gambling, which associated the gamble with enchantment. In the nineteenth century, gambling was viewed as an organized rejection of all reason. It appeared to reject the imperatives of the Protestant ethic: the importance of time, money, and disciplined labour, and replace them with ecstatic behaviours and quasi-mystical views in which time stood still and windfalls occurred. This mode of dealing with property undermined justifications for capitalism, therefore legal prohibitions differentiated gambling from legitimate and supposedly cold-headed capitalist activity. In the context of advertising, the challenge was how to differentiate adverts that amounted to gambling from the rest of the advertising world. Without such differentiation, discourses of enchantment that applied to gambling would have implicated views of advertising at large, and rationalist perceptions of the economy would have wavered. Prize advertising was one problem area in which the lines between gambling and legitimate commerce became blurry; its presence and popularity revealed the enchantments that informed mundane consumer activity. In the late nineteenth- and early twentieth centuries we find an extensive scene of litigation concerned with prize adverts. Viewed cumulatively, court decisions treated prize competitions as a distinct occurrence and dissociated them from the broader advertising scene.

One element in the process of dissociation was the legal theory of lotteries, most of which had been outlawed by the mid-nineteenth century. The accepted definition of a lottery required three conditions: a prize; its distribution by chance; and a payment for participation by a significant portion of competitors. When an advertising scheme fell within this definition, it was considered illegal. In such cases, the advertiser faced criminal liability and the underlying contracts between advertisers and consumers or other actors along the advertising chain (such as advertising agents), were unenforceable.

I would like to pause on the condition of payment for participation to clarify its cultural significance. It meant that a gamble was treated as a commodity for which consumers paid, rather than an advertising strategy; I have described it elsewhere as the commodity theory of the gamble (Rosenberg 2022, ch. 6). This condition not only dissociated the gamble from advertising, but also had a very specific cultural logic: it implied that there could never be something for nothing, because advertisers would never let consumers have more than they paid for. On this theory, consumers simply did not realize that they were actually paying for the prizes.

A leading decision was the 1883 case of *Taylor v Smetten*. Taylor was an itinerant seller who travelled from town to town with his caravans. On arrival, he would build a tent, and his men promoted sales with announcements that the packets of tea contained prize coupons. The tea was sold at a market price and consumers were reportedly happy with it, therefore, when Taylor was charged with running an illegal lottery, he argued that consumers did not pay to participate in the prize competition. However, he was convicted. The judge explained that

> it is impossible to suppose that the aggregate prices charged … did not include the aggregate prices of the tea and the prizes. Nor can it be doubted that in buying a package, the purchaser … bought the tea coupled with the chance of getting something of value by way of a prize. (Taylor v Smetten, 210)

Put simply, consumers paid for prize, it was not something for nothing.

How else could one analyse the situation? The alternative theory could be glimpsed in the case of John Simpson, a grocer prosecuted for running an illegal lottery in Lincoln in 1888. He was selling Una tea with competition tickets. The London Tea Supply Association defended Simpson by arguing that the scheme was not a lottery but an advertisement. On this economic analysis, prizes were not funded by consumers, but by Simpson who saved on alternative advertising costs. The defence continued to argue that there was 'full value for money in the tea itself.' This theory agreed that advertisers were economically rational and therefore had to have a funding source for their prizes. However, it suggested that from consumers's perspective, they *were* getting something for nothing, because they were not the funders. The court rejected the argument (Simpson and another 1888).[2]

Advertisers repeatedly tested the extent of the commodity theory of the gamble. In one of its prize campaigns, the *Weekly Telegraph* tried to create an environment in which there was no payment for participation. Participation medals were distributed freely, the newspaper that announced the winners could be read at the offices without charge, and the prize could be had without buying a copy. Nonetheless, the Lord Chief Justice Alverstone saw a lottery and would not be confused. He clarified that the theory of payment was based on a collective analysis of consumers:

> this Court would be stultifying itself were it to give any effect to the ingenious argument … we must ask ourselves how many of the recipients of these medals, who are unable to go into the office and inspect the paper for nothing, would pay a penny for the paper … to see whether the number of their medal is the lucky one … The persons who receive the medals therefore contribute collectively (though each individual may not contribute) sums of money which constitute the fund from which the profits of the newspaper, and also the money for the prize winners in this competition, come. (Willis v Young 1907, 453–455)

In 1912 the High Court clarified its position for advertisers who thought that courts cared how they financed their prizes: what mattered was not the income side of the advertiser, but the expenditure side of consumers who were driven to pay for hope (Bartlett v Parker 1912). In this case, concert tickets were advertised with a promise that one of them would be selected and win a bicycle. Accused of holding a lottery, the organizers argued that the prize was contributed by the bicycle manufactures as an advertisement and not funded by the ticket entries, but their argument was rejected. Similar analyses applied to adverts that violated anti-betting laws.

Overall, the commodity theory of the gamble suggested that consumers paid for prizes, and therefore they were not magical windfalls. It attempted to undermine the notion of 'nothing' in the formula of something-for-nothing. This cultural implication of law introduced a sobering element along with a direct prohibition, supporting an economic ontology in which nothing was ever free.[3]

The pull of something-for-nothing was often more powerful than legal pushes against it. Consumers responded to prize adverts despite the risk of being unable to enforce prize promises if deemed illegal, and despite the incidental criminal liability, for example in the *Weekly Dispatch's* treasure hunt, when hunters faced charges for damage to properties caused during their ecstatic searches. Meanwhile, legal perspectives refused to treat this force of enchantment as a structural element of the economy. Instead, they either found that consumers paid for the prize and it was therefore no windfall, or they treated consumers as mad. After all, it was impossible to acknowledge the pursuit of a magic that legal doctrine theorized as nonexistent. Thus, for example, judges commenting on the treasure hunt put consumers' actions down to cognitive failures. In their view, the public had 'gone mad' and exhibited 'an idiotic craze.' (*Luton Times and Advertiser* Jan. 29, 1904, 8;

Coventry Herald, Jan. 29, 1904, 6; 116 *Law Times* 290 (1904); *Western Daily Press*, Feb. 5, 1904, 5; *Norfolk News*, Feb. 6, 1904, 12). The presence of something-for-nothing was thus consistently denied even as consumers pursued it.

Fraud and its implications in civil law were another way of curtailing prize adverts, as evident, for example, in the case of the Watchmakers Alliance's advertising campaign (Figure 4). The advert announced a house prize worth £750 (over £75,000 in 2024) to those who answered three mathematical questions. The other side of the pamphlet conditioned the prize on the purchase of a watch for 50s, or 35s in other adverts. It was not a trivial expense (some £250 in 2024), but in no proportion to the prize.

1,200 respondents correctly answered the mathematical questions and bought watches, and therefore became entitled to the coveted house prize. The Alliance responded by sending each winner a transfer deed for 1/1,200 of the house. Each also became entitled to 1s a quarter in rent if collected in person from the Alliance's offices, which was impossible for many winners. This turn of

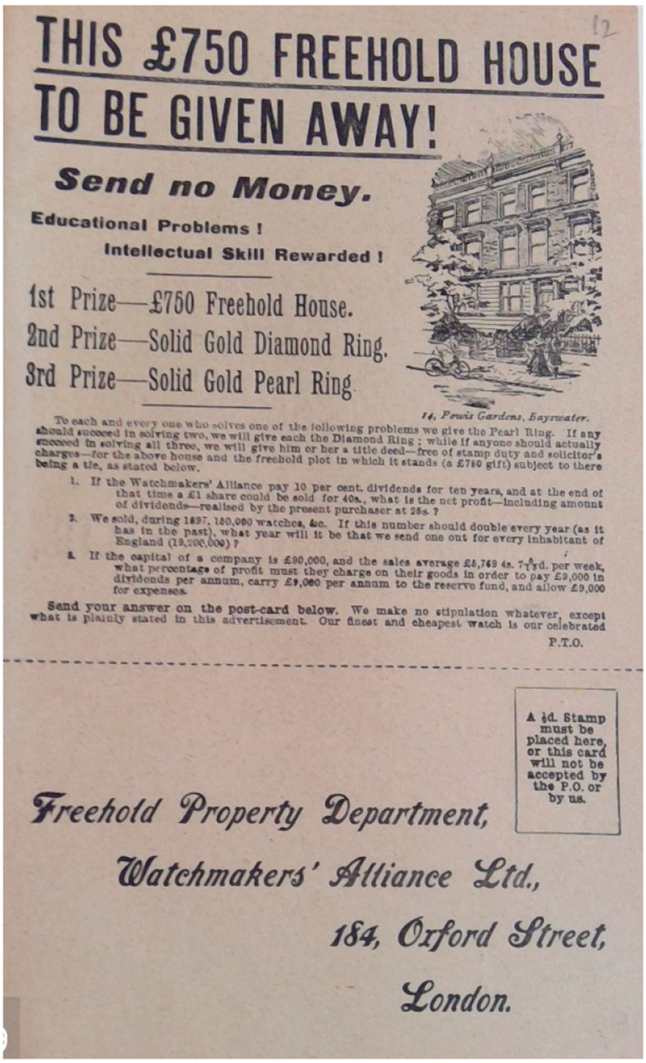


Figure 4. Advertisement by the Watchmakers' Alliance, *c.* 1890s © Bodleian Library, University of Oxford: John Johnson Collection: Publicity box 13.

events was the subject of a civil dispute between two advertising agents involved in the supply chain between the Alliance and Harmsworth Magazine. The magazine stopped a 12-month publication contract because it saw the adverts as fraudulent, which led to litigation. The Westminster County Court, and after it the High Court, agreed that the adverts were 'trickery' and refused to enforce the contract. Meanwhile, the large profit margins of the Alliance were emphasized: the watches only cost 10s or 12s, but consumers paid 35s. Not only was the house turned from something to nothing when divided between 1,200 winners, but it was again implied that consumers paid for anything they received (UK Newspaper Society Circular, Jan. 1899, 8; Mar. 1899, 5; Feb. 1899, 8; *Times*, Dec. 3 1898; Feb. 14, 1899). Once again, the message was that there were no windfalls for consumers.

Beyond explicit legal denials of something-for-nothing, it is worth noting that prize advertising was prone to fraud charges more generally, because a failure to deliver a material benefit was easy to prove. For example, in 1900 one Charles Hanford was sentenced to imprisonment after failing to supply 'free' bicycles promised in his adverts to anyone who sent 1s 6d. As a disappointed consumer explained in court, he was fully aware of the disproportion between the payment and the expected return; a windfall of this kind might seem impossible, but adverts were a universe in which surprises were to be expected (*Leicester Chronicle*, 8 December 1900, 4. See further discussion in Rosenberg 2022, ch. 1).

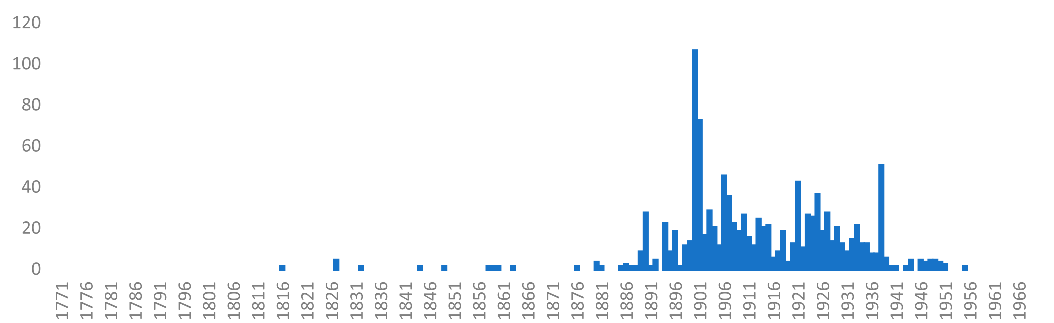
Viewed as a whole, prize advertising faced multiple legal challenges. Whether analysed as an illegal lottery or bet with criminal and civil implications, demystified by the economics of aggregation, condemned for the damages caused to public and private spaces as consumers pursued dreams of treasures, or charged as a fraud when delivery failed, material prize advertising was a risky way of activating the magic of something-for-nothing.

Brand advertising and law

The rise of branding should be read within the context of a growing cultural awareness of laws applicable to advertising, which made apparent the fact that advertising nonmaterial windfalls, understood as a function of the advertised commodity, was legally safer than advertising material ones.

In the late nineteenth- and early twentieth century, laws affecting advertising gained attention. Heated public controversies about advertising reached a boiling point in seemingly unrelated areas: the press, outdoor life, science, and morality. They called attention to the legal aspects of advertising, including in gambling litigation and high-profile cases such as *Carlill*, which I discuss below. Relatedly, there was a growing literature on advertising that systematically reviewed applicable laws (e.g. Clarence 1905, and the first legal treatise on advertising law: Jones 1906).

It may be telling that in the same years the phrase 'something for nothing' was on the rise in adverts (Graph 4). The numbers are small and could be the doing of relatively few actors, but



Graph 4. Adverts containing 'something for nothing.' British Newspaper Archive data May 2023.

this appearance is curious. It might indicate a search for ways of invoking the magical formula in implicit response to legal limitations. Some advertisers even tried to activate it in reverse as it were, stating that their allure was not an impossible something-for-nothing, but rather good value (e.g. Graves Gramophone advert 1911).

In what follows I briefly explain the lenient legal environment around branding, but it is worth emphasizing in advance what I do *not* argue: there is no claim here that advertisers or consumers explicitly considered brand adverts in terms of something-for-nothing as I do in this article; therefore there is also no claim that these historical actors compared legal responses to prize and brand adverts and consciously responded to the legal discouragement of one by moving to the other in their search for magical economics. I do not have – and doubt that there could be, archival material to substantiate such a claim. Rather, the argument is that law should be read as a broad and visible public conversation about something-for-nothing, which created conditions supportive of the magic's dematerialization. Indeed, part of these conditions was the fact that something-for-nothing was discussed in the context of prize adverts, but not branding. The absence of discussion explains why brand advertising was more attractive as a promise of magical economics when prize advertising came under legal pressures, but it also means that we should not expect to find a conscious or explicit decision to move from one to the other in response to those pressures.

We can appreciate the difference in legal responses to material and nonmaterial windfalls if we consider health products, which were among the most developed areas of branding in the late nineteenth century. Health brands brought forth fantastic visions of well-being. This branding created versions of something-for-nothing in the realm of regeneration, sometimes bordering on superpowers, and introduced enchanted images of immortality, serenity, control, and flourishing in industrial society. Both Nestlé and Pears belonged in that wide field. Figure 5 shows additional well-known examples.

Courts generally tended to view cure, well-being and regeneration promises as mere puffs, deemed ridiculous but not illegal. It was almost impossible to turn failures to cure diseases, all the less failures to uplift, empower, or beautify, into legal claims of fraud or breach of contract. On the criminal side, the formal position of the Public Prosecutor was indeed that ineffective treatments did not merit intervention (Select Committee on Patent Medicines 1914, qq. 1098–1100).

Moreover, I am not aware of cases from this period that seriously considered visual content as an enforceable commitment, even as branding increasingly relied on visuals. Content was addressed in other ways, for example in the context of obscenity and indecency, and in the regulation of competition, particularly the protection of trademarks. In outdoor advertising, much legal attention went to spatial regulation, which involved visual approaches to space but did not address the thematic content of posters (Rosenberg 2022, ch. 3). Scholarship on late twentieth- and twenty-first-century law points to more conceptual room for branding content, mainly in the legal approach to competition between businesses, where brands receive protection beyond informational paradigms, particularly protection against brand dilution and misappropriation. The legal approach to consumer–advertiser relationships appears still dominated by rationalist paradigms (Assaf 2010; Assaf 2012; Lury 2004, ch. 5; Becher and Feldman 2016).

The legal decision in the case of *Carlill v Carbolic Smoke Ball*, 1892, is exemplary of the difference in legal responses to prize- and brand adverts. It is familiar to legal scholars to this day because it remains a leading precedent on unilateral contracts. It was also historically important as a legal and a cultural event. The Carbolic Smoke Ball advert in dispute, which appeared in the *Pall Mall Gazette*, promised protection against influenza and any cold-related diseases. The Carbolic Smoke Ball Company advertised that it would pay a reward of £100 to those who fell ill after using its treatment. The advert also stated that the company had deposited £1,000 (about £160,000 in 2024) with the Alliance Bank to show its sincerity. In other words, the advertiser drew on both branding and prize schemes to invoke the formula of something-for-nothing. For the price of the medicine, consumers were offered not only the product but also one of two greater things: an immune body that would not give in to cold weather – an enticingly priceless mode of existence; or a sum of money

Figure 5. Health product advertisements. Left: Electropathic & Zander Institute advert, c.1890, Wellcome Collection. Right: Carbolic Smoke Ball advertisement, c.1890s, © Bodleian Library, University of Oxford: John Johnson: Soap 1(35), Proquest 2009.

disproportionate to their payment – about two hundredfold, which arguably put an implied price tag on the disappointment of the immunity dream, if not on immunity itself. Both alternatives offered something for nothing, in nonmaterial and material forms. It bears repeating: a nonmaterial benefit is not limited to the ideational. It can, as in this case, relate to embodied experience. The promise of immunity in this case was attached to the body and could be tested through its responses, at least negatively when it failed. Even as the promise also offered experiential benefits, such as feelings of security in a world of invisible viruses and uncontrollable natural phenomena, a sense of calm, or empowerment, they were not only ideational. Nonetheless, this was a promise of a nonmaterial windfall. Immunity and wellbeing were not an independent property, in contrast with the reward money. From this perspective, we should think about this case just as we would think about fully disembodied benefits, such as a brand promise of happiness.

As legal historian Brian Simpson's study of the case showed, the Carbolic Smoke Ball Company, a one-man enterprise of Frederick Augustus Roe, began marketing the treatment in the late 1880s. Sales benefited from an influenza epidemic that Britain had not seen for almost fifty years. Influenza was not usually lethal but it was incapacitating and well publicized in accumulating reports about the rapid spread of infection from late 1889, and again in 1891–1892 (Simpson 1985). The advert indeed stated that thousands of balls had been sold during the epidemic and there were no ascertained cases of contracted disease among users. Louisa Carlill bought a smoke ball, used it as instructed, but contracted influenza. She claimed the reward, the company refused to pay and ended up losing at first instance and in the Court of Appeal. The latter construed the advert as an enforceable contractual obligation. In so doing, the court rejected the defence argument according to which the advertised offer was a mere puff that could not ground a binding contract. Each of the three judges fastened on a statement about a bank deposit of £1,000. They thought that the statement precluded the defence of puffery, as Lindley J wrote in the lead opinion:'[w]hat is that passage put in for, except to negative the suggestion that this is a mere puff, and means nothing at all?' (Carlill 1891-94, 129).

Despite Carlill's celebrated legal victory, the crucial point about the decision was actually what remained beyond its reach. The nonmaterial benefit of an immune body, that is, the promise that the smoke ball would protect from influenza and all diseases caused 'by taking cold,' was not the grounds of legal liability. The fantastic cure promise did not, in itself, ground the Carbolic Smoke Ball Company's obligation to pay. The court's approach implied that the promise would not be enforceable on its own, while a reference to large sums of money was. In other words, the decision differentiated the two elements of something-for-nothing in the advert. The material windfall was treated seriously, indeed all the more seriously given the reference to an even larger sum in the bank, the truth value of which was unclear. Since the promise of money was not in breach of anti-gambling laws (the advertiser tried that argument too, but failed), it was enforced. Meanwhile, the legal analysis suggested that the nonmaterial benefit of superb health could not have been a basis for a legal claim.

Positions such as that of the *Carlill* court did not mean that law did not engage with branding content in advertising, but that the mode of engagement was different from that of prizes. Legal responses treated the content as not serious enough to merit prohibition or, at the other end, enforcement. The rationalist concept of exaggeration was central to this approach, and effectively belittled and ridiculed these adverts. The typical position was that the claims made for the product were ridiculous, that no reasonable consumer would believe them, and that they therefore needed no legal response. Here was a complex legal message: the adverts and the market they created were allowed and even encouraged, but at the same time treated as epistemologically vacuous, premised on the ignorance of advertisers and consumers alike.[4] This message attempted to annul the 'something' in the formula of something-for-nothing by doubting the claims that advertisers made for their products.

The legal treatment of health brand advertising was embedded in the historical battle between medical advertisers and the medical establishment, known as the quackery debate. However, it should also be read more abstractly and generally within cultural anxieties about getting something for nothing in the modern market. If consumers were motivated by promises of windfalls, this meant that the advertising-driven market was thriving on a magical economics. Such visions were practically discouraged with legal means when material benefits were offered. When nonmaterial ones were on offer in brand advertising, legal responses left advertisers to their own devices, while treating the devices as meaningless rather than the very basis of the market (Rosenberg 2022, chs. 4-5).

Magical economics and legal history

Prize advertising and branding alike invited consumers to engage in market exchange but outdo its logic. In both, the idea was an inherent disproportion between the consumer's investment and the benefit she could hope to attain. Legal history in turn sheds light on the process by which prize advertising lost its cultural prominence and branding rose to dominance. I have argued for an interpretation of legal developments as a public debate about the possibility of getting something for nothing in the market, in which we find a marked divergence between material and nonmaterial benefits. While responses treated adverts for windfalls of all kinds critically, adverts for material ones were more often and easily prohibited, annulled, their economics demystified. Law was thus encouraging advertisers to dematerialize the benefits they offered, and consumers to seek dematerialized windfalls.

Why the difference in legal treatment? Arguably, it was consistent with an ideology of priceless things, which would not treat them as tradeable property. In the case of prize adverts, the benefits on offer incontestably belonged to the world of trade. It was possible to attribute a monetary value to the prize (occasionally it was just money), and therefore the economic disproportion that triggered something-for-nothing was clear, and courts could assume that consumers must have paid the difference. Once branding was on the rise, this response was unavailable because, by definition, no monetary value could fully reflect the things that the adverts offered. Meanwhile, economic thinking subjectivized the benefits of brands. Between pricelessness and subjective utility, there was no visible economic difference for courts to work with. The magic in its brand guise was therefore far more immune to legal attacks than its prize analogue, even for those critical enough to try to undo it.

If the continuity in the magic of something-for-nothing is appreciated, this suggests that prize advertising was neither naïve nor preprofessional, as its continuation and occasional hypes confirm. Instead, it should be read as a historical articulation of the economic logic of branding. Its wavering fortunes in the first era of mass advertising despite the popularity of prize schemes, and the emergence of branding as the dominant cultural paradigm even as prizes continued, reflect cultural experimentations with something-for-nothing and a gradual move from material benefits to nonmaterial ones, which allows us to extend the periodization of advertising's modernization, and to evaluate its mood as more hesitant, even worried. Legal history explains the historical process and the mood that accompanied it. It therefore sheds new light on the logic and development of brand capitalism.

Notes

1. It bears emphasis that my reference to branding is more specific than the concept of differentiation included in general definitions, which refer to any mode of distinguishing or identifying a good or service. See also the definition of the American Marketing Association (n.d).
2. Neither Simpson nor anyone else ventured into the hazardous economic debates that asked whether advertising itself ultimately raised commodity prices, in which case it too was paid by consumers.
3. Decisions about illegality could even work for advertisers' short-term benefit if they meant that their commitments to pay were not enforceable.
4. Prize adverts that did not violate anti-gambling laws were also ridiculed in law, but the terms of ridicule focused on the idea of a low culture of mass entertainment, not on exaggeration, and enforcement was not refused in such cases.

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