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## Bechtel v. Federal Communications Commission, 957 F.2d 873 (D.C. Cir. 1992)

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reviewing the FTC's findings would be the highly deferential substantial evidence test because the findings required resolution of extremely complex and technical factual issues, and the question of whether an advertisement is deceptive was more "akin to a finding of fact than a conclusion of law." Secondly, the court held that the FTC could rely on its own analysis in determining what claims an advertisement conveys without examining extrinsic evidence, as long as those claims are reasonably clear from the face of the advertisement. The court reasoned that extrinsic evidence was not necessary because "common sense and administrative experience provide the commission with adequate tools to make its findings." Finally, the court determined that the advertisements did violate the Federal Trade Commission Act because it was unlikely that the average consumer knew that 30% of the calcium was lost in the processing of the product, and the implication that consumers will receive five ounces of milk by consuming the product was a material misrepresentation.

-M.D.B.

**BECHTEL V. FEDERAL COMMUNICATIONS COMMISSION, 957 F.2D 873  
(D.C. CIR. 1992).**

The Federal Communications Commission denied licenses to Galaxy Communications, Inc. and Susan Bechtel for a new FM radio station and awarded the license to a competitor, Anchor. A major factor in the FCC determination was the degree of "integration" of ownership into management. Both Galaxy and Anchor had 100% integration with the respective owners participating full-time in the radio station operations, while Bechtel was prepared to hire outside management. Galaxy alleged that Anchor's proposal regarding integration was a sham, while Bechtel alleged that the integration criterion no longer serves its stated objectives of ensuring "greater sensitivity to an area's changing needs."

The District of Columbia Circuit Court of Appeals held that, in regard to Galaxy's challenge of Anchor's proposal, substantial deference would be accorded to the FCC's determination, especially since the Commission's findings of factual and credibility issues were in accord with those of the administrative law judge. The court then determined that the record supported Anchor's promises pertaining to integration. Regarding Bechtel's claim, the court ordered the FCC to respond to Bechtel's challenges and to consider her application in light of those challenges. The FCC was instructed to demonstrate why its focus on the integration crite-

tion is still in the public interest.

-M.D.B.

**ALEXANDER V. THORNBURGH, 943 F.2D 825 (8TH CIR. 1991).**

Ferris J. Alexander, Sr., defendant, was in the adult entertainment business for over thirty years, showing movies, selling magazines and selling and leasing video cassettes. It was shown at his criminal trial that he had consolidated many of his various theater and bookstore businesses under corporation titles, and substituted names of his employees as a front to conduct his businesses. None of these corporations filed income tax returns, and two of the corporations were used to purchase another bookstore and real estate. It was estimated that Alexander underreported his 1982 gross receipts by \$1,322,135 and by \$1,416,883 in 1983. In addition, the trial jury found four magazines and three videos from his business to be obscene.

Alexander was convicted on 24 counts of a 41 count indictment in the U.S. District Court for the District of Minnesota for tax offenses, obscenity offenses, and Racketeer Influenced Corrupt Organizations Act (RICO) violations. He was sentenced to 36-72 months of imprisonment, fined well in excess of \$100,000, and ordered to forfeit his interest in ten pieces of real estate acquired from the proceeds of his racketeering activity. Alexander appealed the conviction, the fines, and the forfeiture on the basis that:

- (1)the indictment alleged and the evidence showed, if anything, multiple conspiracies and not one conspiracy to defraud the IRS;
- (2)the count was defective because it charged a general conspiracy rather than a conspiracy to violate a specific statute;
- (3)the jury's verdicts on the transportation of obscene materials counts were inconsistent;
- (4)the application of the forfeiture provisions of RICO were unconstitutional because they criminalized non-obscene expressive material, violated the First and Eighth Amendments, and the obscenity standards violated his due process rights;
- (5)there was insufficient evidence on all counts to sustain the verdict below; and,
- (6)the District Court should not have entered a summary judgment against him in his civil suit against the government challenging the use of obscenity as a predicate to RICO on First Amendment grounds.

The Eighth Circuit Court of Appeals affirmed Alexander's conviction on all counts. The court held that whether a conspiracy