was inconsistent with the "closer look" that the Court has since required in applying the principles of *Central Hudson*.[1081]

The "different degree of protection" accorded commercial speech has a number of consequences as regards other First Amendment doctrine. For instance, somewhat broader times, places, and manner regulations are to be tolerated,[1082] and the rule against prior restraints may be inapplicable.[1083] Further, disseminators of commercial speech are not protected by the overbreadth doctrine.[1084] On the other hand, there are circumstances in which the nature of the restriction placed on commercial speech may alter the First Amendment analysis, and even result in the application of a heightened level of scrutiny.

For instance, in *Sorrell v. IMS Health, Inc.*,[1085] the Court struck down state restrictions on pharmacies and "data-miners" selling or leasing information on the prescribing behavior of doctors for marketing purposes and related restrictions limiting the use of that information by pharmaceutical companies.[1086] These prohibitions, however, were subject to a number of exceptions, including provisions allowing such prescriber-identifying information to be used for health care research. Because the restrictions only applied to the use of this information for marketing and because they principally applied to pharmaceutical manufacturers of non-generic drugs, the Court found that these restrictions were content-based and speaker-based limits and thus subject to heightened scrutiny.[1087]

[1081] 517 U.S. at 531–32 (concurring opinion of O'Connor, joined by Chief Justice Rehnquist and by Justices Souter and Breyer).

[1082] Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, 425 U.S. 748, 771 (1976); Bates v. State Bar of Arizona, 433 U.S. 350, 384 (1977). But, in Linmark Associates v. Township of Willingboro, 431 U.S. 85, 93–94 (1977), the Court refused to accept a times, places, and manner defense of an ordinance prohibiting "For Sale" signs on residential lawns. First, ample alternative channels of communication were not available, and second, the ban was seen rather as a content limitation.

[1083] Central Hudson Gas & Elec. Co. v. PSC, 447 U.S. 557, 571 n.13 (1980), citing Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, 425 U.S. 748, 772 n.24 (1976). *See* "The Doctrine of Prior Restraint," *supra*.

[1084] Bates v. State Bar of Arizona, 433 U.S. 350, 379–81 (1977); Central Hudson Gas & Electric Co. v. PSC, 447 U.S. 557, 565 n.8 (1980).

[1085] 564 U.S. ___, No. 10–779, slip op. (2011).

[1086] "Detailers," marketing specialists employed by pharmaceutical manufacturers, used the reports to refine their marketing tactics and increase sales to doctors.

[1087] Although the state put forward a variety of proposed governmental interests to justify the regulations, the Court found these interests (expectation of physician privacy, discouraging harassment of physicians, and protecting the integrity of the doctor-physician relationship) were ill-served by the content-based restrictions. 564 U.S. ___, No. 10–779, slip op. at 17–21. The Court also rejected the argument that the regulations were an appropriate way to reduce health care costs, noting that "[t]he State seeks to achieve its policy objectives through the indirect means of restraining certain speech by certain speakers—that is, by diminishing detailers' abil-