absent identification of a serious problem such as ambulance chasing, the Court explained, would dilute commercial speech protection "almost to nothing." [1055]

Moreover, a statute prohibiting the practice of optometry under a trade name was sustained because there was "a significant possibility" that the public might be misled through deceptive use of the same or similar trade names.[1056] But a state regulatory commission prohibition of utility advertisements "intended to stimulate the purchase of utility services" was held unjustified by the asserted interests in energy consumption and avoidance of subsidization of additional energy costs by all consumers.[1057]

Although commercial speech is entitled to First Amendment protection, the Court has clearly held that it is different from other forms of expression; it has remarked on the commonsense differences between speech that does no more than propose a commercial transaction and other varieties.[1058] The Court has developed the

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[1055] 507 U.S. at 777.

[1056] Friedman v. Rogers, 440 U.S. 1 (1979).

[1057] Central Hudson Gas & Electric Co. v. PSC, 447 U.S. 557 (1980). *See also* Consolidated Edison Co. v. Public Service Comm'n, 447 U.S. 530 (1980) (voiding a ban on utility's inclusion in monthly bills of inserts discussing controversial issues of public policy). However, the linking of a product to matters of public debate does not thereby entitle an ad to the increased protection afforded noncommercial speech. Bolger v. Youngs Drug Products Corp., 463 U.S. 60 (1983).

[1058] Commercial speech is viewed by the Court as usually hardier than other speech; because advertising is the *sine qua non* of commercial profits, it is less likely to be chilled by regulation. Thus, the difference inheres in both the nature of the speech and the nature of the governmental interest. Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, 425 U.S. 748, 771–72 n.24 (1976); Ohralik v. Ohio State Bar Ass'n, 436 U.S. 447, 455–56 (1978). It is, of course, important to develop distinctions between commercial speech and other speech for purposes of determining when broader regulation is permissible. The Court's definitional statements have been general, referring to commercial speech as that "proposing a commercial transaction," Ohralik v. Ohio State Bar Ass'n, *supra*, or as "expression related solely to the economic interests of the speaker and its audience." Central Hudson Gas & Electric Co. v. PSC, 447 U.S. 557, 561 (1980). It has simply viewed as noncommercial the advertising of views on public policy that would inhere to the economic benefit of the speaker. Consolidated Edison Co. v. Public Service Comm'n, 447 U.S. 530 (1980). So too, the Court has refused to treat as commercial speech charitable solicitation undertaken by professional fundraisers, characterizing the commercial component as "inextricably intertwined with otherwise fully protected speech." Riley v. National Fed'n of the Blind, 487 U.S. 781, 796 (1988). By contrast, a mixing of home economics information with a sales pitch at a "Tupperware" party did not remove the transaction from commercial speech. Board of Trustees v. Fox, 492 U.S. 469 (1989). In Nike, Inc. v. Kasky, 45 P.3d 243 (Cal. 2002), *cert. dismissed*, 539 U.S. 654 (2003), Nike was sued for unfair and deceptive practices for allegedly false statements it made concerning the working conditions under which its products were manufactured. The California Supreme Court ruled that the suit could proceed, and the Supreme Court granted certiorari, but then dismissed it as improvidently granted, with a concurring and two dissenting opinions. The issue left undecided was whether Nike's statements, though they concerned a matter of public debate and appeared in press releases and letters rather than in advertisements for its products, should