

**CASES**

**For the**

**IIT IPRO ETHICS BOWL**

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## Case 1: Redux Beverages

In September of 2006, James Kirby started a company, Redux Beverages, to manufacture and distribute a caffeinated energy drink called "Cocaine." Redux advertised Cocaine as "A legal alternative" and their advertisements played up on the name. Phrases like "Speed in a Can," "Liquid Cocaine," and "Cocaine--Instant Rush" appeared in their advertisements. In fact, the drink contained no cocaine (drug) or any other illegal substance, but was just a highly caffeinated soft drink. One 8.2 oz. can contained 280 mg of caffeine, roughly the caffeine in two cups of coffee.

As one might expect, a controversy developed almost immediately. A councilman from Queens, New York, tried to organize a boycott of the product, claiming that the manufacturer was either ignorant of the tragedy of addiction, or indifferent to the value of human life compared with the value of money. Mayor Michael Bloomberg of New York strongly criticized Redux Beverages for glorifying a product that capitalizes on a destructive narcotic, given the extensive problem of drug abuse and addiction. In reply to his critics, Kirby said that he chose the name because controversy sells, rebelliousness is appealing, and the wordplay is ironic fun. He credited consumers with being able to distinguish between an energy drink and an addictive drug. Kirby reportedly denied that his drink would encourage drug use, but did not deny that the drug might encourage consumption of his drink. Sales increased rapidly.

Meanwhile, Michael H. Davis, a professor at Cleveland State University's College of Law needed an extracurricular project for students in his Copyright, Patent, and Trademark class. After a class discussion of trademarks that could be refused for being "immoral or scandalous," someone mentioned the new drink and Davis soon found five student volunteers to file a trademark opposition against Redux in his name. In their filing, made on October 10, 2006, the students also represented the nonprofit organizations Americans for Drug Free Youth and the Progressive Intellectual Property Law Association. Their filing opposed the trademark for the name, "Cocaine," on the grounds that it was "immoral and scandalous," and furthermore it was "deceptively misdescriptive" since the drink did not in fact contain the drug cocaine.

As a result of the students' filing, the trademark examining attorney, Michael Engel, who had tentatively approved the application for federal trademark, changed his mind and asked for a remand for refusal. On Dec. 6, the United States Patent and Trademark Office turned down Redux's application for the trademarked name, "Cocaine."

The New York Times (December 18, 2006) quoted Professor Davis as saying, "My interest was just the legal interest, to get some experience for the students." He added that they were "far more anti-drug than I'd expected."

In May 2007, Redux pulled Cocaine from the market and initially announced they were changing the name to "Censored." Redux settled on "No Name," as a temporary measure. At the time of the writing of this case, the product contained a blank space where the name should appear with the instructions, "Insert Name Here." Kirby explained the name change as an opportunity to promote the brand's fun spirit and empower consumers to call the drink whatever they like. As an aid to customers, store

displays contain stickers with suggested names they can put on the can, including, "Banned-by-the-man," "Screwed," and "Censored."

According to the company's official website, "In the coming year we're going to release a few new surprises to the market.... So stay tuned. This party's just getting started."

(Case 14, APPE Ethics Bowl, National Championship, 2008)

## Case 2: Mosquito Teen Deterrent

A device known as the Mosquito ultrasonic teenage deterrent has offered police and business people an effective way to disperse groups of young people.<sup>1</sup> It emits a high pitch sound, around 17.5 to 18.5 kHz, that is only audible to those under the age of 25. All humans suffer from a loss of hearing, most notably occurring around the age of 65. However, as early as 20 years of age, nearly every human can no longer hear the 18 to 20 kHz range due to a natural loss of hearing known as presbycusis. Teens hearing sounds in this range find them annoying and generally disperse within 8 to 10 minutes. Thus, the Mosquito can target a teenage audience and cause them to leave an area rather quickly.

The technology of Mosquito has been touted as an effective way to help prevent vandalism and loitering that can lead to other crimes or to an interruption of business for retail store owners.<sup>2</sup> Since Mosquito's sounds can be broadcast as far as 40 to 60 feet, large groups can be targeted at one time. According to a brochure from the American distributor of Mosquito, Kids Be Gone, the device is not violent and does not hurt. The brochure also suggests that the device may be used to reduce vandalism and theft, and improve quality of life for those "affected by anti social behavior." The effectiveness and popularity of the product led the Wall Street Journal to list it as a "hot dividend stock."<sup>3</sup>

Some suggest, however, that the Mosquito should be banned – they argue that the Mosquito helps perpetrate unfair age discrimination. As reported by TimesOnline.com, "Sir Albert Aynsley-Green, the Children's Commissioner for England... has set up a campaign – called Buzz Off – that is calling for the Mosquito to be banned on grounds that it infringes the rights of young people."<sup>4</sup> He argued that the Mosquito promoted "fear and hatred" of young people and caused greater dissention between young and old.<sup>5</sup> Scottish Children's Commissioner Kathleen Marshall and other civil liberties organizations also joined the Buzz Off campaign.<sup>6</sup>

According to British newspaper columnist, Melanie Phillips of The Daily Mail, however, banning this product would be unconscionable considering the "random savagery and sadism" perpetrated by teenagers in recent days.<sup>7</sup> Retail entities, police, and governmental agencies have also argued to

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<sup>1</sup> Unless otherwise noted, the descriptive information about the Mosquito derived from company websites and brochures, located at: <http://www.kidsbegone.com/>; <http://www.kidsbegone.com/Mosquito-Fact-Sheet-MK11.pdf>; and, [http://www.compoundsecurity.co.uk/teenage\\_control\\_products.html](http://www.compoundsecurity.co.uk/teenage_control_products.html).

<sup>2</sup> "High-Pitch Alarm Quietens Youths," *BBC News*, Jan. 26, 2008.

<http://news.bbc.co.uk/1/hi/england/merseyside/7210923.stm>.

<sup>3</sup> Kazez, Kelly, "New Teen Repellent Has Practical Uses," *The News Courier*, March 4, 2008.

[http://www.enewscourier.com/columns/local\\_story\\_064163144.html](http://www.enewscourier.com/columns/local_story_064163144.html).

<sup>4</sup> Naughton, Philippe, "Kids' Commissioner Calls for Ban on Mosquito, Ultrasonic Anti-Teen Device," *Times Online*, Feb. 12, 2008. Sec. UK News. <http://www.timesonline.co.uk/tol/news/uk/article3356157.ece>.

<sup>5</sup> "Buzz Off! Outcry as Children's Tsar Says Ultrasonic 'Mosquito' Device Is a Breach of Teenagers' Human Rights," *thisislondon.co.uk*, Feb. 14, 2008. <http://www.thisislondon.co.uk/news/article-23437233-details/Hands+off!+Outcry+as+Children's+Tsar+says+ultrasonic+'mosquito'+device+is+a+breach+of+teenagers'+human+rights/article.do>.

<sup>6</sup> Morgan, James, "Campaign to Ban the Teen Tormentor from Scotland," *The Herald*, Feb. 13, 2008. Sec. Politics. [http://www.theherald.co.uk/politics/news/display.var.2039529.0.Campaign\\_to\\_ban\\_the\\_teen\\_tormentor\\_from\\_Scotland.php](http://www.theherald.co.uk/politics/news/display.var.2039529.0.Campaign_to_ban_the_teen_tormentor_from_Scotland.php).

<sup>7</sup> Phillips, Melanie, "Children's Rights? What About the Rights of Those Who Live in Fear of Young Thugs?," *The Daily Mail*, Feb. 19, 2008. <http://www.dailymail.co.uk/debate/columnists/article-515469/Childrens-rights-What-rights-live-fear-young-thugs.html>.

continue use of the Mosquito.<sup>8</sup> Columnist Kelly Kazek even (although admittedly offhandedly) recommends parents using the device to keep their children in line in smaller settings.<sup>9</sup>

The inventor of the product, Howard Stapleton, has chimed in on the debate, as well. He said hopes that government entities will regulate use of the product so that it is only used for legitimate crime prevention purposes, rather than as a means to shoo away unwanted teens.<sup>10</sup>

("Case 6" APPE Ethics Bowl, Regional Competitions, 2008)

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<sup>8</sup> Kilner, Will, "Council Defends Use of Noise Devices," *Telegraph & Argus*, Feb. 13, 2008.  
[http://www.thetelegraphandargus.co.uk/news/2039281.council\\_defends\\_use\\_of\\_noise\\_devices/](http://www.thetelegraphandargus.co.uk/news/2039281.council_defends_use_of_noise_devices/); "No Ban on Mosquito Devices, Government Says," *talkingretail.com*, Feb. 12, 2008.  
<http://www.talkingretail.com/news/8551/No-ban-on-Mosquito-devices-Gov.ehtml>.

<sup>9</sup> Kazek, *supra* n. 3.

<sup>10</sup> "Warning from 'Teen-Repellent' Inventor," *news.com.au*, April 3, 2008.  
<http://www.news.com.au/story/0,23599,23476323-23109,00.html>.

### Case 3: Biofuel

In his most recent State of the Union address, President Bush called for a five-fold increase in biofuel production over the next 10 years.<sup>11</sup> As oil continues to reach record-high prices, and the political landscape in the Middle East grows more violent, finding a sustainable, cheaper and cleaner alternative to fossil fuels seems imperative. Biofuels have been touted by some as a way to finally end U.S. dependence on foreign oil, and reduce our carbon foot-print.<sup>12</sup> However, this naive optimism about the future of biofuels was recently called into question as rising food prices caused riots across the globe.<sup>13</sup>

The production of corn-based ethanol in the U.S., an industry heavily subsidized by taxpayers' dollars,<sup>14</sup> has caused the global price of corn and other grain commodities to rise. The devastating effect of inflated food prices on the global poor has led experts to question the wisdom of using food for fuel. Professor McKnight from University of Minnesota illustrates this tension clearly when he says, "Filling the 25-gallon tank of an SUV with pure ethanol requires over 450 pounds of corn – which contains enough calories to feed one person for a year."<sup>15</sup>

The environmental benefits of corn-based ethanol have also been called into question. Growing corn requires massive amounts of fuel, pesticides and fertilizers, and causes erosion and nitrate depletion of the soil – with the nitrates then contaminating coastal waters and decimating sea life<sup>16</sup> – only to produce a fuel that, compared to gasoline, reduces greenhouse gas emissions by (at most) 26%. Even more worrisome is the fact that as corn becomes a coveted commodity, tropical forests are being clear-cut for its cultivation.<sup>17</sup>

While the U.S. has focused on corn-based biofuels, the rest of the world has been exploring non-food-based alternatives to oil. Cellulose-based biofuels (e.g., waste sugar cane and switchgrass) seem to be the new energy crop, surpassing corn in environmental benefits. It has been estimated that "cellulosic ethanol could reduce greenhouse gas emissions up to 87 percent."<sup>18</sup> Yet, even if the production of

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<sup>11</sup> Mouawad, Jad, "Oil Industry Says Biofuel Push May Hurt at Pump," *The New York Times*, May 24, 2007. <http://www.nytimes.com/2007/05/24/business/24refinery.html?hp>.

<sup>12</sup> Walsh, Bryan, "Solving the Biofuels vs. Food Problem," *TIME*, Jan. 7, 2008. <http://www.time.com/time/health/article/0,8599,1701221,00.html>.

<sup>13</sup> Martin, Andrew. "Food Report Criticizes Biofuel Policies," *The New York Times*, May 30, 2008. Sec. Business / World Business. <http://www.nytimes.com/2008/05/30/business/worldbusiness/30food.html>.

<sup>14</sup> Karetnikov, Daria, Elizabeth Skane, and Abdel Abellard. "How Far Can Corn Take Us? Evaluating the Impacts of Ethanol: Final Report," *National Center for Smart Growth Research & Education, University of Maryland*. 2007. <http://www.efc.umd.edu/pdf/EthanolFinalReport010208.pdf>.

<sup>15</sup> Runge, C. Ford and Benjamin Senauer, "How Biofuels Could Starve the Poor," *The New York Times*, May 7, 2007. [http://www.nytimes.com/cfr/world/20070501faessay\\_v86n3\\_runge\\_senauer.html?pagewanted=print](http://www.nytimes.com/cfr/world/20070501faessay_v86n3_runge_senauer.html?pagewanted=print).

<sup>16</sup> Potera, Carol, "Corn Ethanol Goal Revives Dead Zone Concerns," *Environmental Health Perspectives*, Volume 116, Number 6, June 2008. <http://www.ehponline.org/docs/2008/116-6/EHP116pa242PDF.PDF>.

<sup>17</sup> Runge, supra n. 5.

<sup>18</sup> Clayton, Mark, "The Race for Nonfood Biofuel," *The Christian Science Monitor*, June 4, 2008. <http://features.csmonitor.com/environment/2008/06/04/the-race-for-nonfood-biofuel/>.

cellulose-based fuels ever becomes commercially viable, it is unclear whether it will be able to satisfy the escalating world demand for fuel.<sup>19</sup>

("Case 8" APPE Ethics Bowl, Regional Competitions, 2008)

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<sup>19</sup> Mouawad, Jad. "The Big Thirst," *The New York Times*, April 20, 2008. Sec. Week in Review.  
<http://www.nytimes.com/2008/04/20/weekinreview/20mouawad.html?scp=10&sq=oil%20consumption%20more%20cars%20china&st=cse>.

#### **Case 4: Google Health**

A number of companies offer to store personal health records on the Web. Companies in this business hope to capitalize on the huge market of interested consumers seeking online health information and controlled health spending. The newest entry is Google Health with its technical know-how, deep pockets, and familiarity to consumers. A trial of Google's program with Cleveland Clinic patients was quickly oversubscribed, quelling fears that patients would worry about the security of their records.

Google Health users will create their own electronic medical record online, with the capability to enter and manage health information and access it online from anywhere. This portable medical record will be accessible regardless of doctor, moves, insurance changes, etc. The record can be set to send reminders to refill prescriptions and schedule return medical visits. Permission from the patient is required to access the patient's record; however, there are important exceptions noted in the Google Health Terms of Service and Sharing Authorization to which users must agree when they sign on for the service. Google Health is free to users.

Experts have long touted electronic medical records as a way to overcome the lack of coordination among health care providers. In addition, electronic records provide patients and providers with search capability linking information in the patient's records with information about health care alternatives, thereby giving patients more control over their health care choices. Access is available to patients, and to providers with patient consent.

Google Health allows the patient to determine what information is shared with medical providers and pharmacies. Currently it does not sell advertisements. A variety of health care institutions, pharmacies, and organizations have non-exclusive partnerships with Google, integrating their technologies to allow information to flow back and forth.

The fear of a loss of privacy tempers excitement about a Google-mediated record. Google vows that patients have complete control over their records. Patients decide who may see their records, and they have the option to delete their records completely. The Google Health Privacy Policy (available at its website) promises "Google will not sell, rent, or share your information (identified or de-identified) without your explicit consent, except in the limited situations described in the Google Privacy Policy, such as when Google believes it is required to do so by law." Critics point out that if medical records are not protected, others might use the information to harm the patient: employers to deny jobs, insurers to deny health coverage, financial institutions to deny, universities to deny admission, and so forth.

Fear of commercial exploitation also raises concerns, especially since Google Health skirts the issue on its FAQ's page about how it will make money on this free-to-consumer product. A program patent has been filed on behalf of Google Health allowing pharmaceutical, medical device, and service advertisements related to the patient's record to pop up when either the patient or a provider (permitted by the patient) views the medical record, much as ads related to email content show up on pages of Gmail. Visibility is a key factor in the influence of information on decisions and behaviors. The



positioning of information is not an accident, and it is likely that the assignment of premium web space will be determined not by the medical relevance of information, but by commercial interests. The patented program would allow this advertising feature to be disabled by the patient, but in the patent application, Google Health points out that insurance companies might raise premiums if people did this. The power of industry-supplied information from drug representatives to physicians has long been criticized. The broader influence of such information targeted at both the provider and the patient is hard to overestimate.

Google Health's privacy policy (to which users must agree) includes the following statement:

When you provide your information through Google Health, you give Google a license to use and distribute it in connection with Google Health and other Google services. However, Google may only use health information you provide as permitted by the Google Health Privacy Policy, your Sharing Authorization, and applicable law. Google is not a "covered entity" under the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder ("HIPAA"). As a result, HIPAA does not apply to the transmission of health information by Google to any third party.

When the user opts in to having information shared, Google says this:

We provide such information to our subsidiaries, affiliated companies or other trusted businesses or persons for the purpose of processing personal information on our behalf. We require that these parties agree to process such information based on our instructions and in compliance with this Policy and any other appropriate confidentiality and security measures.

Elsewhere in the Privacy Policy, Google specifies the following:

If Google becomes involved in a merger, acquisition, or any form of sale of some or all of its assets, we will provide notice before personal information is transferred and becomes subject to a different privacy policy.

("Case 4" APPE Ethics Bowl, National Competition, 2009)

### Case 5: Brother, Where Art Thou?

Citywatcher.com, a company that provides security surveillance equipment, sought a way to limit access to a vault containing sensitive data. It implanted a product called VeriChip in the arms of two of its employees. The VeriChip is a radio frequency identification device (RFID), a microchip about twice the length of a grain of rice that is implanted quickly and painlessly by a physician. It emits a code when scanned by special equipment at the vault's door, reading the 16-digit ID number that cross-references to a record in VeriChip's database.

RFIDs have been widely used for libraries, credit cards, roadway tolls, and other applications. The VeriChip Corporation of Delray Beach, Florida, has also made implantable chips that are widely used in pet dogs and cats so they can be identified if they get lost. The use of microchips in humans, however, has raised a number of concerns.

Critics worry that more and more uses will be found for the chips. They worry that a massive national database could be compiled, even though public opinion has consistently discouraged a national ID and its resulting comprehensive database. Critics also point out that inexpensive, handheld wireless readers can detect the numbers on the chips, leading to more privacy invasions. They worry that hacking or employee error could breach the security of such an extensive database. And even if it is secure and private now, government policy could change in the future, making the database available to government agencies and other parties.

Critics are concerned that chips may have health impacts. However, reports linking tumors with the VeriChip in a small percentage of animals have not been sufficiently documented to lead the US Food and Drug Administration to lift its approval of the device as safe for humans.

Involuntary implantation has been especially contentious. Controversy surrounds suggestions to implant chips in prisoners, guest workers, immigrants, newborns, Alzheimer's patients, and other vulnerable individuals. Advocates of 'chipping' contend that the advantages outweigh the disadvantages, particularly for specialty security and medical uses. In fact, VeriChip has a variety of new product lines aimed at medical uses for storing medical information, tracing Alzheimer's patients, and tracing chemicals in cardiovascular applications, among others.

CityWatcher.com is not the first employer to require 'chipping.' The Attorney General of Mexico required his staff to be 'chipped' to access a vault of secure documents.

The potential uses of the chips worry many people. Several states have proposed legislation to prohibit involuntary use of the RFID devices in humans. In Pennsylvania hearings, VeriChip Corporation has made a clear statement supporting a law to ban involuntary implantation. States will need to determine whether employment-required implantation infringes on an employee's free choice, especially in an economy with scarce jobs.

("Case 10" APPE Ethics Bowl, National Competition, 2010)

## Case 6: Roach Baiting

John liked hanging out in the Starbucks near his apartment because mostly people his age patronized it. He knew all the regulars, so he couldn't help but notice the attractive, serious, twenty-something who sat at a table next to him. She sipped her cappuccino for a few minutes until a ringtone distracted her. She opened her purse and pulled out a small metal tablet that she unfolded into a mat the size of a dinner napkin and laid on the table. Her face lit up from the tablet's glow. She swept her hand over the tablet and said, crisply, "I told you, Phil, I need to take a break from us. Don't call me again." A man's voice tried to say something, but she smacked the tablet and his voice gave way to a dial tone.

Obviously irritated, she started tapping and swishing her hand across the tablet. John couldn't see what was happening, but the lighting on her face kept changing, as though from a computer screen. Finally, his curiosity got the better of him and he leaned over toward her table. When he got close enough, he could see that the woman's hand controlled holographic objects that she could move from one spot to another and manipulate in the tablet. With a wave of her hand, she opened what looked like an address book and spoke to it. "Open, Phil Gossett." The book fell open and pages turned on their own. "Delete entry, Phil Gossett." The image of the open page burst into flame and disappeared in a puff of holographic smoke.

"Whoa!" said John. "What is that?"

The woman looked up and noticed him for the first time. She smiled. "Oh, it's this new IEB-Pad I got last week. Pretty, cool, huh?"

"How does it work? I'm sorry, I'm John. Do you mind if I sit here?"

"No, that's fine. I'm Sylvia. I have to go pretty soon, but I have a few minutes."

John pulled up a chair and was soon playing with the gesture-and-voice-activated ultra-thin holographic computer. At one point, while browsing one of John's favorite gaming sites, she said, "Watch this. Command: Block Ads!" All the advertisements blinked off and only the web content remained.

John nodded delightedly. "Now that's more like it. I can't stand ads. They make me puke."

An hour later, Sylvia excused herself from the group that had gathered around her table. She folded up the IEB-Pad, tucked it into her purse, and left. In her car, she checked off "Starbucks" from a list taped to her windshield visor, and said to her IEB-Pad, "more bait distributed." Ten minutes later, while she sat in another coffee shop, her IEB-Pad rang. "I told you, Phil, I need to take a break from us. Don't call me again."

("Case 12" APPE Ethics Bowl, National Competition, 2010)