Legal disputes over advertising seldom get much public attention, but a recent decision out of the U.S. District Court for the District of Columbia was an exception: It made headlines.

In a controversial preliminary injunction, Judge Richard Leon blocked the Food and Drug Administration from forcing cigarette brands to place gruesome photos of blackened lungs and cancer-riddled corpses on its packs—a mandate that was to have gone into effect this September. Warning labels were one thing, the court said, because they were statements of empirical fact. But the proposed images, emotional and deeply disturbing, constituted “commercial speech” and as such were an effort to force a brand to advertise against itself. The FDA has since appealed, and some legal experts say that this case may well end up in the Supreme Court.

Until it does, however, the case has resurrected a larger issue that’s one of marketing’s most enduring hot potatoes: the use of explicit images to get consumers’ attention—also known as “shockvertising.”

Shock tactics have been around for awhile. Though some of the material may seem relatively tame today, the commercial featuring the 15-year-old topless Brooke Shields confessing that nothing came between her and her Calvin Klein jeans dropped many jaws in 1980, as did the Partnership for a Drug Free America’s “This is your brain on drugs” in 1987. (That spot showed a man cracking an egg on a hot frying pan.)

While some have argued that shockvertising had been done to death by the end of the ‘80s, that hasn’t stopped brands from playing the shock card, from fashion label Mangano’s bisexual orgy ads (2009) to Federici ice cream ads depicting a pregnant nun (2010) to dark-horse presidential candidate Terry Randall’s ad for the Super Bowl, featuring dead and dismembered fetuses (2012), banned just days before the game. Why do so many still use it?

That’s probably an obvious one. For as much as the Web may have toughened the societal skin to amateur porn and gross-out videos, graphic images still stand out in a crowded media landscape. According to a white paper presented in London last year at the Center for Innovations in Business and Management Practices, “Advertising agencies are facing difficulties in reaching the customer effectively, so they are using shock advertisements to pierce through this data clutter.”

But the piercing can be tricky. Images that may have offended a generation ago are ubiquitous today, which means brands looking to shock must keep increasing the voltage. “The identification with and understanding of metaphor has increased so much that you need to ratchet things up, keep pushing the envelope,” says psychologist Robert Passikoff, founder and president of consultancy Brand Keys. As veteran adman Ray Black has written, “The major flaw in shock strategy is that it’s like a drug. You have to increase the dose …to remain visible, but there’s a limit to how much of that the public will cop.”

Indeed, there is a limit. Though nearly a third of consumers believed that shock value was an “effective” advertising tool, according to a Media Curves poll conducted in 2009, 58 percent of consumers preferred messages containing wit and humor. Shockvertising’s critics also note that while the tactic turns heads, there’s a big difference between generating attention and generating sales.

This is probably why many branding consultants are lukewarm on shockvertising when asked if it’s an effective and reliable way to build a brand’s reputation and bottom line. “The percentages on it are no better than with any other kind of advertising,” says Hayes Roth, chief marketing officer at global brand consultancy Landor.

“Reliable? It’s clearly going to be very unreliable as far as what’s going to happen when you shock people,” adds marketing consultant Julia Beardwood of Beardwood & Co. “It gets people to pay attention—but how do you quantify that?” asks Rick Barrack, chief creative officer of brand consultancy CBX.

You can’t. But you can draw some conclusions from the textbook cases to follow. As the FDA/tobacco case slowly snakes its way through the courts, we decided to look back at a few of the more famous shock ads of the past two decades—and evaluate just how well (or not) they did their jobs.

1. Deadly Smoking Pics (2011) When President Obama signed the Family Smoking Prevention and Tobacco Control Act into law in 2009, the FDA gained the authority to regulate the sales of cigarettes. In the summer of last year, the FDA selected nine compulsory images tobacco brands were to display, including a black lung, a mouth
riddled with cancerous lesions and a bare-chested male cadaver. Not only did the FDA require the photos to appear on the top halves of cigarette packs (front and back), the agency admitted that the photos had been digitally manipulated to make them ghastlier. The tobacco brands fought back last August, and the legal ball remains in play. “By no means is this over,” says civil liberties litigator Daniel Schwartz, who works for renowned activist attorney Harvey Silverglate. What’s most interesting about the graphic images, Schwartz says, is that “the FDA doesn’t even think they’ll reduce smoking that much.” In fact, the FDA’s own analyst admitted: “Estimation of the effectiveness [of the graphic images] is subject to a large uncertainty.” Stay tuned on this one.

2. Four Nuns and a Naked Adonis (2008) In 2008, working with its new agency Fallon Worldwide, Minneapolis, the upscale fitness-club chain Equinox launched a campaign titled “happily ever...” Most of the glossy magazine ads were the fleshy sort of thing you’d expect from a health club. But one of them—which debuted in Boston magazine that January—was a bit more. The ad portrayed a surreal art class where students sketching the naked male model happened to be nuns, one of whom was wearing a garter belt. Equinox corporate called the ad “thought-provoking” and a “blending of fantasy and impact.” Well, they got the impact part right. The Catholic Action League slammed Equinox for its “callous contempt for the sensibility of Catholics,” and, while the ad disappeared soon after, the controversy itself spread as far as newscasts in Hawaii. Branding consultant Julia Beardwood (who has worked with Equinox, though not on this campaign) ventures that “the ad didn’t harm them in any way, even when they backed down. It got people talking, so there was probably a benefit.”

3. Burger King’s “Seven Incher” (2009) Burger King, like most restaurant chains, skews conservative. However, 90 percent of its 12,300 locations are franchised, which makes it hard to police local campaigns. When a franchisee in Singapore thought it would be funny to create ads that took cues from a pornographic video box, the resultant firestorm erupted here in the U.S., on Fox News. A BK rep assured it that the chain “values and respects all of its guests”—and, incidentally, that the ad “generated positive consumer sales” in its market. But one franchisee’s revenues likely didn’t compensate for the overall PR damage. “Maybe they were thinking…they’d get attention they normally wouldn’t get for a new product,” says Brand Keys’ Robert Passikoff. Well, they sure got that much.

4. Basement Porn at Calvin’s House (1995) Calvin Klein, Landor’s Hayes Roth observes, “is always on the edge of taste.” He doesn’t mean the cutting edge; he means borderline tasteless. In 1995, the fashion brand fell off the cliff. Then again, after cramming Mark Wahlberg into too-tight briefs and shooting a naked, emaciated Kate Moss for Obsession, the only place to go was down. So Klein debutaed a campaign featuring stripping adolescents in sequences that evoked ’70s basement porn, complete with a sleazy, off-camera voice telling the kids not to be nervous. The U.S. Justice Department investigated, and the brand retreated. But Klein came out ahead. While the American Family Association launched a boycott, its members weren’t Klein’s core demo anyway. As TBWAChiatDay’s Marian Salzman, then an agency director, said, the scandal pushed the brand’s “coolness factor from a 10 to a 60.”

5. The Killer Advertising of Benetton (1982-2000) Benetton’s (former) creative director, Oliviero Toscani, has used some of the most shocking images ever seen in American advertising—but Benetton always slipped by with the defense of promoting political awareness and social equality. But in 2000, the Italian label misread its American audience. Ads featuring portraits of inmates awaiting capital punishment were supposed to show the barbarity of the death penalty. Instead, consumers felt it celebrated murderers. Victims’ rights groups protested. Missouri’s prison system sued. Sears banned the brand. Toscani resigned. Today, Benetton is back to PG-13 themes.