



BE MORE ALERT ABOUT ADVERTISING

Last Reviewed: 16 March 2012

DISCLAIMER: This handout has been produced by the office of the Staff Judge Advocate, 66 ABG/JA, Hanscom AFB, MA 01731. This handout is for general guidance only. It is not meant to be a substitute for legal advice and it cannot be cited as legal authority. Before taking any action, you should consult an attorney for guidance.

OVERVIEW

You see advertising every day. In the newspapers, magazines, television, even on the Internet. When the seller promises something about the product, be a cautious buyer/consumer, and always remember the saying "it's too good to be true." Under the Federal Trade Commission Act:

- Advertising must be truthful and non-deceptive;
- Advertisers must have evidence to back up their claims; and
- Advertisements cannot be unfair.

Additional laws apply to ads for specialized products like consumer leases, credit, 900 telephone numbers, and products sold through mail order or telephone sales. And every state has consumer protection laws that govern ads running in that state.

SPECIFIC PROTECTIONS

What makes an advertisement deceptive?

The FTC considers an ad deceptive if it contains a statement, practice or omission that

- Is likely to mislead consumers acting reasonably under the circumstances—if the statement, practice or omission is directed primarily to a particular group, reasonableness is viewed from the perspective of the targeted group—and
- Is "material"—meaning important to a consumer's decision to buy or use the product.

What makes an advertisement unfair?

The FTC considers an ad or business practice unfair if it either

- Sufficiently injures consumers, which occurs if
 - the practice causes or is likely to cause **substantial** consumer injury which a consumer could not reasonably avoid, and
 - it is not outweighed by the benefit to consumers or competition generally; or
- If the practice violates public policy under statute, common law, industry practice or otherwise.

Bait and Switch Advertising

DISCLAIMER: This handout has been produced by the office of the Staff Judge Advocate, 66 ABG/JA, Hanscom AFB, MA 01731. This handout is for general guidance only. It is not meant to be a substitute for legal advice and it cannot be cited as legal authority. Before taking any action, you should consult an attorney for guidance.

It is illegal for a company to advertise a product or service with an intent not to sell the advertised product or service, but rather to induce the consumer to buy a different product or service, usually at a higher price, or one similar but of lesser value. That the company ultimately honors the advertisement does not preclude the existence of a bait and switch scheme.

Contests and Sweepstakes

Sweepstakes-type promotions that require a purchase by participants are illegal in the United States. Other agencies, including the United States Postal Service and the Federal Communications Commission, also enforce federal laws governing contests and prize promotions. Each state may also have laws that require promoters to make disclosures, seek licensing, or post a bond. Since state laws vary, check with the Attorney General's Office in the state(s) in which you plan to advertise. If a contest or promotion involves telephone calls, the FTC's Telemarketing Sales Rule requires specific disclosures, such as the odds of winning a prize, how to participate without buying anything, and that no purchase or payment is required to win. If pay-per-call services are involved, the FTC's 900 Number Rule requires certain disclosures.

Endorsements and Testimonials

Endorsements may not contain representations that would be deceptive, or could not be substantiated, if the advertiser made them directly.

- Endorsements by consumers must reflect the typical experience of consumers who use the product, not the experience of just a few satisfied customers. If an endorsement doesn't reflect users' typical experience, the ad must clearly disclose either what consumers can expect their results to be or the limited applicability of the endorser's experience. Saying "Not all consumers will get these results" or "Your results may vary" is not enough.
- Celebrity endorsements must reflect the honest experience or opinion of the celebrity; the celebrity must use the product if the advertisement so claims. Once a celebrity has endorsed a product, the advertiser has an obligation to update the endorsement to reflect any relevant changes in the endorser's opinion.
- Expert endorsements require sufficient qualifications to be considered an expert in the relevant field of expertise—being an expert isn't enough. Expert endorsements must be supported by actual product evaluation, examination, or testing of the kind that other experts in the relevant field accept to support the conclusions in the endorsement.
- Advertisers also must disclose any material connection between a person endorsing a product and the company selling the product. A "material connection" is defined as a relationship that might affect the weight or credibility of the endorsement. For example, if an endorser is an employee or relative of the advertiser, the advertiser must disclose that fact. So too must an advertiser disclose if a consumer has been paid for giving an endorsement.
- If an organization provides an endorsement, it must be reached by a process sufficient to ensure that the endorsement fairly reflects the collective judgment of the organization. The expert endorsement rules apply to organizations providing expert endorsements.

"Free" Claims and Rebate Offers

When a product or service is offered "free" with the purchase of another product or service, the price of the purchased product or service should not be increased from its regular price. The regular price means

DISCLAIMER: This handout has been produced by the office of the Staff Judge Advocate, 66 ABG/JA, Hanscom AFB, MA 01731. This handout is for general guidance only. It is not meant to be a substitute for legal advice and it cannot be cited as legal authority. Before taking any action, you should consult an attorney for guidance.

the price given the same quantity, quality, and with the same service, as sold in the local area in the regular course of business. In addition, if a product or service is advertised as "free" or is offered at a low cost in conjunction with the purchase of another item, the ad should clearly disclose the terms and conditions of the offer. Terms that affect the price should be disclosed near the advertised price.

Ads that include rebate promotions should prominently state the before-rebate cost and the rebate amount so that consumers know their actual out-of-pocket cost. Rebate promotions also should clearly disclose any additional terms and conditions that consumers need to know, including the key terms of any purchase requirements, additional fees, and when consumers can expect to receive their rebate.

Guarantees

Ads mentioning a product guarantee or warranty should clearly disclose how consumers can get the relevant details of the guarantee or warranty. Any conditions or limits on the guarantee or warranty (such as a time limit or a requirement that the consumer return the product) also must be clearly disclosed in the ad. Companies also must make warranties available to consumers before any sale, including retail sales, sales by phone or mail, and online transactions.

A company offering a guarantee of satisfaction must return the full purchase price at the buyer's request and must clearly disclose any material limitations to the satisfaction guarantee. Finally, lifetime guarantees must clearly disclose the relevant life span.

Leasing

The Consumer Leasing Act and Regulation M include specific rules that apply to ads for consumer leases. For example, if a lease advertisement includes certain terms—such as the amount of any payment due before or at lease inception—the ad also must make other mandatory disclosures about the terms of the lease clear and conspicuous. These rules also apply if the ad contains phrases like "no money down" or "no down payment."

Made in the U.S.A.

A product has to be "all or virtually all made in the United States" for it to be advertised or labeled as "Made in the U.S.A."

For More Information

The FTC works for the consumer to prevent fraudulent, deceptive, and unfair practices in the marketplace and to provide information to businesses to help them comply with the law. Much of the information provided above can be found in more detail online at <http://www.ftc.gov/bcp/guides/guides.shtm>.

The FTC enters Internet, telemarketing, identity theft, and other fraud-related complaints into Consumer Sentinel, a secure online database available to hundreds of civil and criminal law enforcement agencies in the U.S. and abroad. To file a complaint or get more information on consumer issues, visit ftc.gov or call toll-free, 1-877-FTC-HELP (1-877-382-4357); TTY: 1-866-653-4261.

CONSUMER PROTECTION LAWS

Here are some laws that you should know about.

Fair Credit Billing Act: The FCBA requires that the credit billing agencies (usually of the seller)

DISCLAIMER: This handout has been produced by the office of the Staff Judge Advocate, 66 ABG/JA, Hanscom AFB, MA 01731. This handout is for general guidance only. It is not meant to be a substitute for legal advice and it cannot be cited as legal authority. Before taking any action, you should consult an attorney for guidance.

promptly respond to consumer billing complaints in writing and investigate all billing errors.

Truth in Lending Act: The TILA requires that creditors who deal with consumers disclose information about finance charges and other related aspects of credit transactions. This disclosed information should be in writing.

Equal Credit Opportunity Act: The ECOA prohibits lenders from discriminating against the consumer on the basis of race, color, national origin, religion, age, marital status, sex or receipt of public assistance.

Consumer Leasing Act: The CLA, which regulates leases exceeding four months, requires that certain lease costs and terms be disclosed to the consumer. This lease must concern property to be used for the consumer's personal purpose, like family or household purposes.

Fair Credit Reporting Act: The FCRA requires that consumer reporting agencies, such as credit bureaus, provide confidential and accurate information only to creditors or others authorized to know about the consumer's credit history.

Electronic Fund Transfer Act: The EFTA requires that participants abide by certain accepted practices when they deal in transactions involving preauthorized transfers and error resolutions.

Consult an attorney for more information.