

Advertising red flags: What to avoid

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For marketing to be effective, in addition to reaching your customers, it also must comply with regulatory requirements. The Consumer Financial Protection Bureau (CFPB) and the Federal Trade Commission (FTC) enforce the prohibition against deception, including in advertising, under the Dodd-Frank Act and the Federal Trade Commission Act. Additionally, states' attorneys general (AG) may enforce prohibitions against deception, and companies, under the Lanham Act, also may bring suit to allege false advertising against other companies. Regulation Z, moreover, requires that disclosures be provided when triggering terms — e.g., the payment period or the amount of any payment — are used.

Penalties for violating these standards have included cease-and-desist orders requiring companies to stop running the ads and to substantiate future claims; civil penalties and consumer redress, including full or partial refunds to consumers who bought products based on the ads; and corrective advertising to revise the original ads' claims, notify purchasers about the previous ads' deception, and make specific disclosures in future ads.

Some significant advertising cases brought by the FTC, CFPB, and AGs include the following:

- In 2019, California's attorney general sued a dealer for convincing consumers to purchase extra add-on products, such as service contracts and GAP insurance, by telling customers that these add-ons were required by law, or by simply concealing the extra charge. Additionally, the company ran advertisements on television, radio and the internet promising low-interest rates for consumers who wouldn't normally qualify for such rates.
- In 2018, Pennsylvania's attorney general announced 20 actions against dealers for failing to disclose that sales were being conducted by a dealer, as required under Pennsylvania law. All dealers advertised on Craigslist as individual sellers.
- In 2016, a manufacturer settled the FTC largest false advertising case to date, providing up to \$10 billion to owners and lessees of nearly 500,000 diesel cars that, the company claimed, had low levels of harmful emissions, but did not.
- In 2015, as part of "Operation Ruse Control," the FTC settled with three dealers regarding deceptive advertising allegations that also violated the Truth in Lending Act and the Consumer Leasing Act. According to the FTC, the ads promoted sales, lease or financing options that were canceled out by fine-print disclaimers. In other instances, the disclaimers did not disclose relevant terms, such as required down payments. Operation Ruse Control included more than 250 enforcement actions that resulted in more than \$2.6 million in judgments across six states.
- In 2014, the FTC concluded "Operation Steer Clear," claiming that 10 dealers deceptively used footnotes to disclose: that an additional amount was required to get the advertised price; that the advertised payments

substantially increase after a few months; that 0% down includes acquisition and dealer fees due at lease inception; that the advertised “0% Interest” rate was limited, rendering it insufficient to finance the promoted vehicles; and claiming that consumers could get out of their current loan or lease for \$1.

- In 2013, the CFPB brought an enforcement action for deceptive marketing and Regulation Z disclosure violations. The CFPB alleged the companies were responsible for deceptively understating the costs of the vehicle service contract and GAP insurance; and for misrepresenting the extent of the GAP coverage. Additionally, the CFPB alleged the bank failed to disclose a monthly processing fee as part of the finance charge, annual percentage rate, and total payments for the loans.

Building a compliance infrastructure that includes reviews of all advertisements prior to their publication will help to cultivate repeat customers who know you truly deliver on what you advertise. And regulators will know it, too.

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