

MARKETING FEATURE:
Five Steps That Protect Your Ads

Advertising And the Law

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In Brief: Advertising can be a "Catch-22" for any company. Without strong and effective advertising campaigns that set you apart from the competition, you can't maximize sales. Yet, the same high-impact advertising that attracts customers may also attract legal trouble for your firm. By following the legal principles set forth in this article, you can make sure advertising works for your company without subjecting you to potential litigation. (Then turn to the Executive Forum on page 70 for interviews detailing other real-life corporate brushes with advertising law.)

The label on the can of chicken read, "No bones." But a customer disagreed, saying that the can of chicken that he purchased did contain a bone. The customer insisted that the bone became lodged in his throat and that, as a result, he had to undergo surgical treatment. The customer filed a lawsuit against the manufacturer of the canned chicken, seeking damages, contending that the label on the can, as well as newspaper advertisements featuring the product (that also promised boneless chicken), constituted an "express warranty" that the product was, indeed, boneless. The court agreed with him.

As this case indicates, advertising can be risky. It requires more than creativity and knowledge of the sales process. An understanding of the law is also necessary. Here are five legal guidelines to keep in mind

when preparing advertising or promotional materials.

PRODUCT CLAIMS

Rule 1. Watch what you say about your product.

Basically, there are two kinds of product claims that are potentially troublesome for advertisers: express warranties and false or misleading statements.

Express warranties. For an advertiser's claim to be regarded as an express warranty, it must promise more than "the best" or a "great buy." (Such vague, superlative statements are usually considered by the courts as "harmless puffery" or "company opinion"; potential purchasers are expected to place little credence in them.)

Express warranties, on the other hand, affirm a specific fact about a product to that product's purchaser. For example, one manufacturer's claim that its windshield was made so that "it will not fly or shatter under the hardest impact" and a builder's promise that its towers "could safely withstand the maximum wind velocities and ice loads to which they are likely to be subjected" were judged to be express warranties.

While it is possible for you to disclaim any express warranties made in your product's advertisements, it is difficult to do so. The best strategy, therefore, is to avoid the problem altogether by carefully reviewing ads, as well as brochures, labels, catalogs, direct mail letters, and other written materials used to promote your products. Make sure they contain only statements that you can *prove*.

False or misleading statements. The federal Lanham Act prohibits advertisers from falsely describing their products and allows competitors—but not consumers—to sue. Recent amendments to the Lanham Act also make it unlawful for a company to describe a competitor's product falsely. (See Rule 3.)

For example, the Coca Cola Company successfully sued Tropicana Products several years ago under the Lanham Act. A television commercial for Tropicana showed Bruce Jenner squeezing an orange while saying, "It's pure, pasteurized juice as it comes from the orange." He then poured the fresh-squeezed juice into a Tropicana carton while the audio stated, "It's the only leading brand not made with concentrate and water."

Coca Cola, which makes Minute Maid orange juice, complained that the commercial was misleading because it incorrectly represented that Tropicana's juice was unprocessed fresh-squeezed juice when in

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