



U.S. Federal Trade Commission

FTC's Role in Regulating and Monitoring Advertising

June 10, 2008

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History of the FTC

- Created to enhance consumer welfare
- Promotes consumer welfare by intervening in, and only in, cases of “market failure”
- Combined missions work hand-in-hand to achieve the goal of enhancing consumer welfare
 - Competition
 - Consumer Protection

A Short History

- 1914: FTC started as a competition agency: “Unfair methods of competition”
- 1930s: Deceptive selling and distorted markets
 - If one competitor engages in deceptive selling and the others do not, then those other competitors will lose sales to the one engaging in deception. Creates “race to the bottom.”
 - FTC tried to use competition law to remedy this problem, but proof of injury to competition was difficult
- 1938: “Unfair and deceptive acts and practices in commerce” prohibited
 - The basis of consumer protection at FTC



The Situation Today

- In Fiscal Year 2006: 55% of FTC resources were spent on consumer protection and 45% on competition.
- FTC focuses on consumer protection when it affects the working of markets .
 - Advertising, Fraud, Internet, Consumer Credit
- Individual disputes handled elsewhere.

Organization of the FTC

- Commission is comprised of 5 Commissioners.
 - No more than 3 from any one political party
 - Appointed by the President and approved by the Senate
 - 7 year terms that begin at different times



Organization of the FTC

- Three Primary Bureaus
 - Competition
 - Consumer Protection
 - Economics
- Each Bureau is divided into Divisions.



Organization of the FTC

- Some additional offices within the agency:
 - Office of the General Counsel
 - Office of Policy and Planning
 - Office of Congressional Relations
 - Executive Director



The FTC Act

(15 U.S.C. § 41 et seq.)

- The Statute that governs advertising and marketing of most products and services in the U.S. is the Federal Trade Commission Act (“FTC Act”).
- Statute of general jurisdiction

The FTC Act

- The FTC Act prohibits:
 - Unfair and deceptive acts or practices, and
 - false advertising likely to induce the purchase of foods, drugs, and devices
- The FTC Act only covers practices in business - not political, artistic, or social speech.

Jurisdictional Reach

- FTC has jurisdiction over foreign companies and individuals if it can be shown that they conducted business in the United States.
 - All or any part of the conduct or transaction occurred within the United States
 - Any person to whom the conduct is directed is in the United States
 - Advertising, promotional, or labeling material is accessible to consumers located in the United States who can purchase products referred to in the material
 - FTC works with foreign government agencies on cross-border fraud

The FTC Act

- Acts or practices covered by the FTC Act include:
 - False oral or written representations
 - Unsubstantiated claims
 - Misleading claims – these include truthful statements that, in context, may deceive consumers
 - Sales of hazardous or defective products or services without adequate disclosures



FTC “Tools” for Regulating Advertising

- Law Enforcement
- Trade Regulation Rules
- Business Guides
- Consumer and Business Education
- Self-Regulation



Law Enforcement

- A “case” is a formal law enforcement action.
- A “case” can be filed in court or handled through an administrative process.
 - Defendants may contest and litigate, or
 - Defendants may settle and agree to an order.
- Every year, the FTC brings between 100 and 200 cases.
- Most often, the defendants settle before the case is filed.

Cases

- Using a case-by-case approach allows the FTC to conduct a complete factual investigation
- It is a very good approach for learning about a new practice or kind of product.
 - Example: When we open a case to look at advertising for a pill promoted for a health benefit, we interview experts and get a thorough understanding of the scientific information about the ingredients in that pill. It also helps us decide what kind of order is appropriate for that kind of practice or product.

Cases

- Disadvantages of cases: Cases are time-consuming.
- Cases usually permit us to address only one business (or one group of related persons and businesses) at a time.
- Other businesses may not understand that the theory underlying the case applies to them, too.

Cases



- Some cases are resolved through more informal tools:
 - Advisory letters
 - Closing letters

Rules

- A rule is a written statement of how the FTC interprets the FTC Act in a particular context. A rule outlines acceptable and unacceptable conduct that applies to all businesses, or all businesses in a particular industry. A rule tells a wide range of businesses what they should and should not do. If a business or individual violates a rule, we can bring a case against it.
- Example: The Retail Food Store Advertising and Marketing Practices Rule prohibits food stores from advertising merchandise to consumers at a stated price if those stores do not have the advertised products in stock and available to consumers during the period of the advertisement unless the advertisement clearly discloses that supplies are limited.

Rules

- An advantage of a rule is that it sets a common standard of behavior for a wide range of businesses.
- A disadvantage is that rules cannot be easily changed when change is required.
- Generally, promulgating rules is very time and resource-consuming.

Guides

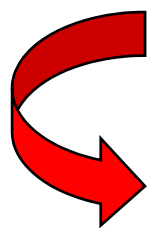
- There are two kinds of guides:
 - Commission Guides
 - Staff Guides
- A guide is a written statement explaining to businesses how the Commission or the FTC staff thinks the law will apply in particular circumstances.
- Sometimes, when we have brought a large number of cases in a particular area, we write a guide that sets forth, in one place, the understanding that businesses should take from those cases.
 - **Example:** We have brought many cases involving health claims for food and health claims for dietary supplements. We used what we learned from these cases to prepare guidelines for advertisers of food, and guidelines for advertisers of dietary supplements.

Guides

- Disadvantage: Guides are not enforceable. We can only bring a case against a business that acts inconsistently with a guide if its actions also violate the FTC Act.
- Advantage: Because guides are not enforceable, they allow businesses more flexibility in acting when they encounter new situations that the FTC may not have considered when it wrote the guide.

Consumer Education

- Consumers who have been educated about potentially deceptive or confusing business practices are better able to protect themselves from harm. The FTC has prepared consumer education materials on many consumer protection topics.
 - Business Briefcase Disks contain a number of our educational materials.
- The materials are in the form of interactive Internet pages, pamphlets, and speeches. They can be accessed from our website and are available also on a CD-ROM.



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Order Today!

You've read about products like this in the news. You've seen them on TV. To a little distribution, FatFoe™ is available ONLY on the internet. You can't buy it in stores. ORDER today while supplies last.

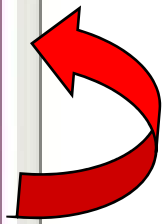
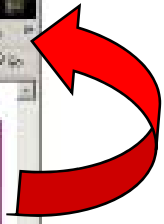
Take this quiz to find out if FatFoe™ is right for your unique metabolism.

Y/N Q: I tend to gain weight around my face and thighs.
Y/N Q: I tend to gain weight around my waist and hips.
Y/N Q: I tend to gain weight around my stomach.
Y/N Q: I have a hard time losing weight.
Y/N Q: I sometimes stay on the scale at 100 lbs for the past 3-4 months.
Y/N Q: I often gain weight and get bloated.
Y/N Q: I tend to gain weight in my arms and legs.

Order now and get a free 60-day trial of FatFoe™ UltraThin Diet. Target the stubborn fat on your hips & thighs with this proven fat fighter. Click here for your free trial!

Bonus Offer!!

“Fat Foe before class really seems to help my patients lose weight... we keep it up!”
Dr. C.P. Reed, MD, MD



Business Education

- The FTC prepares and sends out educational materials for businesses. Reputable businesses are less likely to engage in deceptive practices if they are advised about what conduct is acceptable, and what conduct is not.
- These educational materials are most effective if they use simple language and are limited to a small number of points. The advantage of consumer and business education materials is that they can be prepared and made available to the public in less time than cases, rules, or guides.

Business Self-Regulation

- Effective self-regulation by businesses reduces the need for government action – but it is not a substitute for government action.
- FTC promotes self-regulation by businesses.
- FTC meets with industry organizations to encourage self-regulation.
- FTC gives feedback on proposed self-regulatory standards, when requested.
- FTC gives public credit to industries that engage in appropriate self-regulation.

Business Self-Regulation

- Comparative Advertising - Businesses adjudicate disputes over competitors' comparative advertising before the National Advertising Division (NAD) of the Council of Better Business Bureaus
 - The NAD, funded by major US advertisers, rules on complaints by businesses that national advertising by competitors is deceptive or unsubstantiated. It handles several hundred cases per year.

Black & Decker



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All irons should
come with this seal
Only one does.

BLACK & DECKER Endorsing Endorsed BY
NATIONAL FIRE SAFETY
COUNCIL, INC.

Only the Black & Decker Automatic Shut-Off™ iron shuts off and stays off.

Other automatic shut-off irons can reheat if knocked over. But not the Black & Decker Automatic Shut-Off™ iron. It beeps to warn you it's been left on, then shuts itself off. And stays off, even if knocked over.

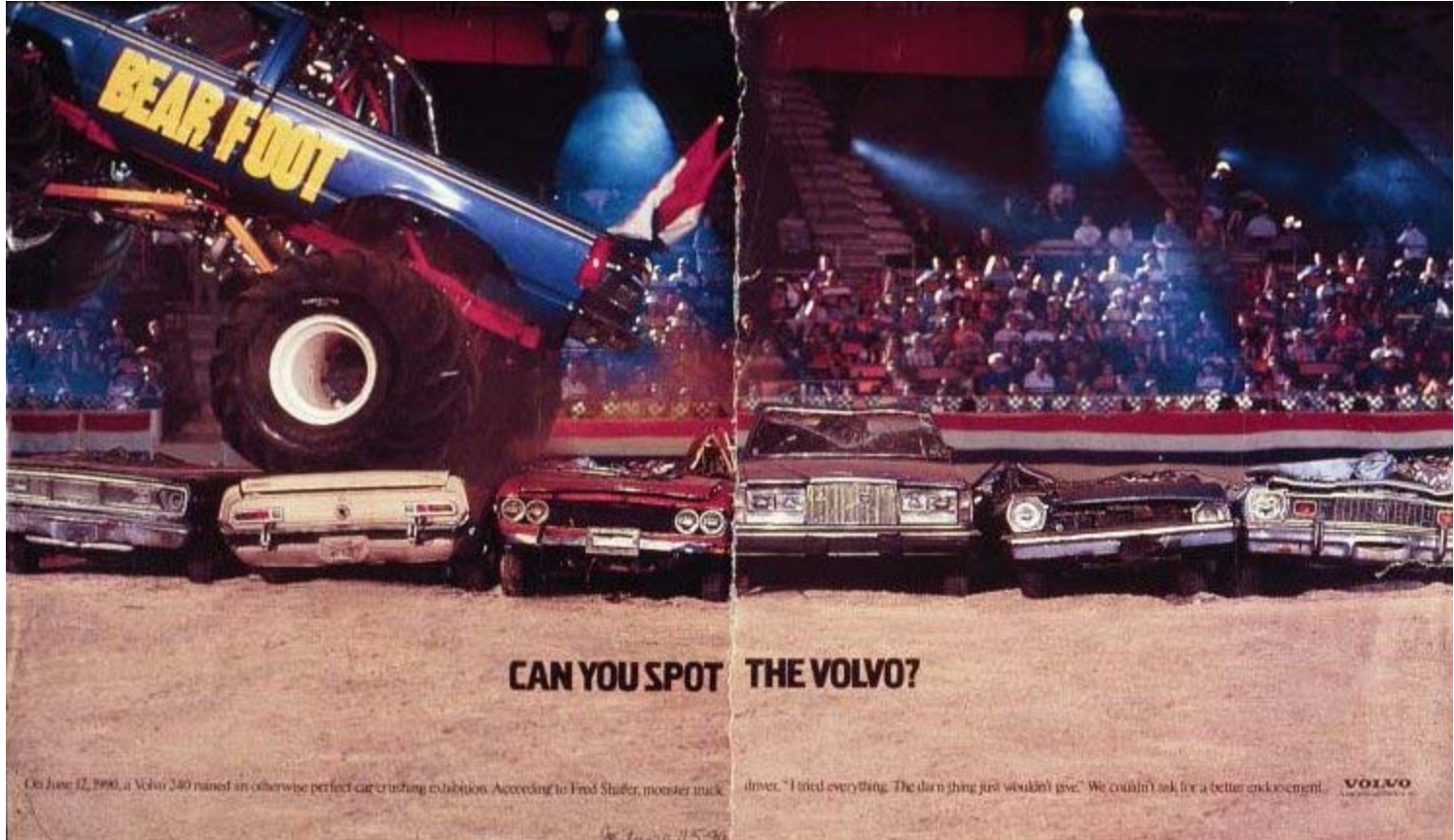
So buy the only iron endorsed by the National Fire Safety Council. And get the features that not only make ironing simpler, but give you peace of mind as well.

● **BLACK & DECKER**
IDEAS AT WORK.™

Duncan Hines



Volvo





Advertising Policy

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Advertising Policy - Unfairness

When is an ad UNFAIR?

- If it is likely to cause substantial consumer injury – physical or economic
- that is not reasonably avoidable by consumers themselves
- and is not outweighed by benefits to consumers or competition.

Advertising Policy - Deception

When is an ad DECEPTIVE?

- Representation, omission, or practice
- likely to mislead consumers acting reasonably under the circumstances
- and that representation, omission, or practice is material to consumers

Materiality

- Only “material claims” can be deceptive
 - Definition of “material” from FTC Policy Statement on Deception, 103 F.T.C. 174 (1984): A “material misrepresentation or practice is one which is likely to affect a consumer’s choice of or conduct regarding a product. In other words, it is information that is important to consumers. If inaccurate or omitted information is material, injury is likely.”



Ad Interpretation

- What types of claims are material to consumers?
 - Intended claims
 - Price
 - Performance
 - Origin
 - Qualities
 - Purpose
 - Safety
 - Efficacy
 - Durability
 - Warranties

Ad Interpretation

- Puffery is NOT a statement of material fact
- Puffery is exaggerated advertising, blustering, and boasting upon which no reasonable consumer would rely
 - Taste, feel, appearance, smell
 - Opinions (except expert opinions)
 - “The most delicious” or “My product is better”
- GENERAL claims of superiority (“My product is better”) are unactionable puffery (as opposed to specific claims of superiority which are actionable – “My product is better than X product”)

Advertiser's Responsibilities

- An advertiser is responsible for all objective claims – express and implied – that are conveyed to reasonable consumers.
- “[A]n otherwise false advertisement is not rendered acceptable merely because one possible interpretation of it is not untrue.” (*In re National Commission on Egg Nutrition et al.*, 1976)

Advertiser's Responsibilities

- Ads must be truthful and not misleading.
 - An ad may be literally truthful and yet still be deceptive to consumers.
 - An ad may be deceptive by omission.
- All objective claims must be substantiated ***at the time they are made***.
- Any disclaimer that is necessary to prevent an ad from being deceptive must be “clear and conspicuous” and must effectively convey the correct net impression to consumers.

All Ads Are Treated Equally

- Same standards apply to all products
- Same standards apply to all media
- Same standards apply throughout the marketing channel
- Same question applies to each ad: “What net impression does the ad convey?”



Three basic forms of deception in advertising

- False representations
- Unsubstantiated representations
- Deceptive omissions

Falsity

- If ad claim is shown to be untrue, it is deceptive.
- Falsity may be shown by various types of evidence:
 - Product testing
 - Testimony of experts
 - Testimony of past employee of advertiser



SUBSTANTIATION

Before disseminating an ad, the advertiser must have a “reasonable basis” to support all objective claims made in the advertisement.



SUBSTANTIATION

Why? Because an objective product claim implies that the advertiser has a reasonable basis for the claim.

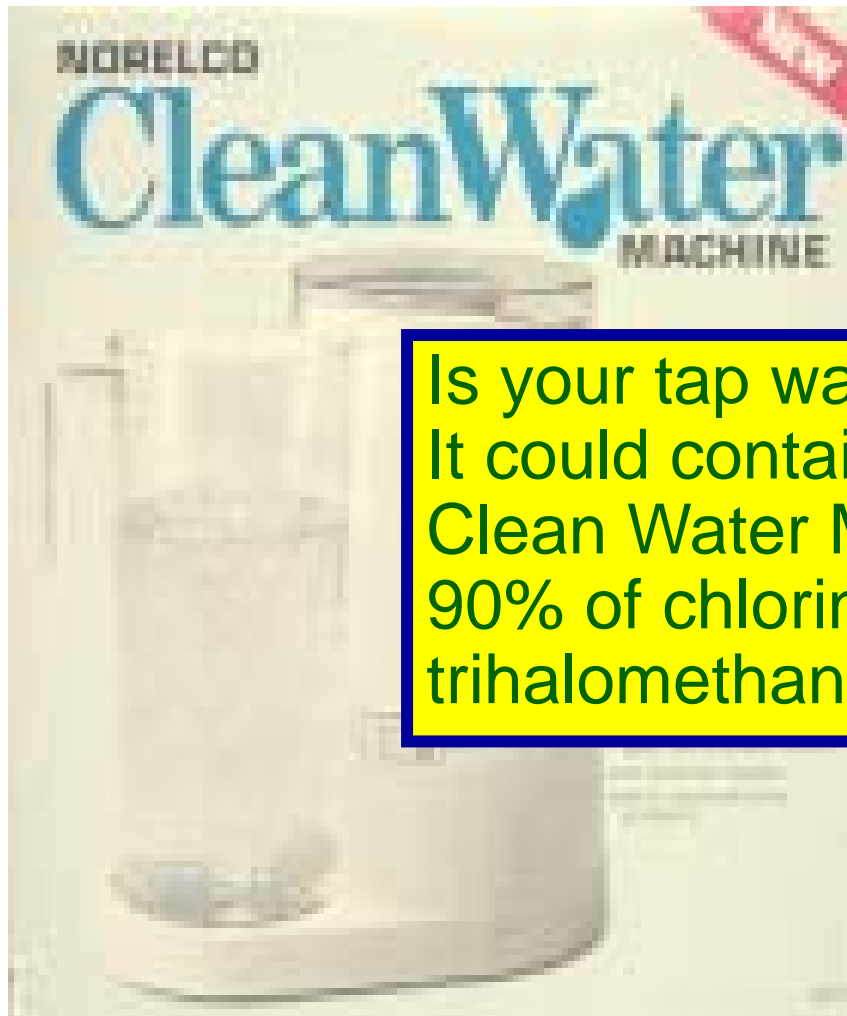
OMISSIONS OF MATERIAL INFORMATION



“A misleading omission occurs when qualifying information necessary to prevent a claim, representation, or reasonable expectation or belief from being misleading is not disclosed.”

Omissions

- Is the omission material?
- Would the disclosure of the omission have been something that would have influenced the consumer's buying decision?
- Was the claim misleading or deceptive because of the omitted information?



Is your tap water as clean as it seems? It could contain impurities. The Norelco Clean Water Machine can remove up to 90% of chlorine, organic wastes, and trihalomethanes.

DISCLOSURES MUST BE CLEAR AND CONSPICUOUS

“Accurate information in the text may not remedy a false headline because reasonable consumers may glance only at the headline. Written disclosures or fine print may be insufficient to correct a misleading representation.”



Deception Policy Statement, 103 F.T.C. 174 (1984)

“CLEAR AND CONSPICUOUS”

- **PROMINENCE**: Is it big enough for consumers to notice and read?
- **PRESENTATION**: Is wording and format easy for consumers to understand?
- **PLACEMENT**: Is it where consumers will look?
- **PROXIMITY**: Is it close to the claim it qualifies?