Insulation Marketing: FTC Rules of the Road

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About this presentation

- The views expressed in this presentation are those of the speaker and not necessarily those of the Commission or any individual commissioner.
Outline

- FTC advertising law
- The R-value Rule
FTC protects consumers by...

...combating telemarketing fraud, Internet scams, deceptive advertising, price-fixing schemes, and other harmful business practices.
Section 5 -- "unfair or deceptive acts or practices in or affecting commerce are declared unlawful" (15 U.S.C. Sec. 45(a)(1)).
A PRACTICE IS “DECEPTIVE” IF:

- it is likely to mislead consumers
- who are acting reasonably under the circumstances, and
- it would be material to their decision to buy or use the product.
WHO MAY BE HELD LIABLE FOR DECEPTIVE PRACTICES?

- Company selling the product
- Ad agencies
- Individual corporate officers
- Wholesalers
- Infomercial companies, shopping channels, catalogs, distributors
- Others with a role in promotion
Ad Claims--Two Step Inquiry

1. *Consumer Perception:* What claims does the ad convey to reasonable consumers?

2. *Substantiation:* Does the advertiser have “competent and reliable evidence” to substantiate those claims?
BASIC LEGAL PRINCIPLES

- An advertisers must have competent and reliable evidence to support all claims – express and implied – that reasonable consumers take from the ad

- An ad may be literally truthful and yet still deceptive to consumers

- An ad may be deceptive by omission

- Fine-print footnotes won’t cure an otherwise deceptive ad

- The FTC may prosecute companies who engage in “unfair acts or practices”
Look at claims from the point of view of reasonable consumers.

“Replace your current 100 watt bulbs with LumaGreen Energy Frugal lights and bathe your home in the natural glow of the sun.”

LumaGreen®
Do your part to save the earth.

Not all light bulbs are the same. Unlike incandescents, compact fluorescents, and LED bulbs, LumaGreen Energy Frugal lights can help save the earth. Replace your current 100 watt bulbs with LumaGreen Energy Frugal lights and bathe your home in the natural glow of the sun.

While you’re saving the earth, you’ll save money, too. For each 100 watt bulb you replace with a LumaGreen Energy Frugal light, you’ll save $28 a year on your electric bill. And at only $2.99 each, LumaGreen Energy Frugal lights are a bright idea.
Substantiate all claims – express \textit{and} implied.

“For each 100 watt bulb you replace with a LumaGreen Energy Frugal light, you’ll save $28 a year on your electric bill.”

Not all light bulbs are the same. Unlike incandescents, compact fluorescents, and LED bulbs, LumaGreen Energy Frugal lights can help save the earth. Replace your current 100 watt bulbs with LumaGreen Energy Frugal lights and bathe your home in the natural glow of the sun.

While you’re saving the earth, you’ll save money, too. For each 100 watt bulb you replace with a LumaGreen Energy Frugal light, you’ll save $28 a year on your electric bill. And at only $2.99 each, LumaGreen Energy Frugal lights are a bright idea.

LumaGreen®
Do your part to save the earth.
Advertisers must qualify claims carefully.

LumaGreen®
Do your part to save the earth.

Not all light bulbs are the same. Unlike incandescents, compact fluorescent bulbs, LumaGreen® Energy Frugal lights can help save the earth. Replace 100 watt bulbs with LumaGreen® Energy Frugal lights and ban the deadly and harmful glow of the sun.

While you’re saving the earth, you’ll save money, too. For each 100 watt bulb you replace with a LumaGreen® Energy Frugal light, you’ll save $28 a year on your electric bill. And at only $2.99 each, LumaGreen® Energy Frugal lights are a bright idea.

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DECEPTION BY IMPLICATION

“60 Watt Replacement for Only 52 Watts”
“Starting now, Juno is offering full Internet access for free. From free Web access to premium dial-up and broadband services, everybody’s getting it.”
POSSIBLE CONSEQUENCES OF DECEPTIVE ADVERTISING

- Cease and desist orders and court injunctions prohibiting deceptive claims
- Refunds for consumers ("redress")
- Bans and bonds
- Informational remedies, such as disclosures in future ads or corrective advertising
If the disclosure of information is necessary to prevent an ad from being deceptive, the disclosure must be:

**CLEAR & CONSPICUOUS**
“CLEAR AND CONSPICUOUS”

NO MOUSEPRINT

NO MOUSEPRINT
COMPAQ PRESARIO 5304 SYSTEM

With rebates, including 15” monitor, speakers, color inkjet printer, keyboard, mouse, free shipping. Visit www.buy.com today for rebate details.

$269
“ONE LINE OF 4-POINT TYPE:
BUY.COM,™ BUYCOMP.COM,™
BUYSOFTWARE.COM,™ BUYBOOKS.COM,™
BUYVIDEOS.COM,™ BUYGAMES.COM,™
BUYMUSIC.COM,™ and
BUYSURPLUS.COM™ are trademarks or service marks of BUY.COM, Inc. Prices subject to change. Quantities limited. Requires Compuserve activation. See site for details. Buy.com reserves the right to cancel this offer at any time. ©1999”

$1059.20
CONSUMER TESTIMONIALS

SUBSTANTIATION?
CONSUMER TESTIMONIALS

- Unsubstantiated efficacy claims cannot be made indirectly through testimonials
- “My arthritis was gone” = an efficacy claim that the product is effective for curing arthritis
- If you haven’t proven it via scientific research, don’t say it in testimonials.
A PRACTICE IS “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 is likely to mislead consumers.
“Flatten your stomach in Just Minutes a Day! Amazing Gut Buster turns ordinary sit-ups into tummy tightening power stretches.”
In 1970’s, FTC found insulation industry members were ...

- failing to disclose or explain R-values;
- exaggerating R-values, often failing to take into account important factors (e.g., aging, settling);
- exaggerating potential fuel bill savings; and
- providing false information about tax credits and federal agency endorsements.
In 1979, the FTC concluded that ...

- Failure to provide R-value information is “unfair” to consumers under the FTC Act
- R-value information is considered “critical performance data” for insulation
Basic Elements of the R-Value Rule

• Mandatory test procedures (must take into account issues such as aging and settling)

• Specific disclosures on labels, advertising, and fact sheets

• Installers and home sellers must provide certain disclosures

• Marketers must have a reasonable basis for claims that insulation can cut fuel bills or fuel use
Impact of R-value Rule

- provides consumers with easy to understand information about complicated issues of insulation performance
- creates a level playing field for industry members
Updating the R-value Rule: 2005 Amendments

- New loose-fill tests and labeling
- Sets temperature differential for tests (50°F ± 10°)
- Eliminates affirmative disclosure requirements for radio and television ads
- Updates test requirements for reflective insulations
- Streamlines compliance for retailers
Section 460.5(a) specifies the ASTM tests used to measure R-value.

Section 460.5(a)(1) provides that the tested samples must fully reflect the effect of aging. To age the sample, follow the procedure in paragraph 4.6.4 of the GSA Specification HH-I-530A, or another reliable procedure.
Foamed-in-Place Insulation Manufacturer Disclosures

- Labeling must contain the type of insulation and general disclosures regarding R-value
- Section 460.12(b) labeling requirements do not apply
- Fact sheets for retailers and installers must identify the manufacturer and show the R-value of the product at 3½ inches; they may disclose R-values at other thicknesses (Section 460.13(c)(1))
Installer Handling of Fact Sheets

- You must have fact sheets for the insulation you sell
- Before customers agree to buy, you must show or give them the fact sheet for the type of insulation they want (Section 460.15)
Installer Disclosure Requirements

- You must give your customers a signed and dated contract or receipt showing the coverage area, thickness, and R-value.
- Use manufacturer data to figure out the R-value.
- If you put insulation in more than one part of the house, put the data for each part on the contract or receipt (Section 460.17).
Insulation Advertising Disclosures

- If your ad gives an R-value, a price, or the thickness of your insulation, you must disclose certain information.
- If your ad compares one type of insulation to another, the comparison must be based on the same coverage area and you must disclose certain information.
- These requirements do not apply to ads on television or radio (Section 460.18).
Other Prohibited Claims

- Do not give the R-value per inch unless test results prove that the R-value per inch does not drop as the product gets thicker (Section 460.20)
- Do not imply that a government agency uses, certifies, recommends or otherwise favors your product, or that it complies with a government standard, unless the claim is true (Section 460.21)
- Do not imply that your product qualifies for a tax benefit unless it is true (Section 460.22)
R-value Rule Enforcement

- **U.S. v. Northwestern Ohio Foam Packaging Inc. (Consent Decree)**
  - $100,000+ civil penalty
  - Alleged exaggerated R-value claims and misreps about K-value
  - Alleged failure to label reflective insulation properly

*The Barrier*

**Under Concrete Insulation**

- Strong, durable, economical
- Insect, pest free
- Patented taping system
- Extruded 3/8” EPS
- Vapor and moisture barrier - keeps cold of earth out and heating of building in
  - Conductivity Value = 0.019
- HEAVY gauge material - both sides
  - Equal to 2” of blueboard at 1/2 the price
R-value Claims for Coatings

- Kryton/Procraft Inc. – allegedly deceptive R-value claims for paints and coating products
- Reflective coatings have a place in energy savings (e.g., ENERGY STAR cool roofs)
THE SHERLOCK HOLMES DEFENSE
THE “CAST OF THOUSANDS” DEFENSE
THE SERGEANT SCHULTZ DEFENSE
Questions?

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