



Client Alert



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Have you ever scratched your head after seeing an outlandish claim made in an advertisement? Often, businesses, in an effort to “one-up” their competitors, throw caution to the wind and come up with slick marketing campaigns that overstep the boundaries of truth. When that happens, a business could face stiff liability in legal action taken by consumers, competitors, or the government.

As the brief examples below demonstrate, it would be wise to make sure that your company’s marketing checklist includes the step of verifying the veracity of what you advertise to your customers.

The Lawsuits

In *Smith v. Wm Wrigley Jr. Co.*, a consumer brought a class-action lawsuit against Wrigley, the manufacturer of Eclipse gum. Wrigley advertised Eclipse as scientifically proven to help kill germs that cause bad breath. The plaintiff claims that this is not true and that Wrigley charged consumers a premium for the gum. Unfortunately for Wrigley, the National Advertising Division, an industry-supported advertising watchdog group, had earlier ruled that Eclipse may not actually “kill” germs that cause bad breath. The lawsuit is still pending in a federal district court in Florida.

In *Federal Trade Commission v. Improvita Health Products, Inc.*, the FTC filed a complaint against Improvita, which advertised that its “Germ Defense” lozenges and tablets could, among other things, reduce the risk of or prevent colds and flu. The FTC claims that Improvita has no proof for these claims. Rite Aid Corporation, which marketed and sold Germ Defense, previously settled with the FTC for \$500,000 for its role in falsely advertising the product. Improvita has not settled and the case against it is ongoing in a federal district court in Ohio.

In *LG Electronics U.S.A., Inc. v. Whirlpool Corp.*, Whirlpool advertised its clothes dryers as “Steam Dryers.” LG sued complaining that these advertisements were false because Whirlpool dryers do not actually use steam. LG was the innovator of introducing dryers with steam technology, won accolades from Consumer Reports, and is, obviously, looking to protect its dominant market share. The lawsuit is still pending in a federal district court in Illinois.

What This Means For You

Your company should not only be careful in what it represents to the public about its products and services, but it should also be mindful of what its competitors are advertising. Remaining vigilant in the marketplace is necessary to

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your company's success, especially in this economy.

Not If, But How

Arnall Golden Gregory, LLP has significant experience in the area of marketing and promotions, including evaluating advertisements and advertising-related disputes. Do not hesitate to contact us if we can be of help to you.

Feel free to forward this Client Alert to others in your business network.

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