

FOOD AND DRUG ADMINISTRATION

WHEN ARE CLAIMS REGULATED BY THE FEDERAL TRADE COMMISSION AND WHEN ARE THEY REGULATED BY THE FOOD AND DRUG ADMINISTRATION?

The FTC and the FDA have a long-standing liaison agreement to allocate their efforts efficiently. As a general rule, advertising for foods, over-the-counter drugs, dietary supplements, medical devices, and cosmetics is regulated by the FTC. Labeling for these products is regulated by the FDA. In addition, the FDA handles most matters related to prescription drug advertising and labeling. For more information about marketing a product within the FDA's jurisdiction, visit the FDA's website at www.fda.gov or call the FDA Inquiries Line, 1-888-INFO-FDA.

FRANCHISES AND BUSINESS OPPORTUNITIES

WHAT RULES APPLY TO ADS FOR FRANCHISES OR BUSINESS OPPORTUNITIES?

The FTC's *Trade Regulation Rule on Franchises and Business Opportunities* ("Franchise Rule") governs the sale of franchises and business opportunities. The law requires sellers to make specific disclosures, give prospective buyers a document containing certain key information about the business opportunity, and be able to substantiate any earnings claims. For more information about buying or selling a franchise, ask the FTC for the *Franchise Rule* and *Your Legal Rights: A Guide To The FTC Franchise Rule*. In addition, visit the FTC website (www.ftc.gov/bizop/index.html) for information on what entrepreneurs need to know before buying any kind of business opportunity and alerting them to the latest "bizop" scams. Many states also have laws governing these transactions. Check with the Attorney General's office in the state(s) where you plan to advertise.

“FREE” CLAIMS AND REBATE OFFERS

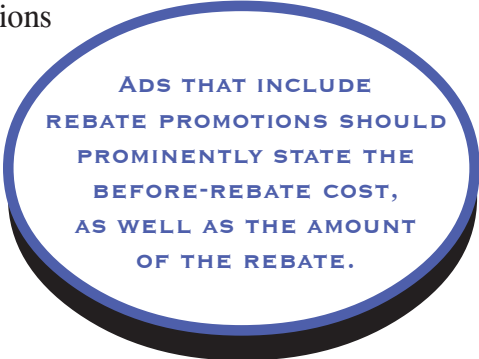
WHEN CAN A COMPANY ADVERTISE SOMETHING AS “FREE”?

When a “free” offer is tied to the purchase of another product, the price of the purchased product should not be increased from its regular price. For more information, ask the FTC for the *Guides Concerning Use of the Word “Free” and Other Representations* and the *Guides Against Deceptive Pricing*. In addition, if you’re advertising a product as “free” or offering it at a low cost in conjunction with the purchase of another item, the ad should clearly and conspicuously disclose the terms and conditions of the offer. Disclose the most important information — like the terms affecting the cost of the offer — near the advertised price. For more information, ask the FTC for *Big Print. Little Print. What’s the Deal?* You also may want to check with the Attorney General’s office in the state(s) where you plan to advertise. In addition, the Better Business Bureau has voluntary standards for when something can be advertised as “free.”

WHAT ARE THE RULES ON ADVERTISING REBATES TO CONSUMERS?

Ads that include rebate promotions should prominently state the before-rebate cost, as well as the amount of the rebate. Only then will consumers know their actual out-of-pocket cost and have the information they need to comparison shop.

Rebate promotions also should clearly disclose any additional terms and conditions that consumers need to know, including the key terms of any purchase requirements, additional fees, and when consumers can expect to receive their rebate. The FTC’s brochure *Big Print. Little Print. What’s the Deal?* outlines other factors advertisers should bear in mind when making rebate promotions.



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GUARANTEES

WHEN A COMPANY ADVERTISES THAT PRODUCTS ARE SOLD WITH A GUARANTEE OR WARRANTY, WHAT INFORMATION ABOUT THE TERMS AND CONDITIONS MUST BE INCLUDED IN THE ADS?

If an ad mentions that a product comes with a guarantee or warranty, the ad should clearly disclose how consumers can get the details. Any conditions or limits on the guarantee or warranty (such as a time limit or a requirement that the consumer return the product) also must be clearly disclosed in the ad. Finally, the law requires companies to make copies of any warranties available to consumers before the sale. This applies to retail sales, sales by phone or mail, and online transactions. For more information, ask the FTC for the *Guides for the Advertising of Warranties and Guarantees*.

INFOMERCIALS

DOES THE FTC HAVE ANY SPECIAL POLICIES RELATING TO INFOMERCIALS?

Infomercial advertisers must have proof to back up all express and implied claims that reasonable consumers would take from an ad. In addition, advertisers should make sure that the infomercial doesn't deceptively mimic the format of news reports, talk shows, or other independent programming. FTC cases have required companies to clearly disclose that "THE PROGRAM YOU ARE WATCHING IS A PAID ADVERTISEMENT FOR [NAME OF PRODUCT]" at the beginning of an infomercial and before ordering information is given. Since many infomercials feature endorsements from consumers, celebrities, or experts, ask the FTC for the *Guides Concerning the Use of Testimonials and Endorsements* for more information.

MY COMPANY PRODUCES INFOMERCIALS FOR OTHER BUSINESSES. WHAT RESPONSIBILITY DO WE HAVE TO MAKE SURE THAT THE CLAIMS ARE TRUTHFUL?

The Commission looks at the facts of each case to determine whether the infomercial producers' role in the promotion makes them liable for deceptive claims in the ad. In many instances, the FTC has taken action against both the manufacturer or marketer of a product and the company that produced the infomercial. Therefore, infomercial producers should ask for materials to back up the claims in the ad. The bottom line: no one involved in the promotion of a product or the dissemination of an ad — whether it's an infomercial, print ad, catalog, or broadcast spot — should look the other way when the claims seem questionable.

INTERNET ADVERTISING

IS ADVERTISING ON THE INTERNET SUBJECT TO THE SAME LAWS AS OTHER ADVERTISING?

Yes. Ad claims on the Internet must be truthful and substantiated. Ask the FTC for a copy of *Advertising and Marketing on the Internet: The Rules of the Road* for more information.

Dot Com Disclosures offers special guidance for online advertisers regarding how to make sure that any disclaimers and disclosures in online ads are clear and conspicuous. It addresses 'Net specific issues such as banner ads, pop-up windows, scrolling, hyperlinks, etc. Internet marketers also should be aware that the FTC's *Mail or Telephone Order Merchandise Rule* ("Mail Order Rule") applies to online transactions. For specific guidance on complying with the Mail Order Rule online, ask the FTC for a copy of

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ADFAQS

Selling on the Internet: Prompt Delivery Rules, as well as *A Business Guide to the Federal Trade Commission's Mail or Telephone Order Merchandise Rule*.

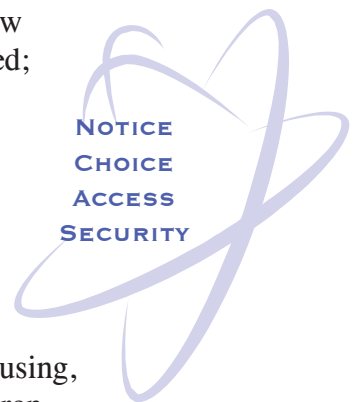
MY WEBSITE IS ATTRACTING VISITORS FROM OUTSIDE THE UNITED STATES. WHAT DO I NEED TO KNOW?

Because the World Wide Web is, as its name implies, world-wide, even small online businesses can reach customers around the globe. *Electronic Commerce: Selling Internationally — A Guide for Business* discusses some online commerce guidelines endorsed by the United States government and 28 other countries.

INTERNET ADVERTISING

WHAT DO I NEED TO KNOW ABOUT CONSUMER PRIVACY ONLINE?

Advertisers should be aware of the privacy issues raised by Internet marketing. For more information about recent FTC Reports to Congress on consumer privacy on the Internet, visit the FTC's website (www.ftc.gov). Basically, the FTC strongly encourages companies to implement four fair information practices: giving consumers **notice** of a website's information practices; offering consumers **choice** as to how their personally identifying information is used; providing consumers with **access** to the information collected about them; and ensuring the **security** of the information collected. In addition, companies need to know about the *Children's Online Privacy Protection Act* and the *rule* that implements it. The law requires websites to obtain verifiable parental consent before collecting, using, or disclosing personal information from children, including their names, home addresses, email addresses, or hobbies. For more information, ask the FTC for *How to Comply with the Children's Online Privacy Protection Rule*.



JEWELRY

ARE THERE SPECIAL GUIDES FOR ADVERTISING JEWELRY?

The FTC’s *Jewelry Guides* cover claims made for gold, silver, platinum, pewter, diamonds, gemstones, and pearls and define how certain common terms may be used in ads. For example, the Guides explain when a product can be called “gold plated” or when a diamond can be called “flawless.” For more information, ask the FTC for the *Guides for the Jewelry, Precious Metals, and Pewter Industries* and *In The Loupe: Advertising Diamonds, Gemstones and Pearls*.

LEASING

WHAT INFORMATION MUST A COMPANY INCLUDE WHEN ADVERTISING LEASES FOR CARS, HOUSEHOLD GOODS, OR OTHER PRODUCTS?

The *Consumer Leasing Act* and *Regulation M* include specific rules that apply to ads for consumer leases. For example, if a lease advertisement includes certain terms — such as the amount of any payment due before or at lease inception — the ad also must make other clear and conspicuous mandatory disclosures about the terms of the lease. These rules also apply if the ad contains phrases like “no money down” or “no down payment.” For more information, ask the FTC for a copy of *Advertising Consumer Leases*.

MADE IN THE U.S.A.

WHEN CAN MY COMPANY ADVERTISE THAT OUR PRODUCT IS “MADE IN THE U.S.A.”?

A product has to be “all or virtually all made in the United States” for it to be advertised or labeled as “Made in the U.S.A.” For more information, ask the FTC for the *Enforcement Policy Statement on U.S. Origin Claims*.

MAIL ORDER ADVERTISING

WHAT RULES MUST A COMPANY FOLLOW IF IT SELLS PRODUCTS VIA MAIL ORDER?

Truth-in-advertising standards — including that companies must have proof to back up express and implied claims made about its products — apply to mail order marketers. In addition, the FTC’s *Mail or Telephone Order Merchandise Rule* (“Mail Order Rule”) applies when a consumer places an order by mail, telephone, fax, or computer.



Under the Rule, a company must have a reasonable basis for believing that it can ship the product within the time period stated in the ad. If the ad doesn’t specify a time period, the company must have a reasonable basis for believing that it can ship within 30 days. The Mail Order Rule applies equally to online marketers. For more information, ask the FTC for *A Business Guide to the Federal Trade Commission’s Mail or Telephone Order Merchandise Rule* and *A Business Checklist for Direct Marketers*. Companies that advertise online also should get a copy of *Selling on the Internet: Prompt Delivery Rules*. In addition, the Direct Marketing Association, a trade group for members of the direct marketing industry, has voluntary guidelines on ethical business practices.

IS IT OKAY FOR A COMPANY TO “DRY TEST” A PRODUCT?

“Dry testing” describes the practice of placing an ad for a product to see if there is sufficient consumer interest before actually going to the expense of manufacturing the item. Although the Mail Order Rule doesn’t specifically deal with this situation, the FTC has issued an advisory opinion that such ads

must clearly disclose to consumers the fact that the merchandise is only planned and may not ever be shipped. For more information, ask the FTC for *A Business Guide to the Federal Trade Commission’s Mail or Telephone Order Merchandise Rule*.

NEGATIVE OPTION OFFERS

ARE THERE ANY RULES REGARDING ADS FOR “NEGATIVE OPTION” PLANS?

The FTC’s *Negative Option Rule* applies to sellers of subscription plans who ship merchandise like books or compact discs to consumers who have agreed in advance to become subscribers. The Rule requires that ads clearly and conspicuously disclose material information about the terms of the plan. Further, once consumers agree to enroll, the company must notify them before shipping to allow them to decline the merchandise. Even if an automatic shipment or continuity program doesn’t fall within the specifics of the Negative Option Rule, companies should be careful to clearly disclose the terms and conditions of the plan before billing consumers or charging their credit cards. For more information, ask the FTC for the *Negative Option Rule*.

“NEW” CLAIMS

WHEN CAN A COMPANY ADVERTISE A PRODUCT AS “NEW”?

The answer depends on how the ad uses the word “new.” For example, under the rules governing the identification of textiles, fabric cannot be advertised as “new” if it has been reclaimed or respun. The rules governing advertising claims for tires prohibit the use of the word “new” to describe retreads. However, when no specific regulation applies, each case must be considered within the context of the ad. At least one FTC advisory opinion has suggested a six-month limit on the use of the word when advertising the introduction of a “new” product not previously on the market.

PRICING

ARE THERE ANY STANDARDS GOVERNING THE ADVERTISING OF PRICES?

The same standards for truthfulness apply when companies make claims about price comparisons, “sale” prices, and the like. For more information, ask the FTC for the *Guides Against Deceptive Pricing*. Since many pricing issues involve local practices, you also may want to contact the Attorney General’s office in the state(s) where you plan to advertise.

WHAT RESPONSIBILITY DOES A COMPANY HAVE TO MAKE SURE THAT PRICES ARE ACCURATE?

In many jurisdictions, companies are legally required to charge no more than the advertised or shelf price for a product, so good pricing practices are important for both customer satisfaction and a company’s bottom line. For tips on accurate pricing practices in advertising and in retail stores, ask the FTC for *Good Pricing Practices? SCAN DO*.

RAINCHECKS

HOW MUCH OF AN ADVERTISED PRODUCT IS A RETAIL STORE REQUIRED TO STOCK?

According to the FTC’s *Retail Food Store Rule*, grocers must offer rainchecks or product substitutes of comparable value when they run out of advertised items. They also can comply by ordering quantities of the item sufficient to meet reasonably anticipated demand or by disclosing in ads that items are available only in limited quantities or only at some stores. Although the specific terms of the Rule apply only to retail food stores, other companies advertising products available in limited quantity or only at some stores may want to make similar disclosures to reduce the risk of deception. For more information, ask the FTC for a copy of *Retail Food Store Advertising and Marketing Practices*.

SALES

WHEN MAY A COMPANY ADVERTISE THAT A PRODUCT IS “ON SALE”?

The same standards for truthfulness apply when a company makes advertising claims about sale prices or products being “on sale.” For more information, ask the FTC for the *Guides Against Deceptive Pricing*. Since this issue often involves local practices, you may also want to contact the Attorney General’s office in the state(s) where you plan to advertise.

WHEN CAN A COMPANY ADVERTISE A “GOING OUT OF BUSINESS SALE”?

The short answer is: only when a store is going out of business. It would be deceptive to advertise a “going out of business sale” when a store is not going out of business. If a store in your area is advertising what looks to be a bogus “going out of business sale,” contact your state Attorney General’s office.

SUBLIMINAL ADVERTISING

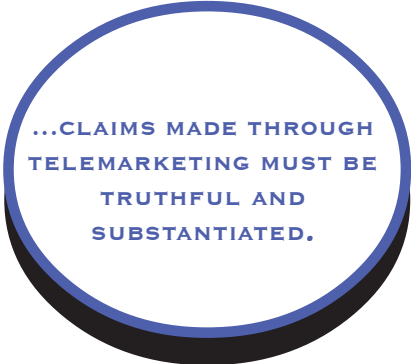
IS IT LEGAL TO USE SUBLIMINAL ADVERTISING TECHNIQUES?

It would be deceptive for marketers to embed ads with so-called subliminal messages that could affect consumer behavior. However, most consumer behavior experts have concluded that such methods aren’t effective.

TELEMARKETING

WHAT RULES MUST A COMPANY FOLLOW IF IT SELLS GOODS OR SERVICES OVER THE TELEPHONE?

As with any other form of advertising or promotion, claims made through telemarketing must be truthful and substantiated. In addition, the FTC’s



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Telemarketing Sales Rule applies to transactions involving the use of interstate telephone calls to sell goods or services. The Rule requires companies to make specified disclosures in their telephone calls and prohibits misrepresentations. For more information, ask the FTC for a copy of *Complying with the Telemarketing Sales Rule*.

TELEPHONE SERVICES

WHAT RULES APPLY TO THE ADVERTISING OF LONG-DISTANCE SERVICES, INCLUDING LONG-DISTANCE CALLING PLANS, DIAL-AROUND (OR “10-10” NUMBERS), AND PRE-PAID PHONE CARDS?

The FTC and the Federal Communications Commission work together to ensure that ads for long-distance services are truthful. If ads tout price, companies should make sure that the ads clearly and conspicuously disclose the actual cost to consumers, including monthly fees or per-call surcharges, not just a per-minute rate. In addition, ads should clearly and conspicuously disclose any limitations on the advertised service, including time, day, or geographic restrictions. Ask the FTC for the *Joint FTC-FCC Policy Statement on the Advertising of Dial-Around and Other Long-Distance Services to Consumers*. In addition, advertisers should visit the FCC’s web page (www.fcc.gov) and check out any state laws in the jurisdictions they plan to advertise in.

WHAT INFORMATION MUST BE INCLUDED IN ADS FOR 900 NUMBERS OR “PAY-PER-CALL” SERVICES?

The FTC’s *900 Number Rule* requires that ads for these services “clearly and conspicuously” disclose the cost of the call. The law is very specific about what “clear and conspicuous” means, depending on whether the ad appears on radio, TV, or in print. The rule also requires that 900 number ads directed at consumers under age 18 disclose that parental permission is required before calling. The rule prohibits 900 number services directed

at children under 12, unless it is a “bona fide educational service.” In addition, 900 number ads that promote sweepstakes must state the odds of winning or, if the odds cannot be determined, the factors that determine the odds. Ads for 900 number services that provide information on federal programs, but are not affiliated with the government, also must contain certain disclosures. For more information, ask the FTC for a copy of *Complying with the 900 Number Rule*.

TOBACCO ADVERTISING

HOW DOES THE FTC REGULATE ADS FOR CIGARETTES, CIGARS, AND SMOKELESS TOBACCO?

The FTC can take action if an ad for cigarettes, cigars, or a smokeless tobacco product is deceptive or unfair. In addition, federal law prohibits the advertising of cigarettes, smokeless tobacco, and little cigars on radio, TV, or other forms of electronic media regulated by the Federal Communications Commission. The FTC also enforces various federal requirements mandating health warnings on advertising, point-of-purchase displays, and packaging of tobacco products. For more information, ask the FTC for a copy of the brochures *Tobacco Products* and *Cigars: No Such Thing as a Safe Smoke*, and the *Memorandum to Potential Cigarette Manufacturers and Importers*.

WEIGHT LOSS PRODUCTS

The FTC has taken action against hundreds of advertisers who have falsely promised easy weight loss. Marketers who promote diet products or services or who make representations about fat loss, weight loss, calorie burning, or the loss of inches or cellulite must make sure that their claims are backed up by sound scientific evidence. The FTC is a member of the *Partnership for Healthy Management* and supports its *Voluntary Guidelines for Providers of Weight Loss Products or Services* (for more information visit www.consumer.gov/weightloss).

ADFAQS

The National Small Business Ombudsman and 10 Regional Fairness Boards collect comments from small businesses about federal compliance and enforcement activities. Each year, the Ombudsman evaluates the conduct of these activities and rates each agency's responsiveness to small businesses. Small businesses can comment to the Ombudsman without fear of reprisal. To comment, call toll-free 1-888-REGFAIR (1-888-734-3247) or go to www.sba.gov/ombudsman.

FEDERAL TRADE COMMISSION

TOLL-FREE 1-877-FTC-HELP

[WWW.FTC.GOV](http://www.ftc.gov)

FOR THE CONSUMER

APRIL 2001