

The Basics of Advertising Compliance

1. Types of advertising claims and their potential pitfalls.

Comparative Advertising

Comparative advertising is a technique used by advertisers to claim superiority or parity of a product (or service) against another product. The comparison can be direct or indirect and can be against a third party or against the claimant's own alternative products. Because comparative claims are often challenged by the affected competitor, it is important that truthful, documented substantiation of such claims is in-hand prior to such claims being made.

Non-Comparative Advertising

Non-comparative advertising, also known as "monadic" claims, are claims made by advertisers touting the alleged benefits of the product itself, based on its own attributes, without comparisons to another product. Although third party products are not mentioned, monadic claims can be challenged for being false and/or misleading, and therefore, substantiation is also advised.

Implied Advertising

Even if an advertising statement is *literally* true, it still might not be lawful. A truthful claim can be challenged for being open to interpretation as false or misleading. In other words, the statement may be accused of conveying a message *beyond the words themselves*, therefore creating an implied advertising claim. Determining how a claim may be interpreted involves a careful examination of the context in which the claim is made, including consideration of the consumer's reasonable interpretation and the reliability of the substantiation supporting the claim.

2. What types advertising require legal review.

All outward facing materials must be submitted for review, including

- Traditional print, TV, radio and internet banner ads
- Labeling, packaging or brochures that accompany the purchase
- In-Store Signage, Point-of-Sale displays, Fact Tags
- Copy posted on the brand's or any website, including blog posts and articles

- Contests and Sweepstakes, their rules, any associated promotional materials and websites and related documents
- Promotional emails and letters to customers
- Social media pages and posts, comments, responses, endorsements, and testimonials
- Press releases, external communication, industry announcements, and newsletters
- Branded content, sponsored articles, or other native advertisings
- Home shopping advertisements, scripts, infomercial, etc.

Advertising materials must be reviewed EVEN IF the submitter says...

- “I got it from a co-worker or from another territory and they said I can use it or it was previously approved by Legal.”
- “I got it off something that was approved before.”
- “I found it on the internet.”
- “I got it off the website.”
- “I got it off another business group (and just assumed it was legally approved).”
- “Our competitors say the same thing.”
- “We always do it this way”

3. Role of disclaimers and how to make effective advertising disclosures.

Disclaimers

Disclaimers cannot fix false or misleading copy, and will not provide protection against accusations of false or misleading advertising. Instead, disclaimers are often used to explain details about a claim or to include legally mandated information. In general, disclaimers must abide by the following guidelines:

- Disclaimers should clarify, but not contradict, the copy to which they refer.
- Disclaimers must be readable and understandable. What is readable and understandable will depend on the actual medium of the advertising, how large the font size is on the claims made, and who the target audience is and how they are receiving the information.
- Disclaimers must be placed close to the copy to which they relate and be “clear and conspicuous.” To determine if a disclosure meets this standard, use the “4 P’s of Disclosures” adopted by the FTC:
 - **Prominence** – Disclosure must be big and bold enough for consumers to *easily see and notice*.

- **Presentation** – Disclosure must be worded in a way that consumers can *easily understand*.
- **Placement** – Disclosure must appear *where consumers are likely to look*.
- **Proximity** – Disclosure must be *close to the claim it modifies*.