

Down...But Not Out: Advertising and Labeling of Feather and Down Products

No matter what you sell, the claims you make about your product must be truthful, accurate and substantiated. Descriptions about your products must not be misleading and must disclose certain information that is important to consumer purchasing decisions.

The Federal Trade Commission, which acts in the interest of all consumers to prevent deceptive or unfair acts or practices, has prepared this brochure to answer questions you might have about advertising policies in general and advertising and labeling feather and down products in particular.

GENERAL ADVERTISING POLICIES

What truth-in-advertising rules apply to advertisers of feather and down products?

Under the Federal Trade Commission Act, advertising must be truthful and non-deceptive, and advertisers must have evidence to back up their claims. All states also have consumer protection laws that apply to ads and products sold in that state. If you sell feather and down products, check the state laws. Some deal specifically with feather and down products.

What makes an advertisement deceptive?

According to the FTC, an ad is deceptive if it contains a statement — or omits information — that is likely to mislead consumers acting reasonably under the circumstances, and if it is “material” — that is, important to a consumer’s decision to buy or use the product.

Facts for Business

How does the FTC determine if an ad is deceptive?

The FTC looks at an ad from the point of view of the “reasonable consumer”— the typical person looking at the ad. The FTC examines the ad in context — words, phrases and pictures — to determine what it conveys to consumers, rather than focusing on certain words.

The FTC studies both “express” and “implied” claims. An *express* claim is explicitly stated in the ad. For example, “100% Eider down” is an express claim that the product contains 100 percent down from the Eider duck, without any other types of filling materials from the Eider duck or other species. An *implied* claim is made indirectly or by inference. The claim “nature’s best insulation,” accompanied by a picture of a goose, suggests to a consumer that the product is filled with goose down. According to the law, advertisers must have proof to back up express and implied claims that consumers would take from an ad.

The FTC also looks at what an ad does *not* say — that is, whether the *failure* to disclose information leaves consumers with a misimpression about the product. For example, consumers expect that products labeled as feather- or down-filled consist of plumage that — to the extent consistent with modern mass production techniques — is not crushed or damaged. As a result, it would be deceptive to advertise and sell feather and down products with more than minimal crushed or damaged plumage without disclosing the fact and amount of the crushed or damaged plumage. Without any disclosures to the contrary, consumers also expect that feather- or down-filled products contain only new, unused plumage. It is unacceptable to add crushed, damaged or secondhand plumage to feathers and down without disclosing the fact and amount of such material; truthful, non-deceptive disclosures of any crushed, damaged or secondhand feather and down materials **are** acceptable.

The FTC also determines whether a claim is “material” — that is, important to a consumer’s decision to buy or use the product. Material claims include representations about a product’s performance, features, safety, price, or effectiveness. Given the well-known insulating properties of down, for example, it is likely that claims about down content would be important to consumers considering buying down-filled comforters or garments.

Finally, the FTC looks at whether the advertiser has enough evidence to support the claims in an ad. The law requires that advertisers have proof for all material claims *before* their ad runs.

ADVERTISING AND LABELING FEATHER AND DOWN PRODUCTS

What kinds of claims about feather and down products are material to consumers?

These days, claims about content, species and cleanliness are among the factors that seem especially important to consumers who are considering buying feather and down products. As market conditions change, though, so will the information necessary for effective marketing.

Content Labeling

Pure... All... 100%... A product may not be called “pure down,” “all down,” “100% down” — or described by any other word or term indicating that the product contains only down — unless that’s the case. The same principle applies to feathers and other filling materials.

Unqualified “Down” Claims. Consider the way a consumer is likely to interpret an ad or a label that describes the product’s filling simply as “down.” It’s reasonable to assume that consumers expect down content to reflect diligent use of modern mass production techniques calibrated to make the most of both efficiency and down content. Applying those production techniques should yield down content of more than 70

percent for products labeled “down.” (Before they were rescinded, the FTC Down Guides allowed the 70 percent standard. According to the FTC, the resulting 30 percent tolerance was outdated and unwarranted, and did nothing to promote truthful labeling and advertising practices.) Producers selling down products in Canada already must meet Canada’s 75 percent down requirement. Producers selling down products in Japan are able to manufacture products with as much as 90 percent down content.

When the FTC decided to rescind the Down Guides, it stated that this action should provide incentive for the industry to create effective standards and develop better methods of product differentiation. For example, the industry is in the best position to determine an appropriate outer limit for non-down content in a product labeled “down.” It also is in the best position to educate consumers about the meaning of the term “down” and about differentiating among down-filled products. Both producers and retailers might choose to move toward a standard of full and accurate disclosure, with all down-filled products labeled to show the actual percentage of down content instead of relying on the more ambiguous “down” label. Or manufacturers might choose to establish and disclose a minimum standard for the down content of their “down” products. For example: “Down — consisting of a minimum of 80 percent down and a maximum of 20 percent waterfowl feathers and down or feather fiber.”

Manufacturers should be aware that in rescinding its Guides, the FTC did not withdraw its scrutiny from this market. Indeed, the agency will continue to monitor claims about down because there’s no way for consumers to determine accuracy for themselves. In the meantime, it is reasonable to expect that sellers in North America will follow the Canadian minimum of 75 percent down in a product labeled “down,” as they strive to achieve the highest standard consistent with modern production techniques.

Percentage Claims. When a product is labeled with a specific percentage of down (say, “50% down, 50% waterfowl feathers”), only a modest deviation reflecting unavoidable manufacturing variations, despite the exercise of due care, is acceptable. This standard applies to all plumage used as filling materials. Under current production methods, manufacturers should produce feather and down blend goods having a down content that is plus or minus two to five percent of the percentage number on the label. This deviation must reflect only the unavoidable variations of the manufacturing process; it is deceptive to intentionally produce and sell feather and down products with anything less than the claimed down content. In short, a producer may not “shoot for the tolerance.” For example, if a manufacturer produces pillows labeled “50% down, 50% waterfowl feathers,” the FTC expects all or nearly all of these pillows to be filled with 50% down and 50% waterfowl feathers. If all or a large portion of the pillows actually contain, for example, 45% down, then the pillows must be relabeled “45% down.” If a manufacturer deliberately labels the pillows with a higher percentage down content than the actual down content that the manufacturer intends to put into the product, the manufacturer is acting deceptively.

Species

When a label identifies a particular species (e.g., “goose down,” “duck down”), only a modest deviation reflecting unavoidable manufacturing variations, despite the exercise of due care, is acceptable. Truthful, nondeceptive disclosures of any species (waterfowl or landfowl) are acceptable.

Cleanliness

The FTC pays close attention to consumer health and safety issues in product advertising and labeling. Consumers expect that feather and down products will be free of foreign matter and contaminants.

Facts for Business

How can the industry determine and convey cleanliness? One way is through the measurement of oxygen number. Because modern mass production techniques allow the industry to produce feather and down materials efficiently with oxygen numbers below 10, cleanliness of feather and down filling should be consistent with an oxygen number of less than 10, no matter how it is measured. Finished goods manufacturers and retailers may contract for feather and down material that is cleaner — or otherwise superior — to these minimum criteria. By doing so — and by making truthful and substantiated comparative claims in their ads — they can offer consumers feather and down products that match their various preferences.

What penalties can be imposed against a company that uses false or deceptive ads or labels for feather and down products?

The penalties depend on the nature of the violation. The remedies that the FTC or the courts have imposed include:

Cease and desist orders: These legally-binding orders require companies to:

- ✓ stop running the deceptive ad or engaging in the deceptive practice,
- ✓ be able to substantiate claims in future ads, and
- ✓ report to FTC staff about the substantiation they have for claims in new ads.

Violations of cease and desist orders can result in civil penalties of up to \$16,000 per violation.

Civil penalties: Sometimes, a company that is not subject to a cease and desist order can be bound by an earlier Commission finding (in a case brought against another company) that a certain practice is deceptive and assessed civil penalties for knowingly engaging in the deception. This can happen when a “synopsis” of Commission decisions in a particular area is prepared and served on industry members. Prior Commission decisions about the labeling and advertising of down-filled products have been compiled into a synopsis that was served on many members of the industry.

Consumer redress and other monetary remedies: Other advertisers have had to give full or partial refunds to all consumers who bought the product.

FOR MORE INFORMATION

To learn more about making accurate representations in advertising, see the FTC brochure, *Frequently Asked Advertising Questions: A Guide for Small Business*, and the FTC’s Deception Statement, Substantiation Statement, and Unfairness Statement. These documents are available on the Internet at www.ftc.gov and from the FTC’s Consumer Response Center, 600 Pennsylvania Avenue, NW, Washington, DC 20580; 1-877-FTC-HELP (1-877-382-4357); TDD for the hearing impaired 1-866-653-4261. Manufacturers of textile and wool products may be interested in the FTC’s new business guide, *Threading Your Way Through the Labeling Requirements Under the Textile and Wool Acts*, also available on the Internet.



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Bureau of Consumer Protection
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