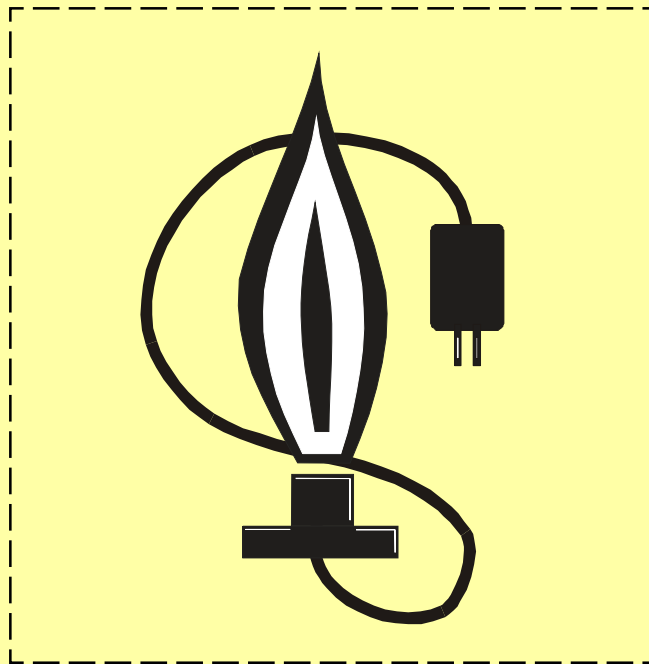


***ADVERTISING RETAIL ELECTRICITY
AND NATURAL GAS***



A POWER-FUL OPPORTUNITY FOR SUPPLIERS

FEDERAL TRADE COMMISSION
WWW.FTC.GOV

TOLL-FREE 1-877-FTC-HELP
FOR THE CONSUMER

Introduction

Deregulation of public utilities is reshaping the electricity and natural gas industries. As a competitive supplier, chances are you will rely on advertising to help consumers make educated purchasing decisions. Advertising offers a powerful opportunity to show — and tell — your organization’s story. It can convey information, increase consumer confidence and ultimately, boost your bottom line. Your advertising claims, and those of your competitors, can determine how consumers evaluate factors like price, environmental impact, customer service and name recognition.

The Federal Trade Commission is a law enforcement agency that works to prevent fraud, deception and unfair business practices in the marketplace. The Federal Trade Commission Act gives the Commission the tools it needs to act in the interest of all consumers to prevent deceptive and unfair acts or practices, including prohibiting unfair or deceptive advertising in any medium.

The FTC has prepared this guide to give you an overview of some of the rules and guidelines that protect businesses and consumers, as well as some of the laws it enforces.

Truth in Advertising

In a nutshell, the FTC Act prohibits unfair or deceptive advertising in all media and holds you responsible for backing up all the claims you make about your products and services.

It requires you to tell the truth in your advertising and not to mislead consumers. It also requires you to provide relevant information that, if left out, might mislead consumers or imply something that’s not true.



If your ad promises “no sign-up fee,” it may be misleading if you bill consumers undisclosed charges when they enter into a contract. Similarly, an ad that promises, “you can always return to your previous utility service whenever you like,” might be misleading if you require your customers to meet a lot of conditions or pay a fee to cancel their contract.

As an advertiser, you must have evidence to back up the claims your advertising makes or implies. Before you run an ad, you must have a reasonable basis for your claims. That means you must have objective evidence that supports your claim. The kind of evidence depends on the type of claim: Letters from

satisfied customers are not enough to support a claim that requires objective, scientific or technical evidence. At the very least, you must have the level of evidence your ad says you have.



If your ad says that “our electricity sources produce 20 percent fewer CO₂ emissions than the national average,” you must have valid scientific studies to support the claim before you run the ad.

You also must be able to substantiate all claims that a reasonable consumer may take from your ads, whether you intended to make those claims.



Consumers are likely to interpret an ad that says “save 10 percent on your electricity bill” to refer to the entire bill, including utility company charges. If the 10 percent savings refers only to the generation portion of the bill, the ad should make that clear.

For more information, see the FTC’s *Policy Statement Regarding Advertising Substantiation* (www.ftc.gov/bcp/guides/ad3subst.htm).

Disclosures and Disclaimers

Sometimes, disclosures and disclaimers are necessary to clarify statements in an ad. However, they are effective only if they are clear and prominent enough for reasonable consumers to see, hear and understand them. There is no hard-and-fast rule about the type size for a disclaimer, its location on a page, or the length of time it must appear on a television screen. But the FTC has taken action when a disclaimer or disclosure is too small, flashes across the screen too quickly, is buried in other information, or otherwise is hard for consumers to notice and understand.



An advertisement that uses giant type to promise a \$50 rebate or credit for consumers who sign up for your service would be deceptive if significant disclaimers and conditions were disclosed only in tiny type on the back of the ad.

Still, no disclaimer or disclosure is enough to “undo” the damage created by an express false or deceptive claim.



It would be deceptive for an electricity supplier to advertise the source of its product using words like “No Nukes, No Coal” if the supplier does use nuclear and coal generation sources

when its wind turbines don't produce enough power. A disclaimer elsewhere in the ad stating that "power sources may differ when conditions limit production of wind power" would not undo the deception because it contradicts the ad's main message.

If you are concerned that a disclaimer or disclosure may be necessary to clarify a claim you make in an ad, evaluate your ad copy and substantiation carefully. You may want to conduct consumer research to judge the disclaimer's effectiveness before you run the ad.

Comparative Advertising

It's legal for a company to compare its product or service to another company's in an ad — as long as the comparison is truthful and accurate. However, an ad that declares that Company A's natural gas is 25 percent lower in price than Company B's natural gas would be deceptive if the statistics aren't reasonably current and the situations under which the prices are offered aren't comparable.

It's also illegal to mislead through an implied comparison. A statement in your ad that your power is more reliable because it flows through the same transmission lines as the utilities' own power lines may deceptively imply that the competitor's power doesn't. Because utilities will continue to deliver electricity and gas through existing wires and pipes, no supplier can say it provides "more reliable" gas or electricity than another.

For more information, see the FTC's *Comparative Advertising Policy Statement* (www.ftc.gov/bcp/policystmt/ad-compare.htm).

Pricing

Good pricing practices are important for both customer satisfaction and your company's bottom line.

It's illegal to mislead consumers about pricing by hiding fees, such as those for switching the service. If there's a monthly fee for service, that should be stated clearly. And if you advertise an introductory price for your services that will increase within a short period of time, your ad must disclose that information clearly and conspicuously. It also could be deceptive to advertise a price reduction and imply that the reduction is available only if the customer switches to your company's service if the state's restructuring plan provides this reduction to all consumers.

Finally, it's important to convey accurate information about the price, especially if it varies by season or time of day or according to variable fuel and other costs. If the price doesn't include charges that consumers may assume are included, like balancing charges or regulatory fees, the ad must make that fact clear.

For more information, see the FTC's *Guides Against Deceptive Pricing* (www.ftc.gov/bcp/guides/decptprc.htm). Many pricing issues involve local practices, so you may want to contact the Attorney General and the public utility commission where you plan to advertise.

Automatic Renewal

Contracts for utility services usually state the length of time they are in effect — generally one or two years. A contract also may provide that at the end of the stated term, the contract will renew automatically unless the customer takes some affirmative steps to cancel it.

If you use such a contract term, you should be careful to communicate to the consumer all important terms and conditions of the automatic renewal *before* the contract is signed. For example, you should disclose that the renewal will occur automatically without prior notification to the customer, whether renewals will occur indefinitely, the cost or range of costs for renewal periods, any other terms that will change in the renewal period, the procedure a customer must follow to prevent an automatic renewal, and the company's refund policy.

To minimize customer dissatisfaction and complaints related to automatic renewals, it is best to provide a written reminder to customers before the renewal date.

Environmental Advertising

Deregulation allows consumers to choose to buy from providers who generate power from nuclear, coal, oil, hydro, solar, wind or other sources. Some customers may base their decision on a preference for power produced from non-fossil fuels and renewable energy. Marketing environmental benefits may be a powerful advertising theme, but it requires careful review.



An electricity supplier that claims to sell "environmentally clean" power must be able to substantiate that its product creates no harmful environmental impact — not just that it creates fewer emissions than another product.

You must have evidence to back up your claims *before* you run the ad. That is, if the ad promises, “*your choice can contribute to the construction of new wind turbines,*” you must have a reasonable basis to support the claim, such as a realistic plan to build new wind turbines to accommodate your customers’ energy needs.

For more information, see the FTC’s *Guides for the Use of Environmental Marketing Claims* (Green Guides), (www.ftc.gov/bcp/online/pubs/buspubs/epaclaims.htm), and the FTC’s *Complying With The Environmental Marketing Guides* (www.ftc.gov/bcp/online/pubs/buspubs/greenguides.htm). *Environmental Marketing Guidelines for Electricity Advertising*, produced by the National Association of Attorneys General, offers guidance for enforcement of state advertising laws (www.naag.org/features/legis.html).

Marketing

Internet Advertising

Many power providers use the Internet to advertise their products and services. Online advertising, like offline advertising, must be truthful and substantiated, and disclosures and disclaimers must be clear and conspicuous. For more information, see the FTC’s *Dot Com Disclosures* (www.ftc.gov/bcp/online/pubs/buspubs/dotcom/index.html).

Telemarketing

Claims made through telemarketing must be truthful and substantiated. The FTC’s **Telemarketing Sales Rule** requires companies to make specific disclosures in their telephone calls and prohibits telemarketers from being deceptive. The rule also prohibits calls to consumers before 8 a.m. or after 9 p.m., and calls to consumers who have previously asked that they not be called again.

Before a customer pays for goods and services, telemarketers must disclose certain information, orally or in writing, that is likely to affect the customer’s decision to purchase the goods or services they’re offering.

For more information, see the FTC’s *Complying With the Telemarketing Sales Rule* (www.ftc.gov/bcp/online/pubs/buspubs/tsr/index.htm).

Door-To-Door Sales

Some power providers promote their services and products by sending salespeople out to ring doorbells. Marketers who sell

anywhere other than their own place of business must honor the **Cooling Off Rule**, which gives consumers three days to cancel a transaction made in their home or at a trade show, shopping mall or other public venue.

By law, the salesperson must tell the consumer about these cancellation rights at the time of sale. The salesperson also must give the consumer two copies of a cancellation form (one to keep and one to return) and a copy of the contract or receipt. The contract or receipt should be dated, show the name and address of the seller, and explain the consumer's right to cancel. The contract or receipt must be in the same language used in the sales presentation.

"Free" Offers

When you tie a "free" offer to the purchase of another product or service, it's deceptive to increase the regular price of the purchased product to cover the cost of the free item.



It would be deceptive to lure consumers with an offer of "free electricity for the first month" of a contract if the cost of the electricity would be factored into the following months' bills.

For more information, see the FTC's *Guides Concerning Use of the Word "Free" and Other Representations* (www.ftc.gov/bcp/guides/free.htm), and *Guides Against Deceptive Pricing* (www.ftc.gov/bcp/guides/decptprc.htm). You also may want to check with the Attorney General in the state(s) where you plan to advertise. In addition, the Better Business Bureau has voluntary standards about when to use "free" in advertising.

Contests and Sweepstakes

Some advertisers use sweepstakes and other contests to promote their products and services. When they do, they must make clear that the consumer does not have to pay or buy anything to enter or win the contest.

When the telecommunications industry was deregulated, some unscrupulous marketers used prize promotions to get consumers to unknowingly switch their long-distance service or sign up for services they would charge to consumers' telephone bills. Thinking they were simply filling out a sweepstakes application, many consumers didn't read the fine print that detailed the financial obligations they were committing to. Practices like these are against the law.

Bait and Switch

It's illegal to advertise a product or service when you actually plan to sell the consumer something else, usually at a higher price.



It would be illegal to run an ad promising that you will provide 100 percent wind power if you don't have sufficient supplies to do so — and try to sell something else, such as appliance repair services, to customers who inquire about the wind power service.

For more information, see the FTC's *Guides Against Bait Advertising* (www.ftc.gov/bcp/guides/baitads-gd.htm).

Testimonials and Endorsements

Testimonials and endorsements must reflect the typical experiences of consumers, unless your ad clearly and conspicuously states otherwise. Testimonials and endorsements should not be used to make a claim that can't be substantiated.



A statement like "I saved 30 percent on my electricity bill when I switched providers" would be misleading if most consumers are likely to save far less or nothing at all.

If you rely on a "celebrity" or "expert" endorsement in your ad, it must reflect the endorser's honest experience or opinion. To give an expert endorsement, a person must have sufficient qualifications to be considered an expert in the field, and must have evidence to support the endorsement.

In addition, you must disclose any relationship between your company and the person endorsing your product or service that might affect the weight or credibility of the endorsement.

For more information, see the FTC's *Guides Concerning Use of Endorsements and Testimonials in Advertising* (www.ftc.gov/bcp/guides/endorse.htm).

Guarantees

If your ad mentions that your product or service comes with a guarantee, you must clearly disclose how consumers can get the details. Any conditions or limits on the guarantee, such as a time limit, also should be clearly disclosed in the ad.



If your ad promises “we will credit your account \$20 if you find a lower price than ours within six months,” it also must tell consumers all the conditions that apply to receiving the credit.

For more information, see the FTC’s *Warranties* (www.ftc.gov/bcp/online/pubs/products/warrant.htm), and *A Businessperson’s Guide to Federal Warranty Law* (www.ftc.gov/bcp/online/pubs/buspubs/warranty/index.htm).

Credit

Because suppliers of electricity and natural gas provide a service before billing for it, they essentially extend credit to their customers. As creditors, these suppliers are subject to several laws designed to protect consumers from unfair or discriminatory lending practices.

For example, if your company provides services on credit, you may be required to meet certain billing standards under the Fair Credit Billing Act. If your company provides information about customer accounts and delinquencies to a credit reporting agency, you must take certain steps to ensure the information is accurate and private. In addition, the Equal Credit Opportunity Act prohibits companies from discriminating in granting credit on the basis of sex, marital status, age, race, national origin or receipt of public income assistance. Other laws also may apply.

For more information, see the FTC’s publications on *Fair Credit Billing* (www.ftc.gov/bcp/online/pubs/credit/fcb.htm); *Fair Credit Reporting* (www.ftc.gov/bcp/online/pubs/credit/fcra.htm); and *Equal Credit Opportunity* (www.ftc.gov/bcp/online/pubs/credit/ecoa.html).

Multi-Level Marketing

Multi-level marketing, also known as “network” or “matrix” marketing, involves selling goods and services through distributors. These plans typically promise that people who sign up as distributors will get commissions based on their own sales *and* on the sales their recruits have made.

Pyramid schemes are an illegal form of multi-level marketing that involve paying commissions to distributors only for recruiting other distributors. Pyramid schemes are illegal because the plans inevitably collapse when no new distributors can be recruited. When a plan collapses, most people — except perhaps those at the top of the pyramid — lose their money.

Advertising Agencies

Ad agencies or other third parties used in your advertising efforts can be held legally responsible for misleading claims in your ads. Agencies or website designers are responsible for reviewing the information used to substantiate the claims. That is, they should not rely on your assurance that you have adequate and appropriate substantiation for the claims.

In determining whether an ad agency should be held liable, the FTC looks at the extent of the agency's participation in the preparation of the ad it is challenging, and whether the agency knew or should have known that the ad included false or deceptive claims.

Questions

What questions should my advertising address to help consumers make their choices?

Consumers are likely to have a wide range of questions regarding their choice of an electricity or natural gas provider. Among them are:

- ✱ Is there a sign-up fee?
- ✱ Is there a fee to switch if I decide to resume service with my current supplier or switch to another supplier?
- ✱ How long am I obligated to stay with this supplier?
- ✱ How much would I pay for electricity or natural gas from another supplier?
- ✱ What's included in the price? Are there any incentives or special rates?
- ✱ Does the company offer a fixed price or flat rate, or will the price fluctuate?
- ✱ What other charges may appear on the bill?
- ✱ Is this price negotiable?
- ✱ Does the company offer any package deals or discounts?
- ✱ What types of budget payment programs or options does the company offer?
- ✱ Where does the power I'm buying come from? How much does this source pollute?
- ✱ How many bills will I receive?
- ✱ If the company provides a separate bill, does it offer an automatic payment service?
- ✱ Who should I contact if I have a billing problem?
- ✱ What are my obligations if I sign a contract?
- ✱ What happens if I decide to relocate before the contract expires?

What can my company do if a competitor is running an ad that I think is deceptive?

You can:

- ✱ Explore your legal options under federal and state statutes that protect businesses from unfair competition. For example, the Lanham Act gives companies the right to sue their competitors for making deceptive claims in ads.
- ✱ File a complaint with the National Advertising Division (NAD) of the Council of Better Business Bureaus (www.bbb.org/advertising), if your competitor's ad is running nationally or regionally. The NAD is a private, self-regulatory group affiliated with the BBB. It investigates allegations of deceptive advertising and gives advertisers a mechanism for resolving disputes voluntarily.
- ✱ Call or file an online complaint with the BBB if the ad is local. Many BBBs have procedures for resolving disputes between businesses.
- ✱ Contact the radio station, television station or publication where you heard or saw the ad to report that it may be deceptive.
- ✱ Contact your state Attorney General or your city, county or state Office of Consumer Affairs. Their phone numbers are in the Blue Pages of your telephone directory.
- ✱ Contact the Federal Trade Commission by phone (Division of Enforcement), 202-326-2996; online, www.ftc.gov; or by mail, Federal Trade Commission, Division of Enforcement, 600 Pennsylvania Avenue NW, Washington, DC 20580.

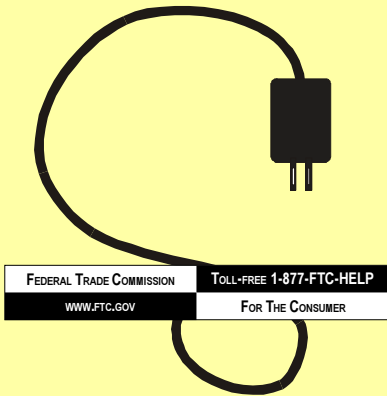
If my company files a complaint with the FTC about a competitor, will the FTC resolve the dispute?

The FTC is authorized to act when it appears that a company's advertising is deceptive and when FTC action is in the public interest. Although the FTC cannot intervene in an individual dispute between two companies, the agency relies on many sources, including complaints from consumers and competitors, to find out about ads that may be deceptive.

The FTC carefully reviews complaints from companies alleging that competitors are advertising deceptively. Because investigations are confidential, however, the staff cannot tell you whether an investigation of a particular company is under way unless and until the FTC takes formal action.

Your Opportunity to Comment

The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards collect comments from small business about federal enforcement actions. Each year, the Ombudsman evaluates enforcement activities and rates each agency's responsiveness to small business. To comment on FTC actions, call 1-888-734-3247.



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