

RV EXECUTIVE TODAY

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A View from Here: Make Sure Advertising Is Clear and Honest

By Tom Kline

After customer and employee problems – both are a catalyst of lawsuits and regulator issues – the next biggest hurdle you will likely face as a business leader is assertions that your advertising is deceptive.

The Federal Trade Commission (FTC) is actively pursuing cases regarding deceptive advertising, even now. Because of COVID-19 being in the news cycle constantly, there has not been as much information reported about any enforcement actions. But the FTC is out there, and enforcement actions are happening and ongoing.

A recent automotive-related case is summarized on the FTC website:

“In March 2020, Michigan-based Federal-Mogul Motorparts LLC (Federal-Mogul) agreed to settle an FTC administrative complaint alleging that it made unsubstantiated claims that its aftermarket Wagner OEX brake pads could stop a vehicle in a shorter distance in an emergency and reduce the risk of collisions, as compared to competitors’ brake pads. The proposed order resolving the FTC’s complaint prohibits Federal-Mogul from making such claims in the future, unless they are true and supported by competent and reliable scientific evidence.”

The Wagner OEX brake pad commercial shows two vehicles driven by moms with their children in the back seats. A moving van pulls out in front of them. One car is able to stop, the other collides with the van. A spokesman then makes the claim that “parts matter” and the Wagner pads can stop a car in a shorter distance in an emergency. The commercial can be viewed here: tinyurl.com/y5wzvv6c

When it comes to consumer loan advertising, the Consumer Financial Protection Bureau (CFPB) has a page that fully details the terms and phrases that require additional disclosures. Importantly, the CFPB goes into detail about “clear and conspicuous” advertising. The notion of “clear and conspicuous” is important to keep in mind for all advertising. Otherwise, the ad will be considered misleading.

Trigger Terms

“Trigger terms” include the down payment (if any), the annual percentage rate (APR), the number of payments, the amount of any payment that you show, or the amount of a finance charge. Special concerns for consumer loan advertising and specifics about words and topics that require special disclosures to avoid legal troubles can be found on the Consumer Financial Protection Bureau’s (CFPB) website, or by searching “consumer finance 1026.24 advertising” through your preferred internet search engine.

And please do not forget the processing fee (some dealers still call this a “DOC” fee). If you advertise a payment, it must include the processing fee unless your disclaimer says otherwise. Failure to get this right will result in a claim of unfair deceptive acts and practices (uniformly called UDAP). With these claims



The Wagner OEX brake pad commercial claimed that its aftermarket brake pads could stop a vehicle in a shorter distance in an emergency and reduce the risk of collisions, as compared to competitors’ brake pads.

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from plaintiff lawyers comes “prayers” for punitive damages and cost-shifting laws that will have you paying for the customer’s attorney’s fees. I conducted a recent review of several RV dealers’ websites, and it proved that this issue is being overlooked.

Want to avoid the FTC? Want to prevent problems and issues with your TV and cable ads? (And don’t forget your print ads, like newsletters, magazines, and newspaper ads.) Review these items with your attorney or a legal service to ensure your advertising is in proper compliance. The “trigger terms” can get you into trouble.

Falsifying Finance Applications

Similarly, in recent years, the FTC also has been very active in pursuing falsification on finance applications. Often, these assertions go hand in hand with deceptive advertising claims. As recently as September 2020, the FTC closed a group of auto dealerships (Tate’s Auto Center in Arizona). Andrew Smith, director of the FTC’s Bureau of Consumer Protection, said Tate’s had, “falsified consumers’ income and down-payment information on vehicle financing applications and misrepresented important financial terms in vehicle advertisements. These auto dealers sent bogus applications to finance companies to qualify consumers for car loans that they could not afford, subjecting the consumers to defaults and repossessions. Falsifying income and down-payment information on car loan documents is illegal, and the FTC won’t hesitate to take action against car dealers who engage in this harmful conduct.”

The FTC has a \$7,203,227 judgment against Tate’s owners, (jointly and separately), who are now in bankruptcy. The FTC website says that the case continues against the owners. It is unknown if any criminal charges are pending.

Unchecked, misrepresentation and deception will cause problems for you and your dealership. Consider developing policies and procedures to root out and address these problems before they happen. You’ll be happy you did.

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