

## *Product Demonstrations*

A successful advertisement causes the viewer to remember the product. Viewers remember commercials involving demonstrations because they make the product come to life. Overzealous or unfounded demonstrations, however, run the risk of challenge by a competitor for false advertising in court under the Lanham Act or before the self-regulatory National Advertising Division of the Council of Better Business Bureaus (“NAD”). The Federal Trade Commission (“FTC”) also knows that effective product demonstrations often convince a consumer to purchase a product and it has challenged deceptive product demonstrations.

### **THE RULES:**

To minimize the risk of challenge from a competitor or the government, follow these rules:

- Demonstrate only what the product can do. It is important to convey accurately only the actual properties of the product you are demonstrating. You should not directly or indirectly misrepresent any product qualities or features. In addition, do not alter any feature of the product, whether it’s your product or your competitor’s. Similarly, you must disclose whether you have condensed or exaggerated the time it takes for the product to work. Finally, you cannot demonstrate a product feature with a phony or rigged demonstration that gives the viewer the impression that an actual demonstration is taking place — even

if the product has the capability to perform as promised.

- The use of a mock-up or prop that portrays or shows features of your product should be disclosed. There is a limited exception to this rule if the mock-up or prop is used to compensate for any technical limitations of portraying the actual product on television. It may be permissible to use shaving cream to show the normal foam on a glass of beer, for example, if the actual foam would melt under the photographic lights used to film a commercial. Be careful, however! The shaving cream should not last longer than the normal foam in a glass of beer.
- Photographic techniques must not be used to exaggerate, distort, or otherwise misrepresent a product’s qualities. Camera angles and photographic lenses should not be used to change the appearance, quality, or performance of any product appearing in the ad.

### **EXAMPLES OF RULEBREAKERS:**

Competitors are sometimes the first to point out violations of the rules. The manufacturers of Glad-Lock bags and Ziploc bags used the NAD to challenge TV and print advertising for Hefty OneZip Bags demonstrating the difficulty of closing competitor’s bag compared to the ease of closing the Hefty bag. “There’s the hard way ... or the Hefty way.” The NAD concluded that the ad was misleading because it failed to disclose that the competitor’s bag shown in the demonstra-

tion had misaligned tracts to cause its failure to close. Breaking these rules can be expensive. In March 2000, Dura Lube agreed to pay \$2 million in consumer redress to settle numerous charges brought by the FTC. The FTC alleged that Dura Lube's ads showed unsubstantiated product demonstrations for its products, including deceptive endorsements from a former NASA astronaut.

The Volvo Corporation and its advertising agency agreed to pay \$150,000 each to the FTC for failing to disclose that they structurally altered cars shown in one of its television commercials. This ad showed an oversized pickup truck driving over a row of cars, leaving only the Volvo intact. Volvo failed to disclose that its car had been structurally strengthened with steel and wood while the other car models had been structurally weakened.

One of the most famous - and blatant - deceptive demonstrations involved the Campbell Soup Company, which conveniently forgot to inform consumers that its soups looked full of luscious ingredients because marbles had been placed on the bottom of a soup bowl in order to raise the soup ingredients to the surface.

Competitors and the FTC are particularly scrutinizing of product demonstrations when children are involved. For example, in 1996, Hasbro, Inc. and its advertising agency, Grey Advertising, settled FTC charges that a commercial for Hasbro's "Colorblaster" paint sprayer misrepresented that children can operate and complete the multi-part stencils that come with it with very little effort. The FTC alleged that Hasbro used a motorized air compressor during filming to demonstrate the operation.

## ABOUT OUR ADVERTISING AND MARKETING PRACTICE

Kelley Drye Collier Shannon's Advertising & Marketing practice comprises attorneys with proven success in advertising litigation and NAD proceedings; expertise in the area of advertising, promotion marketing, and privacy law; and experience at the FTC, FDA, and the Offices of State Attorneys General. We help leading companies identify risks, respond effectively to inquiries, and prevail in contested proceedings.

## ABOUT KELLEY DRYE COLLIER SHANNON

Kelley Drye Collier Shannon, the Washington, DC office of Kelley Drye & Warren, is an international, multidisciplinary law firm that solves competitive problems for Fortune 500 companies, privately-held corporations, government entities, and trade associations. Founded more than 170 years ago, Kelley Drye & Warren has more than 400 attorneys and professionals practicing in eight locations around the world and specializing in: Advertising and Marketing; Antitrust and Trade Regulation; Corporate; Employee Benefits and Executive Compensation; Environmental; Government Contracts; Government Relations and Public Policy; Homeland Security; Intellectual Property; International Trade and Customs; Labor and Employment; Litigation; Private Clients; Real Estate; Restructuring, Bankruptcy, and Creditors' Rights; Tax; Technology; Telecommunications; and Trade Associations.

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