

In Pricing Case, California Court Determines Meaning of "Free" Shipping

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In the Overstock.com case described in the [post yesterday](#), the plaintiff also argued that Overstock's representations that shipping was "free" or "only \$2.95" violated California's False Advertising Law because the company factored the full cost of shipping into the underlying product price. The court ruled in Overstock's favor, determining that the claim was "nonsensical," and explaining that the most logical inference that can be drawn from a "free" shipping advertisement is that the shipping cost has been factored into the price. No reasonable consumer, the court elaborated, could believe that "free shipping" means that shipping has not been factored into the base price; rather, the most reasonable inference is that there is no additional charge beyond the stated price.

As the Federal Trade Commission's Guide Concerning Use of the Word "Free" and Similar Representations ("Free Guides") points out, "free" offers typically require that consumers purchase one product at the regular price in order to receive a second product or service free of cost, and consumers typically believe that they are purchasing one product at regular price and paying nothing for the second. To prevent deception, the Free Guides therefore prohibit sellers from advertising a product or service as "free," but then recovering the cost of the "free" product or service by marking up the price of the product that must be purchased.

Although the court's decision might not sync completely with the FTC's Free Guides, for companies already using or considering a "free shipping anytime" model, the decision could give them some comfort.