

NAD Recommends Advertisers Discontinue "Like Free" Claims

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One of the most powerful tools in a marketer's arsenal is the word "free." And it's precisely because that word is so powerful, that consumers, regulators, and competitors, closely scrutinize how the word is used in ads and are quick to complain when they think the word is used inappropriately. Recently, Office Depot challenged ads in which OfficeMax and Staples claimed that participation in their rewards programs was "like" getting goods "free." The National Advertising Division of the Council of Better Business Bureaus (the "NAD") recommended that both companies change their ads.

OfficeMax advertised its rewards program with the phrase "It's like getting one FREE" and the following disclosure: "Pay \$34.99 plus earn \$35 in MaxPerks Bonus Rewards." The Rewards, however, were subject to various restrictions. For example, customers couldn't use reward points for 30 days, the points were subject to cancellation at any time, and the points expired after 90 days. Similarly, Staples advertised its rewards program with the following phrases: "Buy ANY of these office supplies, get 100% back in Staples Rewards" and "It's like getting supplies for FREE." The rewards program was also subject to certain exclusions and limitations.

Office Depot argued that both ads violated the FTC's [Guide Concerning Use of the Word "Free" and Similar Representations](#) which states, in part, that when advertising a free offer, "all of the terms, conditions and obligations should appear in close conjunction with the offer of 'Free' merchandise or service." The NAD agreed, noting that "merchandise is either free or it's not" and that the word "free" has "cachet with consumers and should be reserved for offers that are truly without cost." Both OfficeMax and Staples argued that no consumers were misled by the ads and indicated that they would appeal the NAD's decisions.

Regardless of what happens with these cases on appeal, marketers should be careful when advertising that something is "free," or even "like free." If there are costs, requirements, or limitations associated with the free goods, those should be clearly disclosed so that consumers know exactly what they are getting.