

New Trends in Health-Related Advertising Claims

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Companies marketing functional foods or dietary supplements should be aware of the Federal Trade Commission's new regime for using health-related advertising claims and the Food and Drug Administration's heightened scrutiny of health-related front-of-package (FOP) labeling claims.

In two game-changing settlement orders, issued in July of this year, the FTC, for the first time, required that the companies under order (1) possess two clinical trials for weight loss claims and certain disease claims, (2) have FDA approval for most other disease claims, and (3) follow a new standard for relying on ingredient testing as claim substantiation. The FTC has indicated that it intends to include similar requirements in its future food and supplement orders, suggesting that these new standards soon could set the bar for all companies, regardless of whether they are under order or not.

Similarly, FDA has issued a series of warning letters challenging the use of nutrient content claims, health claims, and other health benefit claims in food and beverage product labeling. Recent FDA warning letters challenge a number of claims appearing on the principal display panel of food and beverage product labels, underscoring the agency's enforcement and policy development priorities concerning the standards governing FOP labeling systems.

Kelley Drye's Advertising and Marketing practice group has prepared several articles to help companies navigate the new terrain successfully:

- ["The FTC's New Take on Health-Related Advertising: What Companies Facing FTC Enforcement Need to Know"](#) provides strategies for companies that are faced with FTC action and includes summaries and analysis that will be useful for anyone trying to wrap their head around the new standards.
- ["Ingredient Testing for Food and Supplement Advertising Claims: Keeping Up with an Evolving Standard"](#) presents a comparison of the old ingredient testing standard versus the new standard from the recent orders. This article also provides practical pointers for how to base claims on ingredient testing within FTC's current guidance.
- ["Marketing Nutrition & Health-Related Benefits of Food & Beverage Products: Enforcement, Litigation & Liability Issues"](#) examines key developments over the past year and a half involving food and beverage product marketing claims. This examination suggests that FDA and FTC enforcement priorities have contributed to increasing liability trends associated with nutrition and health-related product benefit claims.

With increasing enforcement and litigation activity, food and supplement companies should stay informed about government scrutiny of health-related claims and the standards for competent and reliable scientific evidence.