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Law Paper Assignment: Deceptive Advertising

Deceptive advertising is used in the advertising industry to describe any advertisement that portrays a false message to mislead the consumer into believing something about the product (Pounders, 2020b). The Federal Trade Commission (FTC) oversees the regulation of advertisements. The FTC takes the task of ensuring that customers are receiving full transparency from companies very seriously and are responsible for regulating advertisements in terms of, “unfair, deceptive and fraudulent practices in the marketplace,” (Pounders, 2020b). To understand deceptive advertising it is first important to learn the process and criteria that the FTC has to find.

There are two different types of deceptive advertising claims. These claims are either explicitly false or implied claims. For a claim to be explicitly false it must be, “literally stated in the ad,” (Pounders, 2020c). Explicitly false claims is a term that includes terms such as false establishment claims and false demonstrations/dramatizations. A false establishment claim is when a brand either directly expresses or implies a claim that certain information has been established by scientific testing when in reality it has not (Pounders, 2020c). False demonstrations and dramatizations are when a company uses a, “rigged demonstration” to provide evidence of a claim. On the other hand, an implied claim can be done so without explicitly stating anything. People and objects are used as signifiers of prestige, for example including someone using a medical white coat in a medicine commercial to insinuate that doctors approve of the claims the brand is making, (Pounders, 2020c).

According to Dr. Pounders, “advertisers must have adequate substantiation for all product claims before disseminating their advertising. So any claim that's made on an

advertisement has to be substantiated as soon as that claim is made,” (Pounders, 2020b). This means that for advertisements to not be considered deceptive brands must have evidence that what they are claiming is true. There are three ways that the FTC can first build a deceptive advertising case against a company: complaints from consumers, complaints from competitors, and the FTC taking action out of their own volition (Pounders, 2020b). For the FTC to act on these complaints they must ask themselves, “How would a reasonable consumer view this ad? What are the literally false (explicit) and implied claims made in the ad? Is/are the claim(s) material? Is there sufficient evidence to support the claim(s)?” (Pounders, 2020b). After investigating the FTC may find that the claims are not deceptive advertising but puffery, which is an exaggeration and, “inflating a claim or statement,” (Richards, 2015, p.2). Puffery is completely legal and is considered an opinion rather than something that can be scientifically proven. If the FTC finds that the brand is using deceptive advertising it will usually punish the brand with one of their sanctions: “cease and desist order, monetary penalty, or corrective advertising,” (Pounders, 2020b).

Deceptive advertising law relates to advertising and public relations practitioners because if they do not abide by the FTC rules it can have enormous repercussions on the way they handle their jobs. In 1991 Volvo released an ad that was penalized for deceptive advertisement because of false demonstration. The fine the agency had to pay was so large that it ended the agency and it had to be dissolved, (Pounders, 2020c). This case shows how important it is for practitioners to follow false advertising laws because it can mean quite literally the end of their careers. Another example is when in 2016 Volkswagen was sued by the FTC for false advertising claims. They were falsely claiming that their diesel cars, “were low emission, environmentally friendly,” (Heilpern, 2016). They will now have to pay up to \$61 billion. In

cases such as these, it is the public relations and advertising agencies that get impacted the most by these fines and penalties, since the brands are generally multi-billion dollar companies. PR and advertising practitioners have to be extra careful to follow false advertising laws to make sure their industries remain untouched.

One case that has been found by the FTC to violate false advertising law is POM Wonderful. In 2010 POM Wonderful known for making pomegranate products was found of false advertising by the FTC, (Federal Trade Commission, 2010). According to the FTC POM Wonderful made false and, “unsubstantiated claims that their products...prevent or treat heart disease, prostate cancer, and erectile dysfunction,” (FTC, 2010). POM falsely claimed that research proved that POM promoted prostate health which decreased PSA levels and lowered arterial plaque which lowered blood flow (Pounders, 2020c). Director of the FTC’s Bureau of Consumer Protection, David Vladeck stated, “When a company touts scientific research in its advertising, the research must squarely support the claims made. Contrary to POM Wonderful’s advertising, the available scientific information does not prove that POM Juice or POMx effectively treats or prevents these illnesses,” (FTC, 2010). The FTC was worried about misleading consumers who thought that by buying their product they would be magically cured, which research concluded they would not (FTC, 2010). Instead of being fined the FTC sanctioned a cease and desist order for POM Wonderful’s deceptive advertising. Over the next few years, the owners of POM Wonderful, Stewart and Lynda Resnick spent fighting the FTC’s decision until their fight was halted in 2016 when the supreme court decided to not review the FTC’s decision (FTC, 2016).

In conclusion, I agree with the ruling by the FTC. Pom Wonderful was engaging in deceptive advertising because they were engaging in a false establishment claim. By claiming

that research backed the fact the POM Wonderful improved prostate health and lowered arterial plaque when it did not, it misled the customer. When the FTC started to investigate the case POM failed to provide substantial evidence to back up their case. Furthermore, this case is material because these false claims impacted the customer's decision on whether to buy the product which gives the FTC the right to try the case (Pounders, 2020c). The FTC gave POM Wonderful the easy way out by sanctioning a cease and desist order when they could have been fined millions just like other companies.

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