

CONSUMER PROTECTION

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When does the legislature tend to react?

Who is a "consumer"?
How do you become a "merchant"?

Deceptive Advertising

Labeling and Packaging Laws

Sales

Credit Protection

Consumer Health and Safety

State Consumer Protection Laws

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Deceptive Advertising

objective intent

puffing

bait and switch

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FEDERAL GOVERNMENT
Federal Trade Commission (FTC)
unfair competition
protection of the competitive system
unfair or deceptive trade practice
protection of competitors
and consumers

CIVIL, not criminal

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STATE GOVERNMENT
most often piecemeal
most often parallel the federal laws

almost no States have adopted either the
Uniform Consumer Credit Code

or the

Uniform Deceptive Practices Act

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FTC: DECEPTIVE TRADE PRACTICES

TYPES OF ADS

DECEPTIVE PRICE

"free" or "reduced"
relative to REGULAR price
bait and switch

TESTIMONIALS AND MOCK-UPS
endorser not use
superior
disclose

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FTC: DECEPTIVE TRADE PRACTICES
TYPES OF ADS

QUALITY CLAIMS

puffing

express v. implied: **SUBSTANTIATION**
need **at the time of ad**, not after

COMPARATIVE

OK IN U.S., but defamation or
disparagement

NOT OK IN EUROPE

FTC: DECEPTIVE TRADE PRACTICES
TYPES OF ADS

CORRECTIVE ADVERTISEMENTS ORDERED BY FTC
IF

prior ads play a

A) **substantial role** in

B) **creating**

C) **false and**

D) **material beliefs**, and there exists a

E) **clear and continuing injury**, **AND**

F) **injury will not cease** with an end to ads

THEN

FTC **may order** corrective ads

COMMON LAW CONSUMERS' CAUSES OF ACTION

TORTS

duty of care

breach of duty

proximate (i.e., legal, not factual) cause

reasonably foreseeable

injury

no defenses

defenses to negligence

comparative = offset

contributory = bar

assumption of risk

knowing and

voluntary

TORTS: defenses to negligence
misuse
defenses
res ipsa loquitur
per se negligence
statutory standard of care

TORTS: STRICT LIABILITY
not fault based
instead based on social risk allocation

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CONSUMERS' CAUSES OF ACTION
CONTRACT
ad = offer?
not reasonably definite
puffing
invitation to offer
common law not effective
so statutory response

ADVERTISING = commercial free speech
right of the listener, not right of speaker
objective truth
content regulation
deception = substantial government interest

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STATUTORILY IMPOSED DEFINITIONS
STATES
UCC WARRANTIES
implied for ordinary purpose
MERCHANTABILITY
implied for a particular purpose
seller knows of buyer's reliance
express
seller's affirmation of fact AND
basis of the bargain

DISCLAIMERS
clear and conspicuous
NOT for personal consumer injury
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STATUTORILY IMPOSED DEFINITIONS

FEDERAL: Magnuson - Moss Warranty Act

IF
interstate commerce sale
of
consumer good
AND IF
written express warranty
THEN
define words used in warranty
full v. limited

COMPETITORS' CAUSES OF ACTION

DEFAMATION

place business reputation in contempt

LIBEL = written

SLANDER = oral

IF
business
THEN
presume untrue and damages
punitive if **MALICE**

COMPETITORS' CAUSES OF ACTION

PALMING OFF

misrepresents own goods as goods of another

injunction and damages
lost sales + damaged good will

BUT
NO CONSUMER STANDING TO SUE
IF COMPETITOR
MISREPRESENTS OWN PRODUCT

COMPETITORS' CAUSES OF ACTION

DISPARAGEMENT

- A) malicious
- B) false statements about
- C) business property,
- AND
- D) causing monetary loss

FEDERAL STATUTES

LANHAM TRADEMARK ACT

competitor has standing to sue competitor for

- A) false representation about a
- B) good or service in
- C) interstate commerce that is
- D) likely to confuse a reasonable consumer.

false = (true, but mislead reasonable consumer)

**FEDERAL TRADEMARK STATUTE INCLUDES
COMMON LAW**

**palming off,
defamation,
disparagement**

**AND EXPANDS
TO GIVE COMPETITOR STANDING TO SUE
FOR CONSUMER**

**FEDERAL TRADE COMMISSION, SECTION 5
UNFAIR COMPETITION
protects competition (1914)
UNFAIR OR DECEPTIVE TRADE PRACTICES
protects competitors and consumers (1938)**

LABELING AND PACKING LAWS

knowing and voluntary

require disclosure

SALES

Regulation Z
disclosure of credit terms in a uniform fashion

FTC "Door to Door Sales"
denial of HDC status

Remote Sales: Mail Order
time per express statements

U.S. Postal Service
"gifts" in the mail

CREDIT PROTECTION

disclosure

discrimination

reporting
right to see
right to comment
right to correction

collection
own name
your attorney is covered individually
breach of the peace

HEALTH AND SAFETY

disparate impact
reasonable inspection
affect on commerce

control content of the product itself

disclosure the content

consumer products
aggregate information
