

Advertising Your Business: What You Need to Know

Now more than ever, it is imperative that you understand the law that surrounds advertising and other communications.

by Kenneth D. Morris, Esq.

As the former legal counsel to a major agrichemical manufacturer, much of my job was to ensure that the company's communications — including advertisements, brochures and TV commercials — were legally sound and defensible. That's because large companies know they cannot afford to take chances over misrepresentations or omissions in their advertisements. But "truth in advertising" is not a concept that only the big guys should care about. With consumer groups becoming more and more vigilant and thousands of dollars worth of legal fees and fines at stake, companies of all sizes must be careful — even if they place just one ad each year.

In this article, I will present some key concepts as well as examples how lawn care companies get into trouble, even unwittingly. Please note that this article cannot substitute for actual legal advice; if you are concerned that your advertising may be problematic, contact an attorney like myself as soon as possible.

Understanding "Truth In Advertising"

Let's start with some basic concepts. The Federal Trade Commission Act declares that all "unfair or deceptive acts or practices" in commerce are unlawful. But what do they mean specifically? **An advertisement is unfair or deceptive if any text or visual image — or the omission of such — is likely to mislead the consumer.** For example, you could mislead a consumer if you claim that a pesticide is "all natural" when it is not, claim that a service is "new and improved" when it is not, or omit key information about price or product (for example, if "additional fees may apply," you must say so!)

In addition, all claims in advertising must be substantiated. This means you must have, or can easily obtain, objective evidence from credible sources that what you are saying is true. This applies to statements that are made outright (called "express" claims such as "XYZ product controls fire ants") as well as statements that are *implied*. For example, advertising that states "XYZ product controls fire ants which cause lesions and other reactions" implies the XYZ will prevent lesions and other reactions. Such an implied claim needs substantiation, whether through replicated and scientifically valid studies or credible experts, among other methods.

Substantiation is especially important for lawn care companies applying pesticides. In the case of statements about pesticides' effect on consumer health and the environment, substantiation might be tests, research or other evidence. For lawn care operators, this typically comes from manufacturers and suppliers. That's why it's so important that you never change verbiage that comes straight from the manufacturer.

Also, be specific. It must be clear whether the environmental or other benefit you are touting relates to the product, the packaging, or some component. For example, suppose a lawn care product you use comes in a dissolvable bag, which is sold by the supplier in a type of cardboard box containing four such bags. If you claim you are using a “recycled” product, it is not clear whether you are referring to the box in which the bags arrive, the bags themselves, or their contents.

So, your ads must be truthful, substantiated and specific. Sounds pretty simple, right? Well, let’s take a look at some situations where lawn care companies get into trouble:

Misleading statements... Let’s say you’ve decided to send a direct mail piece that describes a new service that “prevents Lyme disease.” However, your product controls the ticks that spread Lyme disease; it does not in fact prevent the disease itself. Your statement is deceptive to consumers, and is therefore illegal. You should change the statement to read “our product controls the ticks that cause Lyme disease.” You also must have the proper substantiation to back up this claim.

Deceptive pricing... Suppose each pesticide application costs you \$100 in product and \$100 in labor. You normally charge at a rate 50% above your costs, so your typical charge is \$300. But you decide to charge \$500 per application for a few months and then later cut the price to \$300 so you can advertise the new price as a “great bargain.” Is this new pricing scheme legal? No, it falls under deceptive pricing, which is an area where many small businesses can get themselves into trouble.

Non-specific environmental marketing claims... Suppose the products you apply during service calls come with an “environmentally friendly” claim, but provides no other information. This phrase is likely to convey to consumers that the product does not pose any risk to humans or the environment. If in fact there is some risk, you are liable if one of your customers investigates further and reports you to Pennsylvania’s Consumer Affairs department.

Or, let’s say you claim your grub control product is “30% more effective.” You must clarify what you are comparing it to: Is it more effective than last year’s product? Than a competitor’s product? Than a different class of pesticides? Be as specific as you can; do not take any chances with what you say about your business, products or services!

In summary, ask yourself:

- Can I substantiate all claims made in my ads?
- Does any part of my ads sound misleading?
- Am I leaving anything out on purpose?
- What would the reader assume from this ad — and is it an assumption that is truthful?
- When writing about pesticides, do the words I use create a false impression?
- Did my advertising agency change or omit information that is important to consumers,
- Am I making use of verbage provided by suppliers?

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NOTE: This article should not be interpreted as offering legal advice in any jurisdiction where such practice is not authorized. When legal issues arise, competent counsel familiar with your jurisdiction should be engaged, as your situation may vary depending on the facts and local statutes.