

# Advertising and Marketing

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Across a wide range of industries, Wiley's advertising and marketing attorneys help clients comply with truth in advertising requirements under state and federal law. We also assist clients facing inquiries and allegations about deceptive advertising from federal agencies, state Attorneys General (AGs), private litigants, and self-regulatory programs like the BBB National Program's National Advertising Division. Our multidisciplinary team includes former Federal Trade Commission (FTC) enforcers and federal prosecutors who counsel clients on widely applicable deception laws and FTC regulations, elite litigators adept in Lanham Act and consumer class action defense, and in highly regulated industries like telecommunications; fintech and financial services; food, drugs, medical devices and cosmetics; and plastics and chemicals.

## What we do

We counsel clients on compliance with advertising and marketing laws, including FTC rules and formal guidance and state law requirements. Representative work includes advising on:

- Substantiation requirements for health claims.
- Distinguishing between material advertising claims and "mere puffery."
- Influencer and social media marketing.
- Online and mobile disclosures, including those related to fees and subscriptions and accuracy of privacy and data security policies.
- Federal and state disclosure laws in regulated industries.
- FTC regulations including the Consumer Reviews and Testimonials rule, the Made in the USA Rule, and the Rule on Unfair and Deceptive fees (sometimes called the "junk fees" rule).
- Formal FTC guidance like Green Guides, Endorsements Guides, Dot Com Disclosures Guide, and Policy Statement on Made in the USA Advertising.
- The increasingly complex patchwork of state laws covering these same issues, including laws prohibiting unfair and deceptive acts and practices (UDAP).

Advertising and marketing claims raise particular challenges for companies in highly regulated industries. As a premier DC firm with decades of experience at and before federal agencies like the FTC, Federal Communications Commission (FCC), U.S. Food and Drug Administration (FDA), U.S. Department of Agriculture (USDA), and U.S. Environmental Protection Agency (EPA) under one roof, our advertising lawyers leverage unparalleled depth and regulatory expertise to ensure our clients comply not only with generally applicable

advertising laws, but also with Agency-specific regulatory requirements and policy changes.

When clients face federal government inquiries, state Department of Health citations, or state Attorney General (AG) investigations, our team of former government enforcers and officials, including from the FTC, U.S. Department of Justice (DOJ), and USDA, along with our seasoned white collar practitioners, litigators, and regulatory experts, position clients for success at every stage of the process, including:

- Negotiating to minimize the burden associated with information requests.
- Representing clients in investigative depositions where the government seeks testimony from corporate representatives and employees.
- Devising and presenting revised claims and risk disclosures that address Agency-specific rules and enforcement priorities.
- Seeking the termination of investigations, through advocacy with line enforcement staff, career government managers, and political leadership.
- Engaging in settlement negotiations to narrow the terms of consent decrees.
- Advising on matters involving DOJ, including criminal actions and fraud allegations in areas such as telemarketing, mass marketing, health care, and e-commerce.
- Litigating to defend our clients in court, including at trial.
- Monitoring post-settlement Corporate Integrity Agreements, voluntary or mandated Compliance programs, and corrective and preventive action plans.

In the self-regulatory context, we advocate for companies through BBB National Programs' National Advertising Division (NAD) and its appellate body, the National Advertising Review Board, to address deceptive advertising by competitors. And when companies face challenges to their own advertising at the NAD, we help navigate the process to defend promotional claims and avoid NAD referrals of matters to the FTC. NAD matters involve many types of advertising claims, including technology, consumer products, prescription drugs and devices, artificial intelligence, green and environmental claims, consumer reviews, and influencers. We pair our deep substantive knowledge with our relationships with key NAD staff and leaders to advocate for clients and circumvent disruptive NAD decisions.

For companies facing private claims, our unique government-adjacent litigation group doesn't just litigate to win the case, but also works in tandem with our premier regulatory practices to provide a comprehensive win strategy. Our team includes litigators who have held clerkships at every level of state and federal courts, former federal prosecutors, and former general counsels of federal agencies. We understand how litigation can impact regulatory risk and excel in navigating these situations.

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