



# Fine Print

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## Can I Say That? Legal Basics Every Advertiser Should Know

By Jill P. Meyer

Whether you advertise a lot or a little, locally or nationally, in print or electronically, on billboards, in newspapers, on the Internet, radio or television, you naturally hope your advertising campaigns will draw attention to your goods or services. But keep in mind that, in addition to gaining the attention of the consumers that you want to reach,

you may also capture an entirely different and unwelcome audience if you are not careful in developing your message.

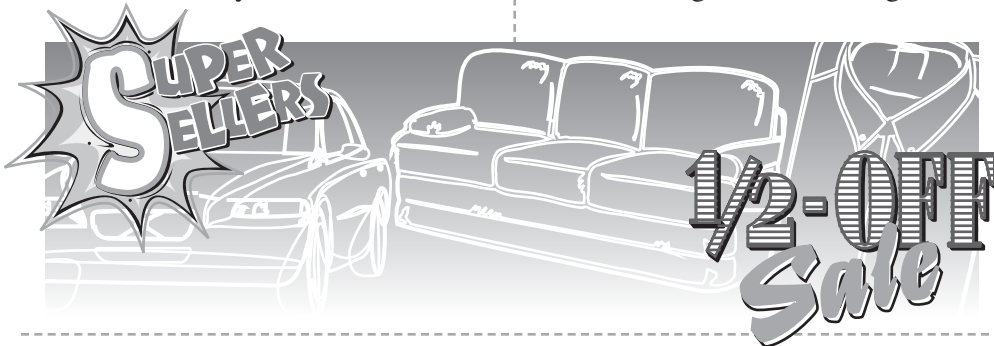
Your competitors watch your ads as closely as you watch theirs, and they have some power to keep you on your toes. Short of being sued by a competitor for false claims, though, who else might

be watching? The Federal Trade Commission (FTC), the Better Business Bureau, your state's Attorney General, the Food & Drug Administration (depending on your business), and various watchdog groups. (These days, if you're in the business of food or drinks for children, many different watchdog, agency, and government groups are paying special attention to you.) These groups are simply trying to ensure that what you are saying is truthful and fair and not harmful to the consuming public.

If you stick with the following general principles, however, all the potential challengers to your advertising will, for the most part, be satisfied:

- Advertisements must be truthful and not unfair or deceptive.

*Cont. on page 2*



## How Are Environmental Liabilities Handled by the Bankruptcy Code?

by David G. Cox

**Q:** My company is facing bankruptcy and wishes to reorganize under Chapter 11 of the Bankruptcy Code. How does Chapter 11 address environmental obligations, say, my company's contaminated property?

**A:** All claims, including environmental obligations, are generally handled the same way as other claims are handled in bankruptcy, but because environmental claims

are brought by a governmental entity (such as a state or the EPA), they are sometimes afforded special treatment. Environmental claims are typically claims for clean up costs, payment of civil or administrative penalties for past violations of environmental law, or claims for the current cost of complying with the law if the debtor is reorganizing under Chapter 11.

**Q:** I've heard that environmental claims are exempted from the automatic stay. Is this true?

**A:** Generally, yes. Once a debtor files a petition in bankruptcy court, the "automatic stay" prevents creditors from taking any further action against the debtor to collect on their claims. For example, a person who has a breach of contract claim

*Cont. on page 2*

**Advertiser**, cont. from page 1

■ Claims of fact, survey numbers, statistics and the like must be substantiated, i.e., backed up by competent and reliable data or testing.

■ Comparative ads are fine, but don't misrepresent your competition.

■ An endorser must be a true user of your product or service and the testimonial must be representative of the typical experience a

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consumer can expect from use.

■ Want to run a special sweepstakes promotion?

Know that there are particular rules in each state that must be followed, including some that require registration and bonding.

Of course, many types of industries are specially regulated and their advertising efforts require extra care and compliance. If you are not sure about

these requirements, contact your Better Business Bureau or the FTC (or visit [www.ftc.gov](http://www.ftc.gov), which provides helpful guidance), or consult a lawyer familiar with advertising issues. Don't rely on your luck. Not only is it expensive to find out what not to do the hard way through litigation or an agency action, it might result in more PR than you planned—though not the positive kind you were hoping to get.

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**Bankruptcy Code**, cont. from page 1

against the debtor cannot even file suit against the debtor. Instead, the creditor must file a "claim" for "breach of contract" with the bankruptcy court and wait to see how the claim is handled by the court.

Governmental entities, however, cannot only file environmental "claims" against a debtor; they can simultaneously file suit against the debtor and attempt to convert their claim into a "judgment" if they prove their case. However, even though the government may convert their environmental "claim" into a "judgment," they cannot collect on the judgment unless the bankruptcy court authorizes it.

**Q:** *Must I continue to comply with all laws, including environmental laws, if my company is reorganizing under Chapter 11?*

**A:** Yes. Federal law provides that a debtor in possession, i.e., a debtor undergoing a reorganization under Chapter 11, must continue to comply with all applicable state and federal laws, including environmental laws, while the reorganization is pending.

**Q:** *My company has contaminated property as part of its assets. Can it just abandon the property or sell it to someone else?*

**A:** No. Contaminated property cannot be abandoned to avoid a governmental obligation. However, you

may be able to sell the contaminated property if notice is given to other creditors, the government's environmental claim is addressed, and the bankruptcy court authorizes the sale. The new buyer would then be obligated to comply with environmental laws and clean up the property.

**Q:** *When my company submits its plan for reorganization to the bankruptcy court for approval, can the governmental entity (for example, the Ohio EPA) object to my plan?*

**A:** Yes, and under the Bankruptcy Code, the governmental entity's claim will likely be the largest single claim asserted, as cleanup costs usually run into the millions of dollars. Creditors and claims that are similar are lumped together for purposes of objecting to reorganization plans, and thus governmental entities with large environmental claims may have more votes when it comes to approving or rejecting the reorganization plan. Therefore, it is important to discuss with those governmental entities what they would need to satisfy their claims before submitting a reorganization plan to the bankruptcy court.

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## In the Hopper...

*State legislation that could affect small business*

House Bill 301 was signed into law in July 2006. It amends certain sections of the Ohio Revised Code to: 1) authorize and specify applicable provisions to conversions of business entities by corporations, limited liability companies, and general, limited liability, and limited partnerships; 2) expand the limited liability of registered limited liability partnerships; 3) limit liability to limited partnerships; 4) modify the Corporation Law relating to regulations or articles, shareholder rights, delegation of authority, acceptable payments for shares, director meetings, executive committees, actions authorized after bankruptcy, distributions to shareholders when the issuing corporation "spins off" a subsidiary corporation, reorganization and restructuring of holding company corporations, and control share acquisitions; 5) modify the Limited Liability Company Law to specify acceptable forms of contributions; and 6) modify the Securities Law relating to dealer record-keeping and filing requirements, tender offers, and incorporation in Ohio law of future amendments to federal securities laws.