

## Tips on Food Supplement Advertising

Food Supplement advertising has become an active area in broadcast advertising as it has elsewhere. The Federal Trade Commission (FTC) and the Food and Drug Administration (FDA) work together, but have divided their responsibilities regarding dietary supplements. While the FDA deals with matters involving the products themselves, such as product labeling, including packaging, inserts, and other promotional materials distributed at the point of sale, the FTC has primary responsibility for claims in advertising, including broadcast ads, and internet marketing.

Reviewing the FDA labeling regulations is instructive regarding permissible advertising claims. . . and impermissible ones! Under the Dietary Supplements Health and Education Act (DSHEA) and the Food and Drug Administration Modernization Act of 1997 (FDAMA) claims on labeling are permitted only if it is: 1) a health claim specifically authorized by the FDA; 2) a statement of nutritional support or 3) based on "authoritative statements" from certain federal scientific bodies. Health claims that relate to the nutrient and its effect on a disease or health-related condition must be supported by an FDA finding.

Otherwise, supplement marketers are prohibited from making any labeling claim about the diagnosis, mitigation, treatment or cure of a disease. In contrast to *health* claims, "statements of nutritional support," on the supplement's effect on the body for good health and nutrition are not subject to FDA pre-authorization. They do require notification to the FDA and a disclaimer that the claim has not been evaluated by FDA and that the product is not intended to diagnose, mitigate, treat, cure, or prevent disease. Of course it must also be substantiated and be truthful and not misleading. This requirement coincides with the FTC's standard that advertising claims be truthful, not misleading and substantiated. It is notable that FTC is pledged to be "especially vigilant in examining whether qualified claims are presented in a manner that ensures that consumers understand both the extent of the support for the claim and the existence of any significant contrary view within the scientific community. In the absence of adequate qualification the Commission will find such claims deceptive."

So when accepting orders for dietary supplements, its practice to examine the copy for representations about the effect of the product and to obtain a statement of substantiation for the claims.

The FTC has published a guide for evaluating advertising on dietary supplements. It's worth reading and making sure someone in your sales staff becomes familiar with it. Then any orders for this type of product must be approved for compliance with this good advertising practice.

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