Advertising Primer: Protecting Your Best Client, The Audience.

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The growing popularity of advertisements for "no-points" house mortgages and "no money down" car leases has created increased concern of possible consumer confusion and fraud. As a result, the Federal Trade Commission has implemented some changes in the "Truth-in-Lending" and Consumer Leasing Acts to protect consumers. Although broadcasters are not held liable for illegal or deceptive advertisements carried on their station, all licensees should be aware of these rules to promote good relations with their audience.

Generally, there are two sets of regulations for advertising, those relating to consumer credit, "Regulation Z," and those relating to consumer leases, "Regulation M." The main focus of the FTC's rules is to protect the consumers, and permit them to compare prices and credit terms effectively. As such, certain statements made in advertisements for consumer credit and leases "trigger" the disclosure of additional terms. Broadcasters should review proposed advertisements for these triggering terms and determine whether additional statements should be added to the spot, prior to approving the advertisement.

CONSUMER CREDIT

Consumer credit is defined as credit which is provided for personal, family and household purposes. There are two types of common consumer credit, *open-end* and *closed-end*. The distinction results in different requirements for disclosures in an advertisement.

An example of **Open-End Credit** would be a gas or bank card, or a cash-advance checking account. In each of these circumstances, the creditor expects that there will be repeated transactions. Additionally, the creditor may impose finance charges on any unpaid balance, and will offer credit automatically when the credit limit is not exceeded, or when the outstanding balance is paid. **Closed-End Credit** is typically limited in duration and amount. The major terms of the credit agreement are negotiated by the creditor and consumer. Typically, a close-end credit agreement would be for the purchase of an automobile, appliances, or real estate.

For **Open-End** credit offers, further disclosures are required when any of the following terms be provided in the advertisements:

- The periodic rate used to compute the financing charge ***or*** the annual percentage rate;

  ("Only 1.25% a month" or "fixed 12.9% APR")

- The commencement of a finance charge accrual;

  ("No charges for 30 days!")

- The method in which a finance charge will be calculated;

  ("Daily Interest charged on any remaining balance")

- The method for determining the balance of the credit arrangement on which the finance charge will be calculated; or

  ("Minimum monthly charge of $5.00")

- The amount of any other charge that may be imposed.

  ("Only $25 Membership Fee stands in your way!")

In the event that any of these terms are advertised, then the advertisement must also contain statements defining:

- Whether there are any minimum, fixed, transaction, activity, or similar charges that may be imposed;
- The annual percentage rate, or variable periodic rate that will be charged, and
- Whether any membership or participation will be imposed.

Furthermore, if the advertisement is for discounted, variable rate. open-end credit, then the advertisement must disclose the annual percentage rate after the discounted period expires. For example, if a bank card offers a six-month introductory APR of 7.5%, and, at the end of the introductory period will be tied to the prime rate, then the advertisement must contain the information as to how that post-introduction rate will be calculated.

Lastly, advertisements for **Home Equity,** additional requirements apply to financing for open-end credit arrangements that are secured by the consumer's home. If the following statements are provided in the advertisement, either positively or negatively, then specific disclosures must be included in the advertisement:

- The periodic rate used to compute the finance charge or APR;

  ("We offer home equity loans for only 7.5% APR")

- The point in a loan term when financing charges begin to accrue;

  ("There is no free ride in this home equity plan")

- The method for determining the balance on which the finance charge is imposed;

  ("We charge interest on your previous balance")

- The method for determining the finance charge;
- Whether there are any other charges imposed; or

  ("No annual fees on our home equity loans")

- The payment terms of the plan, including either the length of the draw period, the repayment period, and or the minimum payment each period.

  ("Up to 10 years to repay")

If any of these statements are provided in the advertisements, then the following must be disclosed:

- Any loan fee, and any other fees that are imposed for opening the plan;
- Any periodic rate used to compute the finance charge, provided as an APR; and
- The maximum APR that can be charged in a variable rate plan.

Finally, if there are discounted rates or balloon payments that are part of the home equity plan, specific information must be included regarding either term.

Closed-End credit agreements, as described above, are most commonly associated with the sale or financing of real estate, automobiles or appliances. In order to ensure that consumers learn all terms of the credit agreement, should an advertisement contain any of the following information, these additional disclosures are required:

- The amount of the downpayment;
- The amount of any payment, including the monthly payment or the percentage of the amount borrowed;
- The number of payments, or the period of repayment; or
- The amount of any finance charge.

Acceptable statements that would not trigger further disclosures include: "no downpayment," "easy monthly payments," or "loans available at 5% below standard APR." However, if any of the listed information is provided, the following additional disclosures are required:

- The amount or percentage of the downpayment;
- The terms of repayment; and
- The annual percentage rate.

The downpayment may be described as the percentage of the entire sales agreement, e.g., 10% of purchase price required, the terms of repayment may either state the repayment cost specifically, e.g., 48 monthly payments of $230, or as the unit cost, such as 48 monthly payments of $23 per $1000 borrowed. Finally, the length of the loan can either be the number of payments or the time period of the loan.

Should the advertiser seek to promote several different products, e.g., Ford Taurus and Expedition in the same advertisement, then it only needs to provide an example of the terms, rather than the terms for each automobile.

Therefore, when dealing with consumer credit, you should look for the following terms to determine whether additional disclosures are necessary.

Open-End Consumer Credit	Closed-End Consumer Credit	Open-End Home Equity Loan
The periodic rate used to compute the financing charge ***or*** the annual percentage rate	The amount of the downpayment	All terms listed in Open-End Credit, plus

The commencement of a finance charge accrual	The amount of any payment, including the monthly payment or the percentage of the amount borrowed	The periodic rate used to compute the finance charge or APR
The method in which a finance charge will be calculated	The number of payments, or the period of repayment	The point in a loan term when financing charges begin to accrue
The method for determining the balance of the credit arrangement on which the finance charge will be calculated	The amount of any finance charge	The method for determining the balance on which the finance charge is imposed
The amount of any other charge that may be imposed		The method for determining the finance charge
		Whether there are any other charges imposed
		The payment terms of the plan, including either the length of the draw period, the repayment period, and or the minimum payment each period

CONSUMER LEASES

A consumer lease generally relates to agreements for personal property for more than four months, for personal, family or household use, where the total contractual obligation is $25,000 or less. The most common example of these agreements is an automobile lease.

The FTC regulations for consumer leases are much easier to understand than those for consumer credit. If an advertisement provides any part of the information described below, additional disclosures are required.

- The capitalized cost reduction or other payment required before or at consummation;
- The capitalized cost reduction or other payment required at delivery, if delivery occurs after consummation; or
- The amount of any other payment required under the lease.

Any mention of these terms require the following additional disclosures:

- That the transaction is a lease;
- The total amount due before or at consummation, or by delivery if delivery takes place after consummation;
- The number, amounts and due dates or period of scheduled payments under the lease;
- The security deposit amount, if any;

- That an extra charge may be applied if the consumer's liability is based on the difference between the leased item's residual value and the realized value at the end of the lease term.

A NOTABLE EXCEPTION EXISTS, HOWEVER, FOR ADVERTISEMENTS PLACED ON RADIO AND TELEVISION STATIONS. Rather than be required to announce the five additional disclosures listed above, the advertisement needs only to make the following disclosures:

- That the transaction is a lease;
- The total amount due before or at consummation, or by delivery if delivery takes place after consummation;
- The number, amounts and due dates or period of scheduled payments under the lease;

<u>AND</u>

- **That the consumer can get all other required disclosures through a toll-free, collect, or local call, or**
- **through a specific print advertisement, providing the date and publication.**

An example of an acceptable advertisement for an automobile lease would be:

> Lease a Jeep Grand Cherokee for $500 down, $300 a month, with payments totaling $12,000. Call 1(800) I MUST-B-CRZY for additional details, or see the May 10th Washington Post advertisement.

You should confirm with the advertiser that the toll free number will be established *prior to* the advertisement's first run date, and maintained for at least 10 days after the last air date. The toll free number must provide all additional terms required under the FTC's rules. Print advertisements that are referred to in the broadcast advertisement must be placed at least three days before the radio or TV advertisement, and must continue for at least 10 after the last broadcast. Also remember, this provision applies to federal law but you should check to see whether your state law has a similar exception.

CONCLUSIONS

Each licensee should pay special attention to those advertisements that relate to consumer credit and leasing. Although the licensee generally will not be subject to civil liability for a false or misleading advertisements, each licensee should screen for such adds in its role as a public trustee. Also, some states do hold a broadcaster liable if it assisted in the preparation or production of an advertisement.

We recommend that you confer with local or communications counsel should you have any questions regarding a questionable advertisement, contact Gregg P. Skall at (202) 857-4441 or gskall@wcsr.com.