Deceptive Advertising Essay, Research Paper

Deceptive Advertising

As a consumer in a world of constant advertising messages being flashed before my eyes, I am always wary of the truth of those messages that I see. It is terrible when consumers see an advertisement, whether it is in a magazine, television or any other medium, and they decide to make a purchase only to find out they are not getting what they originally planned or have to pay more than they had expected. Deceptive advertisements have been a problem since the early days of media and consumers have needed to keep an eye out for them. Yet, with so many advertisements that consumers are exposed to each day, worrying about the truth of every line and every sentence of an ad is quite inconvenient. Advertisers must follow strict guidelines to stay clear of lawsuits resulting from deceptive advertisements. I will be focusing on automobile advertisements and how consumers have been deceived through their ads.

Deceptive advertising can be described as advertising which is misleading in a material aspect. (Simon 256) This definition would include all the false and misleading advertisements that would appear in print, television, radio, outdoor and direct mailings. As well as more non-traditional forms of advertising like transportation ads along with the use of pictures, trade names, display materials, labels, sales talks, sales letters, price lists and catalogs. As any consumer can see, advertisers have many means by which they can trick or deceive us consumers into buying products not planned for.

Unlike most tort cases that are decided in the courtroom by a judge, most deceptive advertisement claims are turned over to governmental agencies like the Federal Trade Commission. Agencies like the FTC are better suited to handle these cases because they have the necessary expertise to make proper decisions.

So before an ad can be deemed deceptive, a complaint must be made to the FTC. From then an investigation can be made into the falseness and deceptiveness of the advertisement. The FTC tests to see the reaction from other consumers as to how misleading the ad is. These tests are done in the atmosphere and under the same circumstances as the actual consumer would be in. The test is based on the casual reaction of the consumer and the impression that they received from the ad. This public view of the ordinary and trusted mind has been described as uneducated prejudiced impressionable, gullible and stupid. (Simon 257) These average people are the ones that will view or listen to the alleged deceptive advertisements and explain what they think they are going to get out of it. There are stricter controls when the ads are aimed at children, foreigners or the sick but hopeful. These tests to determine falsity are very important in a deception case.

Another test that the FTC performs is to determine if nondisclosure was used as deception. This means that the advertiser would tell the truth about some of the information but leave out undesirable information to the consumer. Less appealing facts about the product would remain out of the ad, as in many cases dealing with hidden costs. As a consumer this is possibly the most harmful when dealing with deception because the ad doesn t reveal all of the information needed to make a clear decision necessary to make a good purchase.

Arrangement and layout of the advertisement is another aspect to be considered when telling if an ad is deceptive. If the advertisement has a lot of visual impact the underlying message, or the important details of the product, may be looked over. Sometimes an ad will focus heavily on the positive selling arguments and overlooks or downplays the negative/detail-oriented messages. When advertisers do this the consumer naturally focuses their attention on the positives and may make a decision not realizing the hidden costs or anything else that may be included somewhere else in the ad. The uses of asterisks are a common way that advertisers let the consumer know that there is addition information, usually in small type. However, the small type is rarely ever read and practically nonexistent to the average reader.

In conjunction with the placement of the negative aspects of the ad are the sizes of the type used to display those messages. Like stated before the size of the type pushes average readers away and the messages are rarely read. Consumers tend to focus on the bolded headlines and the visuals, thus making them oblivious to the important facts of the product. For example, when advertisers for alcohol place a print ad the mandatory statements are very small; some needed a magnifying glass to read. (Simon 261)

In the case of Grey Advertising, Inc. v. the Federal Trade Commission, Grey Advertising used deceptive advertising in commercials for Mitsubishi Motor Sales of America, Inc. Grey evidently created and disseminated automobile lease advertisements that violated the FTC Act, the Consumer Leasing Act, and Regulation M, according to case documents. A consumer lease is a contract in the form of a lease or bailment for the use of personal property by a natural person for a period of time exceeding four months, and for a total contractual obligation not exceeding $25,000, primarily for personal, family, or household purposes (Internet) The problem started when the ad stated an amount down at the initiation of the lease agreement was not the total amount the consumers were to pay. Consumers have to pay other costs in addition to the down cost which include things like security deposits, first month s payment and/or an acquisition fee to lease those cars. In addition, the ad failed to show the terms of the lease in a clear manner that the consumer could reasonably understand.

Grey Advertising had prepared and disseminated three lease advertisements for Mitsubishi in which two were television ads and the third being a print ad. The first television ad is as follows:

(Audio) Lease for zero down and just two forty-nine a month for thirty-six months.

(Video) MITSUBISHI GALANT S

$0 DOWN $249 A MONTH, 36 MONTHS

At the bottom of the screen read, in dark print on a similarly dark background:

First payment, plus a $0 down payment and a refundable security deposit of $250 (in NY, final monthly payment of $249 in lieu of security deposit) due upon delivery. 36 monthly payments based on MSRP of $18,043 with a dealer capitalized cost reduction of $922, excluding tax, title, license, registration, regionally required equipment, dealer options, and charges for a 36-closed month closed-end lease Total payments: $8964. Lessee liable for maintenance, non-warrantable repairs, excess wear and tear, and up to 15[cents]/mile over 36,000 miles and $350 disposition fee and applicable taxes at lease end. Option to purchase at lease end for residual value of $10,068, plus applicable fees and taxes and purchase option fee of $150

This fine print was displayed on the bottom of three separate screens, each containing a block of at least seven lines, and the block was only showed for about three seconds each.

The second television ad is as follows:

(Audio) Lease for just two forty-nine a month for forty-eight months with a thousand dollars down.

(Video) $1000 DOWN

$249 A MONTH 48 MONTHS

Again at the bottom of the screen in fine white print on a dark-colored moving background reads:

First payment, plus a $1000 down payment and a refundable security deposit of $250 (in NY, final monthly payment of $249 in lieu of security deposit) due upon delivery. 48 month payments based on MSRP of $18,747 with a dealer capitalized cost reduction of $1,289, excluding tax, title, license, registration, regionally required equipment, dealer options, and charges for a 48-month closed-end lease Total payments: $11,952. Lessee liable for maintenance, non-warrantable repairs, excess wear and tear, and up to 15[cents]/mile over 60,000 miles and $350 disposition fee and applicable taxes at lease end. Option to purchase at lease end for residual value of $8,436, plus applicable fees, taxes and purchase option fee of $150

This fine print was again displayed on the bottom of three separate screens, each containing a block of at least seven lines, and the block was only showed for about three seconds each.

The third advertisement, the print ad, is as follows:

$0

Down Plus

$500

CASH BACK

\*

Now, lease for 36 Months or

Buy a Galant S

\*

LEASE

OR

BUY

$0 DOWN

$249 A MONTH

At the bottom of the page, in small print, reads the following lease disclosure:

\*\*First payment, plus a $0 down payment and a refundable security deposit of $250 (in NY, final monthly payment of $249 in lieu of security deposit) due upon delivery. 36 monthly payments based on MSRP of $18,043 for a Galant S with automatic transmission (FOG A88), with a dealer capitalized cost reduction of $922, excluding tax, title, license, registration, regionally required equipment, dealer options, and charges for a 36-month closed-end lease rounded to the nearest dollar. Total payments: $8,964. Lessee liable for maintenance, non-warrantable repairs, excess wear and tear, and up to 15[cents]/mile over 60,000 miles and $350 disposition fee and applicable taxes at lease end. Option to purchase at lease end for residual value of $10,068, plus applicable fees and taxes and purchase option fee of $150

The FTC brought up three counts against Grey Advertising and Mitsubishi for deceptive advertising. These counts are misrepresentation in lease advertising, failure to disclose adequately in lease advertising, and violations of the Consumer Leasing Act and Regulation M. The Consumer leasing Act is a 1976 amendment to the Truth in Lending Act that requires disclosure of the cost and terms of consumer leases and also places substantive restrictions on consumer leases. (Internet) The FTC claimed that the ads presented the information about additional costs in an unreadable print that appeared 1) in type too small; 2) for too short a duration; 3) in quick scrolling text; 4) against moving or distracting backgrounds; and/or 5) in a location far removed from the more prominent representations. (Internet)

In count 1, misrepresentation in lease advertising, the FTC said that Grey and Mitsubishi advertised the down payment as the total amount that the consumer would have to pay. But, there were additional costs involved in the lease of the Galant S including the first month s payment, security deposit and lease inception and others. The FTC concluded that the ads were misleading and that both the agency and Mitsubishi should have known that the ad was misleading to the consumer. Thus, they were using deceiving advertising which would affect commerce in violation of Section 5(a) of the FTC Act.

In claim 2, failure to disclose adequately in lease advertising, the FTC stated that the intentional failure to hide important leasing information is deceptive. Consumers are likely to make ill-advised decisions without the whole truth about all the additional costs involved in leasing a vehicle. As in claim 1, this claim also violates Section 5(a) of the FTC Act.

In claim 3, violations of the Consumer Leasing Act and Regulation M, the FTC states that Grey and Mitsubishi do indeed include the required terms needed to meet Regulation M. The ad included one or more of the following terms of Regulation M: that the transaction advertised is a lease; the total amount of any payment such as a security deposit or capitalized cost reduction required at the consummation of the lease or that no such payments are required; the total of periodic payments due under the lease; a statement of whether or not the lessee has the option to purchase the leased property and at what price and time or the method of determining the purchase-option price; and a statement of the amount or method of determining the amount of any liabilities the lease imposes upon the lessee at the end of the term. (Internet) Although this information is included in the advertisement, the ads do not display that information in a clear and conspicuous manner. Due to the fact that the information is in very small type, against a background of a similar shade, shown for a very short time with background sounds and images that distract from the message, the ad is considered deceptive because it violates Section 184 of the Consumer Leasing Act and Section 213.5(c) of Regulation M.

As stated before, the Federal Trade Commission settles deceptive advertisement cases. The proposed settlements brought against Grey Advertising and Mitsubishi Motor Sales, Inc. would prohibit the ad agency, in any motor vehicle lease advertisement, from misrepresenting the total amount due at lease signing or delivery, the amount down, and/or the down payment, capitalized cost reduction, or other amounts that reduce the capitalized cost of the vehicle. (Internet) Whenever the agency or the carmaker runs an ad the focuses on and amount down or other amounts due at lease inception there would have to be an equal amount of attention given to the total amount due at lease inception. The settlement would also prohibit any misrepresentation as to the existence and amount of any balloon payment or the annual percentage rate in a closed-end credit advertisement involving motor vehicles. (Internet) All further advertisements must communicate the disclosures in a clear and conspicuous manner. The FTC will monitor the actions of Grey Advertising through various record keeping and reporting requirements. Each of the violations may face an $11,000 civil penalty by the FTC.

After this case was heard the FTC issued a consumer alert named Look Before You Lease to assist consumers in leasing terms and questions to ask before deciding to lease or buy a vehicle. According to Arizona Attorney General, Grant Woods, This settlement is historic He claims that this case will force companies to avoid hiding information in the fine print at the bottom of the ads and claim that the consumers should have understood it. This settlement will help consumers feel more comfortable when they go through the leasing process. Hopefully, consumers won t have to worry about deceptive advertisements because advertising agencies and automobile companies will have to clearly state all the costs and conditions in a clear manner.

One day I plan on purchasing a new car and it is very likely that I will lease it. This settlement between Grey Advertising and the Federal Trade Commission will put some ease to the consumer because they know that the advertisements should be truthful and they should contain all of the information necessary to make an informed decision. It will still be necessary for the consumer to read through ads completely and carefully, not relying solely on the large, bold copy of the ad. Print ads, especially automobile ads, try to be visually pleasing to the eye but there is a need for the negative information to be displayed. As a general rule to the consumer, always be as informed as possible before making a purchasing decisions. Buyers beware.

Works Cited Page

FTC DRIVES TO END THE BLUR IN CAR LEASING ADS, (August 28, 1998)