

*Disclaimed!*  
The Fine Print of Television Disclaimers, Disclosures, and Warnings:  
Regulations, Motivations, and Effects

by

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## Abstract

*\*Disclaimed!* - The Fine Print of Television Disclaimers, Disclosures, and Warnings:  
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This project explores the fast-paced fine print that often appear at the bottom of television advertisements. To better understand these disclaimers, disclosures, and warning, regulations, history, administrative law, legal actions, and experimental research are discussed. The project sets out to answer or investigate the questions of the effect of disclaimers, disclosures, and warnings, their intended and actual effect, who benefits from them, what the government is doing about them, and why advertisers use them. The results of this investigation have led to several suggestions, including that trusted brands benefit from them and that the intended effect is often different from the actual effect, and varies greatly from person to person, but also is inconclusive on many points.

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## **Disclaimed!**

### **The Fine Print of Television Disclaimers, Disclosures, and Warnings: Regulations, Motivations, and Effects**

*TV Voiceover: Warning, tickets should not be taken internally.  
Homer: See, because of me, now they have a warning.<sup>1</sup>*

#### **Chapter 1. INTRODUCTION**

In a dark living room with shag carpeting and wood paneling, John sits on an old dilapidated sofa watching television. The plastic covering of the sofa has long since been replaced by a kaleidoscope of stains, but John pays them no mind. It's 1:37 in the morning, but he can't sleep – anxiety over his underemployment and worry over how to pay for the rent, let alone for a new clean sofa, keeps his mind racing.

His show fades to black and is replaced by a bright fast-moving sales pitch blaring at what seems to be twice the volume of his favorite show. It's a new commercial for Rent-A-Center<sup>©2</sup>. Commercials are usually John's time for checking his phone or grabbing some munchies, but this particular ad catches his attention. A disembodied male voice rapidly tells him,

“Double the savings with 2-for-1 Bundle Deals at Rent-A-Center. Bundle an Amana washer and dryer pair both for just \$17.99 a week, or bundle an

LG 55-inch flat screen with an LG 32-inch both for only \$22.99 a week.

Only at Rent-A-Center. Yeah, you can do that.”

“Double the savings?” John thinks to himself. Yeah, he could do that, especially since the reason this ad caught his attention was not just the promised savings, but the specific products highlighted.

John lives with his grandmother in a small row-home downtown. A few weeks ago a flood in her basement ruined her ancient washer and dryer, and even between the two of them they could not afford replacements. John’s minimum wage paycheck and his grandmother’s social security check were barely enough to remediate the basement flood. However, \$17.99 a week seemed doable to John, and he was tired of the hassle and waste of time and money of taking his and his grandmother’s laundry to the laundromat three blocks down the street.

What failed to catch John’s attention was the fine print at the bottom of the commercial, or to the extent it did, he didn’t concern himself with it. How could he? Even if he wanted to read it, there was so much of it, so small, and on the screen for such a short amount of time, there was no chance he could have. Was it important? Couldn’t be, or else it would be readable, right? Of course if it wasn’t important, why was it there at all?

If John could have read the entirety of the fine print, he would have read:

Rental Purchase/Lease transaction. “Delivery, set-up & Service included” –  
RAC will service and maintain the merchandise while on rent, set-up does  
not include connection of gas appliances. Payment rate defined in  
agreement. Ownership is optional

*(cut transition)*

and requires payment of total cost or early purchase option (“EPO”). Bundle offers reduce weekly rates when compared to weekly rates for renting bundled items separately. Bundle offers will not reduce total amount necessary to acquire ownership

*(cut transition)*

or purchase-option amounts. Amana washer (NTW4605EW) and dryer (NED4655EW): \$17.99/wk, 103 weeks, total cost \$1,857.97; GA/PA cost of lease services: \$752.98. WV retail value \$900.96, WV RTO Charge \$952.01. LG 55” LED Smart TV

*(cut transition)*

(55LF6100) and LG 32” TV (32LF500B): \$29.99/wk, 116 weeks, total cost \$3,478.84; GA/PA cost of lease services: \$1,364.76, WV retail value \$1,135.37, WV RTO Charge \$1,533.74. Prices valid for new items at participating stores 9/28/2015-10/17/2015.

*(cut transition)*

MA & RI: EPO is 80% of remaining rent. In VT, 18 week minimum applies and 90 days same as cash not available. Selection varies by location. Only select items may be bundled; some items excluded. Not valid with any other offer. See store for details.

Again, this commercial was fifteen seconds long. The voiceover contained 47 words. That’s about 3 words per second, or 188 words per minute.



The fine print disclaimer (for the purposes of this paper, “disclaimers” shall collectively mean disclosures and warnings as well unless otherwise noted), by comparison, contained 186 words. The average American reads at about 250-300 words per minute<sup>3</sup>, to be generous. Assuming a reader who could read at the upper end of that, 300 words per minute, it would take 0.62 minutes to read the entire disclaimer. That translates into 37.2 seconds, which is about 2.48 times the length of the entire commercial. A reader would have to read at the astounding rate of 744 words per minute to read all of the fine print in the ad.



([http://www.ispot.tv/ad/AL\\_e/rent-a-center-2-for-1-bundles](http://www.ispot.tv/ad/AL_e/rent-a-center-2-for-1-bundles))

In addition to having to read at breakneck speeds, in order to read all of that fine print a reader would have to contend with the print itself. On a 50-inch television with a vertical viewing angle of 22.5 inches, the letters of the disclaimer top out at a height of a mere half an inch. Yet another hindrance to actually reading the print is that it is in white that changes from being set against a red background that makes it semi-legible to an orange and then to a bright,

almost-white yellow that can be fairly said to make it nearly completely illegible. Add to the difficulty of being able to read the print the distraction of the advertisement itself (the video, voiceover, labels, music, etc), and an argument that with all of these factors combined the disclaimer/disclosure is impossible to read.

John couldn't read it. To be fair, though, he probably didn't even try, having long ago dismissed attempting to read the fine print on television commercials. Should he have, though? Or rather, should he have been able to? What would he have learned? What difference would it make to him? Perhaps the most interesting question is if it is indeed impossible to read, why is that fine print disclaimer there at all?

For starters, John would learn that this was an advertisement for a "Rental Purchase/Lease transaction." Purchasing was never mentioned in the commercial, however. He would also then learn that "Delivery, set-up & Service Included" which is then further and very helpfully explained to mean that "RAC will service and maintain the merchandise while on rent," which certainly seems like a good thing, even though "set-up does not include connection of gas appliances." Next John might learn that "Payment rates defined in agreement." Payment rates for what and in what agreement? After that, broken up by a cut screen transition, the advertisement states that "Ownership is optional and requires payment of total cost or early purchase option ("EPO")." There's that talk about ownership and purchase which isn't mentioned anywhere else in the ad but in the fine print.

The next part of the disclaimer is where this whole purchase thing becomes interesting. While the commercial might not talk about purchasing the advertised products or entering into some sort of rent-to-own program, it seems safe to assume that this option would be presented upon a customer coming into the store, and with good reason, at least to Rent-A-Center<sup>®</sup>.

According to the fine print, it would appear that to purchase the advertised Amana washer and dryer will require 103 weekly payments of \$17.99, for a total cost of \$1,857.97 (the unintelligible information that follows could mean that the actual cost is somewhat to significantly higher or lower). This might not seem to be such a big deal, except that the retail value as of the time the commercial aired was \$799.98. That amounts to an annual percentage rate of approximately 67%.<sup>4</sup> The last sentence of the disclaimer is “See store for details,” which opens up a world of possibilities, and raises questions such as are the really important details the one that have been disclosed already in the fine print, or in the details found at the store.

Although it’s probably safe to say that a majority of the important details to the contemplated transaction will be disclosed in the store, in some form or another, there is still a good deal of information in the form of disclaimers and disclosures in the fine print in the commercial. This begs the question of if this information is important, why is it allowed to be displayed in such a way as to make it impossible to read. Or, conversely, if it’s not that important, or at the least redundant since the real details are at the store, is it there at all. Where do the requirements for it come from? Who is in control, regulates, administers, enforces, etc.?

## **Chapter 2. BACKGROUND**

### **Regulation**

The American people deserve a regulatory system that works for them, not against them: a regulatory system that protects and improves their health, safety, environment, and well-being and improves the performance of the economy without imposing unacceptable or unreasonable costs on society; regulatory policies that recognize that the private sector and private markets are the best engine for the economic growth; regulatory approaches that respect the role of State, local, and tribal governments; and regulations that are effective, consistent, sensible, and understandable. **We do not have such a regulatory system today.** (emphasis added).<sup>5</sup>

Regulation, administration, and enforcement of television disclaimers and disclosures is the responsibility of several administrative agencies and stem from a number of state and federal statutes. The most significant agency to oversee television disclaimers and disclosures is the Federal Trade Commission (“FTC”). The Federal Communication Commission (“FCC”) and Federal Drug Administration (“FDA”) also play significant roles, all depending on the type of advertising and the product being advertised.<sup>6</sup>

Two of the most fundamental regulations controlling television advertisers are the FTC Policy Statement on Unfairness<sup>7</sup> and the FTC Policy Statement on Deception<sup>8</sup>. These Statements

derive their authority from the Federal Trade Commission Act<sup>9</sup>. This Act forms the foundation for most television advertising regulations, and requires that:

- Advertising must be truthful and non-deceptive;
- Advertisers must have evidence to back up their claims; and
- Advertisements cannot be unfair.

The interpretation of what terms like “truthful,” “non-deceptive,” “unfair,” and the evidence required to back up a claim is left primarily to the FTC. There are also additional laws that apply to advertisements for specialized products like consumer leases, credit, 900 telephone numbers, and products sold through mail order or telephone sales, and each state has their own consumer protection laws that govern advertisements running in their state.<sup>10</sup> The FTC pays particular attention to regulating advertisements that make claims about health or safety and that consumers would have trouble evaluating for themselves, but pay less attention to subjective claims or ones that consumers can judge for themselves, even those these can often times be presented as objective facts.<sup>11</sup>

The Federal Trade Commission Act and the FTC Policy Statement on Unfairness sets forth that an advertisement or business practice is unfair if:

- It causes or is likely to cause substantial consumer injury which a consumer could not reasonably avoid; and
- It is not outweighed by the benefit to consumers.<sup>12</sup>

This is a rather straightforward policy, probably because of the requirement of injury, at least in comparison to the policy regarding deception.

According to the FTC Policy Statement on Deception, an advertisement is deceptive if it contains a statement or omits information that: is likely to mislead consumers acting reasonably

under the circumstances; and is “material” – that is, important to a consumer’s decision to buy or use the product.<sup>13</sup> To determine if an advertisement is deceptive, the FTC attempts to look at an advertisement from the perspective of the “reasonable consumer.” A reasonable consumer is considered to be the typical person looking at the advertisement. Rather than focusing on certain words, the FTC looks at the advertisement in context, including the words, phrases, pictures, etc., to determine what it conveys to consumers.<sup>14</sup>

In evaluating what an advertisement conveys, the FTC looks at the totality of the ad, evaluating both the “express” and “implied” claims. An express claim is literally made in the advertisement. An implied claim is one that is made either indirectly or by inference. Under the Federal Trade Commission Act, advertisers must have proof to back up both express *and* implied claims that a reasonable consumer could take from an advertisement.<sup>15</sup> The FTC also looks at what an advertisement does *not* say. If an advertisement fails to include information that leaves consumers with a misimpression about the product, it is in violation of the Act. The FTC, however, is only concerned with what it considers “material” claims. Material claims are ones that are important to a reasonable consumer’s decision to buy or use the product, such as representations about a product’s performance, features, safety, price, or effectiveness.<sup>16</sup>

As stated before, an advertiser must have proof of the claims in its advertisement before it airs. The required threshold of evidence is a “reasonable basis.” A reasonable basis means objective evidence that supports the claim. The kind of evidence depends on the claim. At a minimum, as advertiser must have the level of evidence that it says it has. So if an advertisement states that 9 out of 10 dentists recommend chewing a brand of gum, that statement must be supported by a reliable survey to that effect. The FTC, however, apparently does not have a definition for a “reliable” survey. If an advertisement is specific such as in the aforementioned

example, the FTC looks at several factors to determine what level of proof is necessary, including what experts in the field think is needed to support the claim. In most cases, advertisements that make health or safety claims must be supported by “competent and reliable scientific evidence” – tests, studies, or other scientific evidence that has been evaluated by people “qualified” (again undefined) to review it. Additionally, any tests or studies must be conducted using methods that “experts” (again undefined) in the field accept as accurate.<sup>17</sup>

Enforcement of these rules by the FTC can be difficult and cumbersome, if not overwhelming. In deciding what cases to bring against violators of these rules, the FTC weighs several factors. Among them, and firstly, is the question of jurisdiction, or the ability and authority of the FTC to enforce the rules. Although the FTC has jurisdiction over ads for most products and services, Congress has given other governmental agencies the authority to investigate advertising by airlines, banks, insurance companies, common carriers, and companies that sell securities and commodities.

Another major factor the FTC takes into account in deciding whether or not to bring a case against a potentially deceptive advertiser is the amount of injury the advertisement could cause if consumers rely on the deceptive claims. This injury could be in the form of the consumer’s health, safety, or finances. The FTC also focuses its enforcement efforts on national advertising campaigns, often referring local matters to state, county or city agencies. It also focuses on advertisers that perpetuate a wider pattern of deception, rather than on individual disputes between a consumer and a business or a dispute between two competitors. This results in the exclusion of many ads from the FTC’s umbrella of enforcement, and particularly leaves the individual consumer out in the rain, so to speak. It is the FTC’s position, though, that such disputes are better handled by state or local consumer protection agencies or private groups such

as the Better Business Bureau, believing them to be in a better position to resolve disputes involving local businesses or local advertising. The FTC's resources are limited, and combined with, or caused/justified by the above factors, ignores a vast amount of the advertisements out in the ether.

When the FTC does bring a case against an advertiser and finds a violation of its rules, it has three main penalties that it can utilize. First, it can issue cease and desist orders. These legally-binding orders require companies to stop running the deceptive advertisement or engaging in the deceptive practice, to have substantiation for claims in future advertisements, to report periodically to FTC staff about the substantiation that have for the claims in new advertisements, and to pay a fine of \$16,000 per day per advertisement if the company violated the law in the future.<sup>18</sup> Second, the FTC can issue civil penalties, provide consumer redress, and/or other monetary remedies. Civil penalties range from thousands of dollars to millions of dollars depending on the nature of the violation. In some cases, advertisers have been ordered to give full or partial refunds to all consumers who bought a product. Third, the FTC can order corrective advertising, disclosures, and other informational remedies. Advertisers have been required to take out new ads to correct the misinformation conveyed in the original ad, notify purchasers about deceptive claims in ads, include specific disclosures in future ads, or provide other information to consumers.<sup>19</sup>

All of these rules and regulations and the FTC's ability to enforce them would seem to be rather thorough and make for advertisements that are quite clear to consumers, being both fair and free from deception. Nonetheless, these lofty requirements would often appear to fall short, at least in their enforcement. Take the Rent-A-Center advertisement described previously.



Assuming the John is a reasonable consumer, would that commercial really be fair and free from deception? Would not the inability to read the fine print alone make it unfair and deceptive?

According to the FTC, yes, in fact it would. Some laws and regulations enforced by the FTC (including ones that would cover the advertisement in question), such as the 900 Number Rule, the Truth in Lending Act<sup>20</sup>, and the Consumer Leasing Act<sup>21</sup>, have specific requirements that apply to advertising, including that certain information must be “clearly and conspicuously” disclosed. According to the FTC, when the disclosure of qualifying information is necessary to prevent an ad from being deceptive, the information should be presented clearly and conspicuously so that consumers can actually notice and understand it. A fine-print disclosure at the bottom of an advertisement, a disclaimer that is easily missed, a brief video superscript, or a disclaimer buried in a body of text unrelated to the claim being qualified are not likely to be effective. Nor can advertisers use fine print to contradict statements in an advertisement or to clear up misimpressions that the advertisement would leave otherwise. To ensure that disclosures are effective, advertisers should use clear and unambiguous language, place any qualifying information close to the claim being qualified, and avoid using small type or any distracting elements that could undercut the disclosure. Although there is no hard-and-fast rule about the size of type in an advertisement or the length of time it must appear on a television screen, the FTC claims that it has often taken action when a disclaimer or disclosure is too small, flashes across the screen too quickly, is buried in other information, or is otherwise hard for consumers to understand.

Although this may be the FTC’s de jure policy, its de facto policy is clearly to the contrary, as evidenced by the plethora of advertisements with unreadable fine print. At the very least, the aforementioned sample advertisement would violate most of these requirements. So

why are such advertisements permitted? What if anything is the FTC doing about them? If advertisers know that the FTC is not enforcing its own rules and the laws it is charged with administering, why do they bother with any disclaimers and disclosures at all rather than employing fine print? What is the effect on the consumer? And who really benefits from the de facto practice?

## History

The source and authority of many mandated disclaimers, at least those mandated by the FTC, come from what is commonly referred to as Section 5 of the Federal Trade Commission Act which specifically states that

Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful.<sup>22</sup>

The FTC itself was created by this Act in 1914.<sup>23</sup> It was born out of the Anti-Trust Movement but had evolved greatly over the years in almost all regards. There have been many amendments to the Act over the years. One of the most prominent occurred in 1973, which read in part

"(b) It is the purpose of this Act [amending this section and 15 USCS §§ 46, 53, 56] to grant the Federal Trade Commission the requisite authority to insure prompt enforcement of the laws the Commission administers by granting statutory authority to directly enforce subpoenas issued by the Commission and to seek preliminary injunctive relief to avoid unfair competitive practices."<sup>24</sup>

It was with this amendment that the FTC gained teeth and allowed it to, among many things, mandate, regulate, and enforce through judicial action disclaimers.

Section 5 was deliberately left broad and general, and there has been a long history of case-by-case construction of its meanings and scope by the courts.<sup>25</sup> An important component of understanding an Act and how and why it has been interpreted by the courts the way it has is to examine its legislative history, that is, how it came to be a law, and the reasons behind it becoming a law. Legislative histories are particularly important when laws are intentionally broad and vague, which is often the case when administrative agencies, such as the FTC, are created.

The roots of the Federal Trade Commission Act lie in the Sherman Act which was passed in 1890.<sup>26</sup> The Sherman Act was a landmark piece of legislation that was designed to fight anti-competitive activities. It proved highly effective, but with its interpretation left solely up to the courts, disparate outcomes resulted, and was also limited to being a reactive measure.<sup>27</sup> The creation of the FTC was partly motivated by the need for an agency that could leverage its institutional advantages in research and reporting to develop evidence-based competition policy rather than the ad hoc policy being created by the courts.<sup>28</sup> Since then its authority and influence has grown, ballooning with the 1973 amendment.<sup>29</sup>

## Administrative Law

The Federal Trade Commission is an administrative agency that promulgates administrative law. Like all administrative agencies, many of its operations are regulated by the Administrative Procedure Act (“APA”).<sup>30</sup> An agency, as defined by the APA is an authority of the government of the United States. Administrative law encompasses virtually everything that today goes on under the banner of public law.<sup>31</sup> Administrative agencies such as the FTC engage in rulemaking, enforcement, and adjudication. Although created and bounded by Congress, most agencies including the FTC fall under the executive branch of government.

All units of the national government except the President, Vice President, and Congress are thus created by *statute* (or by presidential allocation of resources placed at his or her disposal by congressional statute). The entire machinery of the executive arm of the United States government below the level of the President is the result of congressional action. None of the many federal agencies with which we are all familiar have to exist – or have to exist in their present form. Accordingly, behind every agency lies a legislative act, called an *organic act*, that creates, empowers, defines, and limits that agency. Similarly, every federal office except the few created by the Constitution must originate in a legislative act that creates, empowers, defines, and limits the office.<sup>32</sup>

The FTC's enforcement powers include the ability to levy significant fines and to issue injunctions.

Adjudicative functions are in the form of administrative hearings before and administrative law judge. Adjudicative decisions are appealable to the federal court system. However, in order for an agency decision to be overturned, it must be found to be (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege, or immunity; (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (D) without observance of procedure required by law; (E) unsupported by substantial evidence; or (F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.<sup>33</sup>

## Legal Actions

The powers and limits of the Federal Trade Commission has gradually been more narrowly defined by court action, and continues to be the case. All evidence indicates that the FTC has been extremely active in utilizing its enforcement and adjudication powers to support its regulations. A search of cases involving the FTC returns hundreds of results. Over the last decade, for example, the FTC has filed one hundred and twenty cases challenging health claims made for supplements alone.<sup>34</sup>

Most cases, however, are settled. For instance, in 2014, cosmetics company L'Oréal USA, Inc. agreed to settle charges brought by the FTC of deceptive advertising about certain of its skincare products.<sup>35</sup> According to the FTC's complaint, L'Oréal made false and unsubstantiated claims that its products provided anti-aging benefits by targeting users' genes. In national advertising campaigns that encompassed print, radio, television, Internet, and social media outlets, L'Oréal claimed that its products were "clinically proven" to "boost genes' activity and stimulate the production of youth proteins that would cause "visibly younger skin in just 7 days," and would provide results to specific percentages of users.



(<https://www.ftc.gov/system/files/documents/cases/140926lorealxha-f.pdf>)

Under the settlement, L'Oréal is prohibited from claiming that the products target or boost the activity of genes to make skin look or act younger, or respond five times faster to aggressors like stress, fatigue, and aging, unless the company has competent and reliable scientific evidence substantiating such claims. The settlement also prohibits claims that certain products affect genes unless the claims are supported by competent and reliable scientific evidence. Finally, L'Oréal is prohibited from making claims about these products that misrepresent the results of any test or study. This is the typical means by which the FTC resolves violations of its regulations. Many of these settlements are published as press releases



on the FTC's website, however many are not, so it is impossible to tell the true extent to the FTC's attempts at enforcement.

Not all disputes can be resolved through settlements, however. Quite on the contrary. For example, in one typical case, and potentially associable with the commercial evaluated in the beginning of this paper, a petitioner to the U.S. Court of Appeals sought review of an order by the Federal Trade Commission that petitioner refrain from making unsubstantiated claims that its product was effective and to disclose in the product's labeling and advertising that the product did not contain aspirin.<sup>36</sup>



(<http://pics2.ds-static.com/proding/10326/300.JPG>)

The court denied the petition, holding that the FTC's order was supported by the law and the facts; that the FTC had jurisdiction and regulatory authority over drug advertising while the Federal Drug Administration conducted its drug safety review; and that the FTC employed the

appropriate multi-factorial analysis, exercised its remedial discretion, and determined that the particular facts warranted the imposition of a clinical testing requirement. The FTC's requirement of aspirin-content disclaimers was also entirely appropriate - petitioner's product did not contain any aspirin, and petitioner should not have implied that it did.

In another fairly typical case that has bearing on the previously analyzed advertisement, a pest control company appealed an order issued by the FTC.<sup>37</sup> The pest control company petitioned the U.S. Court of Appeals because the FTC concluded that petitioner committed an unfair act in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C.S. §§ 45(a)(1) and (2), and ruled that a summary decision was appropriate, issuing a cease and desist order. The petitioner offered contracts with lifetime continuous protection guarantees, provided that the customer paid the specified fixed annual fee. Subsequently, petitioner unilaterally breached the contracts with its customers by raising the amount of the annual fee. The court affirmed the FTC's order, holding that the Commission did not err in concluding the contracts unambiguously provided for a fixed annual renewal fee. The court determined that the Commission did not exceed its authority in deciding that petitioner's conduct met the Commission's definition of unfairness.

Although the FTC has been a party to hundreds of lawsuits challenging all sorts of its actions (or inactions), surprisingly it does not appear as though any of them have to do with speed or comprehensibility of disclaimers. Given the proliferation of disclaimers, and the inherent problems with many of them as discussed previously herein, this is puzzling.

### **Chapter 3. EXPERIMENTAL RESEARCH**

Understanding how disclosures, disclaimers, and warnings work and affect their audience, as well as their effectiveness, helps answer the questions posed herein. Significant research has been conducted into just such an understanding. The starting point for most of this research is the (purported) purpose of disclaimers.

One of the reasons disclaimers, or “information interventions” as some researchers have called them, exist because of the belief that the availability of relevant, accurate information will assist consumers in making meaningful decisions about product and brand use.<sup>38</sup> Advertisers employ disclaimers to protect against possible lawsuits and to adhere to industry regulations.<sup>39</sup> Sellers are motivated to provide warnings with products that may be dangerous in surprising ways or degrees.<sup>40</sup> Perhaps more on point in their purpose for advertisers is that

[l]ike rituals, ads are intended to interrupt the ongoing flow of everyday life and practical, technology-governed activity. Both use dramatic and aesthetic effects to underline their messages and associate them with strong emotion. Both appeal to received ideas and established social categories and principles.<sup>41</sup>

On the other end of the spectrum, lawmakers and regulators impose disclaimers when they believe that sellers would otherwise fail to inform buyers.<sup>42</sup>

[t]here are two master tropes in commercial culture: The one seeks to persuade, seduce, entertain, inform, and ultimately, sell; the other finds it necessary to warn, caution, expose, reveal, and offer counter-indications.<sup>43</sup>

Any such imposition, however, is an imposition upon free speech, and as such policymakers must balance the rights of sellers to make accurate and truthful claims about their products and the rights of the consumer to have access to complete and non-deceptive information.<sup>44</sup> As the FDA has officially stated, “[a] well-informed public is one of the best weapons against some of the biggest public health threats facing the country. Simply put, better information means that consumers can make better health choices.”<sup>45</sup> For the public to effectively use this information, however, it must have the opportunity to take it in. “The effectiveness of utterances is measured or assessed by their subsequent material, social, cognitive results.”<sup>46</sup> There are thus many purposes to disclaimers which differ from party to party and are often at odds with each other.

Whatever the purpose of disclaimers, their intended effects have been shown to often differ from their actual effects, or have no effect whatsoever.<sup>47</sup> This is problematic, as it is important for marketers and policymakers to understand how consumers evaluate product risk information.<sup>48</sup> While there has been a notable amount of research into this, the results have been mixed, surprising, and inconsistent to various extents. Studies suggest that information on product risks lowers consumers’ product evaluations, while others suggest they ignore such information, while still others suggest that they can actually enhance consumers’ product evaluations.<sup>49</sup>

A concern some studies have addressed is the false impression of safety or effectiveness that disclaimers can convey- a government mandated message can suggest that an authority has

carefully reviewed the thing advertised and that consumers might be reassured by it, causing them to feel looked after, like there is nothing to worry about, and thus they must be less vigilant in evaluating the safety and effectiveness of a product on their own.<sup>50</sup> “Customers exposed to a government mandated message may believe that because the government has warned of a negative aspect of a product, they do not need to worry because the risk must have been regarded as acceptable by government’s experts; otherwise, the product would not be on the market.”<sup>51</sup> Further, mandated disclaimers are irrelevant to consumers, and the presence of such irrelevant information can distract people and negatively affect their decision making.<sup>52</sup>

Still, some very interesting and enlightening research has been done that is not only consistent, it has clarified the inconsistencies in prior studies by narrowing the parameters of their research. For instance, studies have shown that consumers are more likely to notice warnings and remember precautions that can take to avoid the risk when warnings are particularly vivid.<sup>53</sup> Also, the more specific the risk about which consumers are warned, the more likely they are to appreciate the actual risk.<sup>54</sup> In research on the disclosure of risks related to prescription drugs, it was found that the disclosure of specific risks led to greater risk information awareness than did disclosure of general risks.<sup>55</sup>

Similarly, in research on warnings for over-the-counter antacids, it was found that specific warnings led to greater recall and greater knowledge than did general warnings.<sup>56</sup> Specific vivid warnings facilitate processing of the message and provide greater ease of encoding, which can aid interpretation of the risk message, impacting specific risk beliefs and more global attitudes.<sup>57</sup> Still, warnings have different effects on consumers, depending on the consumers’ ability to comprehend the message, the message’s believability, the relevance of the message to the consumer, and the consumer’s predisposition to believe or reject the message.<sup>58</sup>

One study evaluated the impact of the disclaimer on subjects' beliefs about the issues specifically mentioned in the disclaimer.<sup>59</sup> The study found that the disclaimer had no discernable impact on subjects' beliefs about the FDA's involvement in evaluating product claims or about the effectiveness of supplements in preventing, treating, or curing the focal disease. One must consider relevant background beliefs when attempting to provide information to the consumer. The study found that information regarding a particular product can be overridden by the consumer's existing and distantly related beliefs: "This bias is problematic for two reasons. First, consumers with negative beliefs regarding supplements may eliminate a potentially helpful product from their evoked set – an error or omission. Alternatively, those with positive opinions regarding the industry, who are innovative and motivated to protect themselves, may use many supplements that are not useful."<sup>60</sup> Overall, the authors concluded that the disclaimer did not have its intended effects in communicating to consumers' specific information about the regulatory environment for dietary supplements, and policymakers take a more holistic approach to policy design.

It has been found in one study that consumers respond differently to product risk depending on both the nature of this risk (temporary versus permanent) and the framing of the persuasive message.<sup>61</sup> Participants in the study exposed to loss-framed messages exhibited an aversion to product risk, whereas those exposed to upbeat, gain-framed messages essentially disregarded temporary product risks in forming product evaluations and intentions.

Another study found that disclaimers are less likely to impact inferences about global product or brand characteristics, especially when the information would require modification of previously held beliefs.<sup>62</sup> Only vivid, explicit disclosures were able to impact consumer inferences, and then only under conditions of high motivation and high opportunity. Its findings

suggest that consumers who are exposed to disclosures under limited-capacity conditions, such as when the disclosure is only briefly presented in a broadcast ad, may use these disclosures for subsequent capacity-unconstrained decisions, as long as the disclosure is accessible to them.<sup>63</sup> According to the study, encoding of a message does not ensure use. Encoding, however, is typically a first step in disclosure use. Efforts to making disclosures more prominent, such as font and placement requirements, are likely to facilitate encoding. After encoding, use of the disclosure relies on ability, motivation, and opportunity. Of particular note, in regard to the overall question of this paper, is that opportunity can be effectively increased by reducing the processing demands of the disclosure, and by techniques that expand time available for processing, for example, content-to-time ratios, or the use of “dead time,” a pause following a critical point in a broadcast message.<sup>64</sup>

Research into how to make disclaimers more effective have shown, unsurprisingly, that they should be in large font so that even those with less than perfect vision can read them, be in dark lettering on a white background in columns, and in a standard serif typeface.<sup>65</sup> If spoken, disclaimers should be read at a normal speaking voice, loudly, clearly, and without distraction. Some advertisers, however, intentionally violate these principles, either because they do not want to spend the advertising dollars on time used for disclaimers, or because they intentionally want to discourage reading and comprehension of the disclaimers. “For audio advertisements, disclaimers are presented using fast-talkers, who sound authoritative and help save on media costs, but they are also not effective for conveying information.”<sup>66</sup> This tactic, however, does not always have the desired effect.

Research has shown that it is true that fast speech, whether verbal or visual, can limit people’s ability to process or elaborate on the message content. As such, its effect is dependent

upon whether having the time to process the message content would have led to a positive or negative result, or put another way an intended or unintended result. “If elaboration would have yielded greater persuasion, as when argument is strong, then fast speech hinders persuasion.”<sup>67</sup> If elaboration would have yielded weaker persuasion, in contrast, then fast speech promotes persuasion. Indeed, fast radio advertisements decrease differentiation between strong and weak arguments because consumers have trouble processing the content of the message.”<sup>68</sup> Fast speech can also give an impression on the intelligence and honesty of the speaker. For some subjects, fast speaking can convey a belief that the speaker is intelligent.<sup>69</sup> However, this is not the only thing that can be conveyed. Fast speaking can also convey a belief that the speaker is being deceitful.<sup>70</sup>

One study conducted two experiments to test the hypothesis that disclaimer speed and brand trust would interact to predict purchase intention.<sup>71</sup> One of the experiments suggested that “fast disclaimers undermine consumers’ purchase intention toward brands when they lack relevant information or believe the brand is untrustworthy, *but not when they trust the brand*” (emphasis added).<sup>72</sup> The other experiment demonstrated that

[b]rand trust moderates the effect of disclaimer speed on purchase intention comparably whether the disclaimer contains negative or positive information about the advertised product. Regardless of disclaimer valence, when consumers lack trust information about an advertised brand, fast disclaimers undermine their purchase intention. In contrast, when consumers trust the brand, they appear to be unaffected by disclaimer speed.<sup>73</sup>



The importance of brand trust in the effect on disclaimers provides potentially profound insight into the interests in disclaimers generally.

## **Chapter 4. CONCLUSION**

The purposes behind having disclaimers has already been discussed herein. When voluntary, the intended beneficiary of the disclaimers are generally the advertisers. When the disclaimers are mandated by regulation, the intended beneficiary of the disclaimers are generally purported to be the consumers. Research, however, has shown that these assumed beneficiaries frequently do not benefit or do not react in the intended way. This raises the question of whether the actual result was accidental or intentional. It also raises the question of who the disclaimers are truly meant to benefit.

The study demonstrating the effect of brand trust on the total equation is illuminating in regard to the latter question in particular.<sup>74</sup> If indeed fast disclaimer speed undermines consumers' purchase intention except in the cases of trusted brands, then trusted brands would be a beneficiary of having fast disclaimers. It would thus be in their best interest to lobby for the requirement of disclaimers, but against the regulation of their speeds or comprehensibility. While mandated disclaimers are supposed to be for and in the best interest of the consumers, "government officials are fallible, sometimes biased, and sometimes duplicitous."<sup>75</sup> Despite the lofty language of the laws and regulations that have been implemented to protect consumers, "[r]egulators may also fail to implement the wishes of elected officials."<sup>76</sup>

Of even greater impact perhaps, is that by their very nature disclaimers as a policy option encourage lobbying of politicians and regulators by competitors and interest groups.<sup>77</sup> If trusted brands can successfully lobby for mandated disclosures without comprehensibility requirements, they would force their competitors, particularly smaller and newer ones, to utilize fast

disclaimers because of a need to meet regulatory requirements and to maximize their advertising dollars on their content rather than the disclaimers, then they would garner a higher purchase intention than their competitors and thus potentially benefit greatly. One study found that if advertisers use the type of fast speech they often do, then “trusted brands could devote only 13% of the advertisement’s duration to the disclaimer (4 seconds in a 30-second spot), whereas other brands might have to devote 23% of the advertisement’s duration to the disclaimer (7 seconds in a 30-second spot).<sup>78</sup>

There is no hard-and-fast rule about the size of type in a print ad, the length of time a disclosure must appear on TV, their speed, etc. The FTC claims that it has often taken action when a disclaimer or disclosure is too small, flashes across the screen too quickly, is buried in other information, or is otherwise hard for consumers to understand.<sup>79</sup> Despite these claims, however, such disclaimers still seem to be prolific.

Getting back to John, we are left with several questions. What effect did the disclaimer have on him? What was the intended effect? Did it benefit him? Did it benefit anyone else? Earlier we questioned why such advertisements are permitted? What if anything is the FTC doing about them? If advertisers know that the FTC is not enforcing its own rules and the laws it is charged with administering, why do they bother with any disclaimers and disclosures at all rather than employing fine print?

The research that’s been discussed herein suggests that the answers to these questions depend on many factors. Put another way, as one commentator has, from anthropological perspective,

Text and countertext duke it out in consumer consciousness; the entire mass market resembles an experiment station of contesting tropes where we, the subjects of the laboratory trials, have been coaxed with seductive texts and seemingly effective machines to pay for uncertain outcomes. Uncertainties fluctuate between the dueling messages, each textual type feeding off the other. Together we are offered unresolvable antinomies of persuasion-for-use and the real, but untotizable and not wholly benign activities of the agent – activities that must be described in the discourse of counterindications.<sup>80</sup>

This process of semiosis is what produces meaning.<sup>81</sup> Disclaimers, like advertisements as a whole, are signs, often multiple ones at once. Unfortunately for advertisers and regulators alike, as well as for consumers, signifier and signified are not intrinsically entwined and can often vary from subject to subject, and thus sometimes the wrong sign is conveyed.<sup>82</sup>

John's reaction to the disclaimer is going to depend largely upon his preexisting feelings about the brand, the type of product, his use of such products in the past, and other factors. "When an occurrence of a sign is an expected or usual event it is automatized. Its use would function as a simple affirmation of shared knowledge."<sup>83</sup> It is hard to believe that the disclaimer benefitted him, as he could not have had the opportunity to use it. It could have benefitted the advertiser, if John trusted it to begin with. While the FTC is continuously taking strong action to enforce its regulations, it is neither putting out strong regulation regarding the comprehensibility of disclaimers nor vigorously enforcing what regulations it does have them. It is unknown why. It could be that the FTC has other (bigger) concerns, that it lacks the resources, or that it is being lobbied not to, among other possible reasons. Advertisers may be employing these disclaimers

out of fear of FTC enforcement, fear of lawsuits, or because they think that the disclaimers actually have a positive effect for them upon the consumer. The research that has been done in the area of disclaimers has helped cast some light on these questions, and raised others, but undoubtedly further studies will continue to aid our understanding on how disclaimers work and the various interests behind them.

## **BIBLIOGRAPHY**

- Advertising FAQs: A Guide for Small Business*. FTC. Web. 10 Oct. 2015. Available at <https://www.ftc.gov/tips-advice/business-center/guidance/advertising-faqs-guide-small-business>.
- Averitt, Neil W. "The Meaning of 'Unfair Methods of Competition' in Section 5 of the Federal Trade Commission Act." 21 B.C.L. Rev. 227 (1980), <http://lawdigitalcommons.bc.edu/bclr/vol21/iss2/1>. Web. 27 Feb. 2016.
- Cox, Anthony D., Dena Cox, and Gregory Zimet. "Understanding Consumer Responses to Product Risk Information". *Journal of Marketing* 70.1 (2006): 79–91. Web. 16 Feb. 2016.
- Denny, Rita. "Speaking to Customers: The Anthropology of Communications." *Contemporary Marketing and Consumer Behavior*. Ed. John F. Sherry. Thousand Oaks: SAGE Publications, 1995. 330-346. Print.
- Food and Drug Administration (FDA). 2004. Protecting and Advancing Consumer Health and Safety. January 13. <http://www.fda.gov/oc/whitepapers/consumers.html>.
- France, Karen Russo, and Paula Fitzgerald Bone. "Policy makers' paradigms and evidence from consumer interpretations of dietary supplement labels." *Journal of Consumer Affairs* 39.1 (2005): 27-51. Web. 16 Feb. 2016.
- FTC. "Health Claims." *Federal Trade Commission*. FTC, n.d. Web. 01 Mar. 2016.
- FTC. "L'Oréal Settles FTC Charges Alleging Deceptive Advertising for Anti-Aging Cosmetics." *Federal Trade Commission*. FTC, 30 June 2013. Web. 3 Mar. 2016.
- FTC Policy Statement on Deception*. FTC, 14 Oct. 1983. Web. 10 Oct. 2015. Available at <https://www.ftc.gov/public-statements/1983/10/ftc-policy-statement-deception>.
- FTC Policy Statement on Unfairness*. FTC, 17 Dec. 1980. Web. 10 Oct. 2015. Available at <https://www.ftc.gov/public-statements/1980/12/ftc-policy-statement-unfairness>.
- Green, Kesten C., and J. Scott Armstrong. "Evidence on the Effects of Mandatory Disclaimers in Advertising." *SSRN Electronic Journal SSRN Journal*. Web. 16 Feb. 2016.
- Herbst, Kenneth C., Eli J. Finkel, David Allan, and Gráinne M. Fitzsimons. "On the Dangers of Pulling a Fast One: Advertisement Disclaimer Speed, Brand Trust, and Purchase Intention." *J Consum Res Journal of Consumer Research* 38.5 (2012): 909-19. Web. 16 Feb. 2016.

- Johar, Gita Venkataramani, and Carolyn J. Simmons. "The Use of Concurrent Disclosures to Correct Invalid Inferences". *Journal of Consumer Research* 26.4 (2000): 307–322. Web. 16 Apr. 2016.
- Kang, Jerry. *Communications Law and Policy: Cases and Materials*. New York, NY: Foundation, 2005. Print.
- Lawson, Gary. *Federal Administrative Law*. St. Paul, MN: Thomson/West, 2004. Print.
- McCreary, John. "Malinowski, Magic, and Advertising: On Choosing Metaphors." *Contemporary Marketing and Consumer Behavior*. Ed. John F. Sherry. Thousand Oaks: SAGE Publications, 1995. 309-329. Print.
- Mason, Marlys J., Debra L. Scammon, and Xiang Fang. "The Impact of Warnings, Disclaimers, and Product Experience on Consumers' Perceptions of Dietary Supplements." *Journal of Consumer Affairs* 41.1 (2007): 74-99. Web. 16 Feb. 2016.
- Rose, Dan. "Active Ingredients." *Contemporary Marketing and Consumer Behavior*. Ed. John F. Sherry. Thousand Oaks: SAGE Publications, 1995. 51-85. Print.
- Stam, Robert, Robert Burgoyne, and Sandy Flitterman-Lewis. *New Vocabularies in Film Semiotics: Structuralism, Post-structuralism, and beyond*. London: Routledge, 1992. Print.
- Statement of Commissioner Joshua D. Wright: Proposed Policy Statement Regarding Unfair Methods of Competition Under Section 5 of the Federal Trade Commission Act*. FTC, 19 June 2013. Available at [https://www.ftc.gov/sites/default/files/documents/public\\_statements/statement-commissioner-joshua-d.wright/130619umcpolicystatement.pdf](https://www.ftc.gov/sites/default/files/documents/public_statements/statement-commissioner-joshua-d.wright/130619umcpolicystatement.pdf).
- Ziefle, Martina. "Effects of Display Resolution on Visual Performance." *Hum Factors Human Factors: The Journal of the Human Factors and Ergonomics Society* 40.4 (1998): 554-68. Web.

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## ENDNOTES

- <sup>1</sup> Matt Groening. "Homer Loves Flanders," Season 5, Episode 16. *The Simpsons*. Fox. 17 Mar. 1994. Television.
- <sup>2</sup> The commercial advertisement can be watched at [http://www.ispot.tv/ad/AL\\_e/rent-a-center-2-for-1-bundles](http://www.ispot.tv/ad/AL_e/rent-a-center-2-for-1-bundles).
- <sup>3</sup> Martina Ziefle. "Effects of Display Resolution on Visual Performance." *Hum Factors Human Factors: The Journal of the Human Factors and Ergonomics Society* 40.4 (1998): 554-68. Web.
- <sup>4</sup> The APR on the television bundle is 111%.
- <sup>5</sup> President William Jefferson Clinton. Executive Order No 12866. 58 Fed. Reg. 51735. 30 Sept, 1993.
- <sup>6</sup> *Advertising FAQs: A Guide for Small Business*. FTC. Web. 10 Oct. 2015. Available at <https://www.ftc.gov/tips-advice/business-center/guidance/advertising-faqs-guide-small-business>.
- <sup>7</sup> *FTC Policy Statement on Unfairness*. FTC, 17 Dec. 1980. Web. 10 Oct. 2015. Available at <https://www.ftc.gov/public-statements/1980/12/ftc-policy-statement-unfairness>
- <sup>8</sup> *FTC Policy Statement on Deception*. FTC, 14 Oct. 1983. Web. 10 Oct. 2015. Available at <https://www.ftc.gov/public-statements/1983/10/ftc-policy-statement-deception>
- <sup>9</sup> 15 U.S. Code § 41.
- <sup>10</sup> *Advertising FAQs: A Guide for Small Business*, supra.
- <sup>11</sup> *Advertising FAQs: A Guide for Small Business*, supra.
- <sup>12</sup> *FTC Policy Statement on Unfairness*, supra.
- <sup>13</sup> *FTC Policy Statement on Deception*, supra.
- <sup>14</sup> *FTC Policy Statement on Deception*, supra.
- <sup>15</sup> 15 U.S. Code § 45.
- <sup>16</sup> *Advertising FAQs: A Guide for Small Business*, supra.



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- <sup>17</sup> *FTC Policy Statement on Deception*, supra.
- <sup>18</sup> *Advertising FAQs: A Guide for Small Business*, supra.
- <sup>19</sup> *FTC Policy Statement on Deception*, supra.
- <sup>20</sup> 15 U.S.C. 1601.
- <sup>21</sup> 15 U.S.C. 1667.
- <sup>22</sup> 15 USCS § 45(a)(2).
- <sup>23</sup> Act of Sept. 26, 1914, ch. 311, 38 Stat. 717.
- <sup>24</sup> Act Nov. 16, 1973, P.L. 93-153, Title IV, § 408(a), (b), 87 Stat. 591.
- <sup>25</sup> Neil W. Averitt. “The Meaning of ‘Unfair Methods of Competition’ in Section 5 of the Federal Trade Commission Act.” 21 B.C.L. Rev. 227 (1980), <http://lawdigitalcommons.bc.edu/bclr/vol21/iss2/1>. Web. 27 Feb. 2016; *see also* See H.R. REP. NO. 63-1142, at 19 (1914) (Conf. Rep.) (observing if Congress “were to adopt the method of definition, it would undertake an endless task”).
- <sup>26</sup> 26 Stat. 209, 15 U.S.C. §§ 1-7.
- <sup>27</sup> *Averitt*, supra.
- <sup>28</sup> *Statement of Commissioner Joshua D. Wright: Proposed Policy Statement Regarding Unfair Methods of Competition Under Section 5 of the Federal Trade Commission Act*. FTC, 19 June 2013. Available at [https://www.ftc.gov/sites/default/files/documents/public\\_statements/statement-commissioner-joshua-d.wright/130619umcpolicystatement.pdf](https://www.ftc.gov/sites/default/files/documents/public_statements/statement-commissioner-joshua-d.wright/130619umcpolicystatement.pdf)
- <sup>29</sup> Jerry Kang. *Communications Law and Policy: Cases and Materials*. New York, NY: Foundation, 2005. Print.
- <sup>30</sup> 5 U.S.C. §§ 500 et al., Pub.L. 79–404, 60 Stat. 237.
- <sup>31</sup> Gary Lawson. *Federal Administrative Law*. St. Paul, MN: Thomson/West, 2004. Print.
- <sup>32</sup> *Lawson*, supra.
- <sup>33</sup> 5 U.S.C. § 706.
- <sup>34</sup> FTC. “Health Claims.” *Federal Trade Commission*. FTC, n.d. Web. 01 Mar. 2016.

- 
- <sup>35</sup> FTC. "L'Oréal Settles FTC Charges Alleging Deceptive Advertising for Anti-Aging Cosmetics." *Federal Trade Commission*. FTC, 30 June 2013. Web. 3 Mar. 2016.
- <sup>36</sup> *Thompson Medical Company, Inc. v. Federal Trade Commission*. 791 F.2d 189, 253 U.S. App. D.C. 18 (D.C. App. 1986).
- <sup>37</sup> *Orkin Exterminating Company, INC. vs. Federal Trade Commission*. 849 F.2d 1354, 1988 U.S. App. LEXIS 9904 (11<sup>th</sup> App. 1988).
- <sup>38</sup> Marlys J. Mason, Debra L. Scammon, and Xiang Fang. "The Impact of Warnings, Disclaimers, and Product Experience on Consumers' Perceptions of Dietary Supplements." *Journal of Consumer Affairs* 41.1 (2007): 74-99. Web. 16 Feb. 2016.
- <sup>39</sup> Kenneth Herbst, C., Eli J. Finkel, David Allan, and Gráinne M. Fitzsimons. "On the Dangers of Pulling a Fast One: Advertisement Disclaimer Speed, Brand Trust, and Purchase Intention." *J Consum Res Journal of Consumer Research* 38.5 (2012): 909-19. Web. 16 Feb. 2016.
- <sup>40</sup> Kesten C. Green and J. Scott Armstrong. "Evidence on the Effects of Mandatory Disclaimers in Advertising." *SSRN Electronic Journal SSRN Journal*. Web. 16 Feb. 2016.
- <sup>41</sup> John McCreary. "Malinowski, Magic, and Advertising: On Choosing Metaphors." *Contemporary Marketing and Consumer Behavior*. Ed. John F. Sherry. Thousand Oaks: SAGE Publications, 1995. 309-329. Print.
- <sup>42</sup> *Green, supra*.
- <sup>43</sup> Dan Rose, "Active Ingredients." *Contemporary Marketing and Consumer Behavior*. Ed. John F. Sherry. Thousand Oaks: SAGE Publications, 1995. 51-85. Print.
- <sup>44</sup> *Mason, supra*.
- <sup>45</sup> Food and Drug Administration (FDA). 2004. Protecting and Advancing Consumer Health and Safety. January 13. <http://www.fda.gov/oc/whitepapers/consumers.html>.
- <sup>46</sup> *Rose, supra*
- <sup>47</sup> Karen Russo France and Paula Fitzgerald Bone. "Policy makers' paradigms and evidence from consumer interpretations of dietary supplement labels." *Journal of Consumer Affairs* 39.1 (2005): 27-51. Web. 16 Feb. 2016; *Mason, supra*.
- <sup>48</sup> Anthony D. Cox, Dena Cox, and Gregory Zimet. "Understanding Consumer Responses to Product Risk Information". *Journal of Marketing* 70.1 (2006): 79-91. Web. 16 Feb. 2016.
- <sup>49</sup> *Cox, supra; Green, supra*.
- <sup>50</sup> *Green, supra*.

- 
- <sup>51</sup> *Green, supra.*
- <sup>52</sup> *Green, supra*, citing Robert A. Osterhouse and Timothy C. Brock (1970). “Distraction Increases Yielding to Propaganda by Inhibiting Counterarguing,” *Journal of Personality and Social Psychology*, 15 (4), 344-58.
- <sup>53</sup> *Mason, supra*, citing Paul Slovic, Melissa Finucane, Ellen Peters, and Donald G MacGregor. 2002. “The Affect Heuristic.” In *Heuristics and Biases: The Psychology of Intuitive Judgment*, edited by Thomas Gilovich, Dale Griffin, and Daniel Kahneman (397-420). New York: Cambridge University.
- <sup>54</sup> *Mason, supra*, citing David W. Stewart and Ingrid M. Martin. 1994. “Intended and Unintended Consequences of Warning Messages: A Review and Synthesis of Empirical Research.” *Journal of Public Policy & Marketing*, 13 (Spring): 1-19.
- <sup>55</sup> *Mason, supra*, citing Louis A. Morris, Michael B. Mazis, and David Brinberg. 1989. “Risk Disclosures in Televised Prescription Drug Advertising to Consumers.” *Journal of Public Policy & Marketing*, 8 (1): 64-80)
- <sup>56</sup> *Mason, supra*, citing Michael J. Houston and Michael L. Rothchild. 1980. Policy-Related Experiments on Information Provision: A Normative Model and Explication. *Journal of Marketing Research*, 17 (November): 432-449.
- <sup>57</sup> *Mason, supra*, citing James R. Bettman, John W. Payne, and Richard Staelin. 1986. Cognitive Considerations in Designing Effective Labels for Presenting Risk Information. *Journal of Public Policy & Marketing*, 5: 1-28; Derek D. Rucker and Richard E. Petty, 2006. Increasing the Effectiveness of Communications to Consumers: Recommendations Based on Elaboration Likelihood and Attitude Certainty Perspectives. *Journal of Public Policy & Marketing*, 25 (Spring): 39-52
- <sup>58</sup> *France, supra.*
- <sup>59</sup> *France, supra; Mason, supra.*
- <sup>60</sup> *France, supra.*
- <sup>61</sup> *Cox, supra.*
- <sup>62</sup> *Mason, supra*, citing, Gita Venkataramani Johar and Carolyn J. Simmons. “The Use of Concurrent Disclosures to Correct Invalid Inferences”. *Journal of Consumer Research* 26.4 (2000): 307–322.
- <sup>63</sup> Gita Venkataramani Johar and Carolyn J. Simmons. “The Use of Concurrent Disclosures to Correct Invalid Inferences”. *Journal of Consumer Research* 26.4 (2000): 307–322. Web. 16 Apr. 2016.

- 
- <sup>64</sup> *Johar*, supra.
- <sup>65</sup> *Green*, supra.
- <sup>66</sup> *Green*, supra.
- <sup>67</sup> *Herbst*, supra, citing Smith, Stephen M. and David R. Shaffer (1991), "Celerity and Cajolery: Rapid Speech May Promote or Inhibit Persuasion through Its Impact on Message Elaboration," *Personality and Social Psychology Bulletin*, 17 (6). 663-69.
- <sup>68</sup> *Herbst*, supra, citing Danny L. Moore, Douglas Hausknecht, and Kanchana Thamodaran (1986), "Time Compression, Response Opportunity, and Persuasion," *Journal of Consumer Research*, 13 (1) 85-99.
- <sup>69</sup> *Herbst*, supra, citing Norman Miller, Geoffrey Maruyama, Rex J. Beaber, and Keith Valone (1976), "Speed of Speech and Persuasion," *Journal of Personality and Social Psychology*, 34 (4), 455-69; *Smith and Shaffer* (1995), supra.
- <sup>70</sup> *Herbst*, supra, citing *Smith and Shaffer* (1995), supra.
- <sup>71</sup> *Herbst*, supra.
- <sup>72</sup> *Herbst*, supra.
- <sup>73</sup> *Herbst*, supra.
- <sup>74</sup> *Herbst*, supra.
- <sup>75</sup> *Green*, supra.
- <sup>76</sup> *Green*, supra.
- <sup>77</sup> *Green*, supra.
- <sup>78</sup> *Herbst*, supra.
- <sup>79</sup> *Advertising FAQs: A Guide for Small Business*, supra
- <sup>80</sup> *Rose*, supra.
- <sup>81</sup> Robert Stam, Robert Burgoyne, and Sandy Flitterman-Lewis. *New Vocabularies in Film Semiotics: Structuralism, Post-structuralism, and beyond*. London: Routledge, 1992. Print.

---

<sup>82</sup> Rita Denny. "Speaking to Customers: The Anthropology of Communications." *Contemporary Marketing and Consumer Behavior*. Ed. John F. Sherry. Thousand Oaks: SAGE Publications, 1995. 330-346. Print.

<sup>83</sup> *Denny, supra*