

Warning: The Article You're About to Read Might Make You Laugh

Advertising Hyperbole Is Best Found in the Disclaimer

Jan. 22, 2015 Issue (page 1 of the Print edition of the *Wall Street Journal*)

To avoid advertising their products in a misleading way, companies often add disclaimers as a safety net. Even if it seems as though they're stating the obvious. Photo: Inter IKEA Systems, B.V.

By
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If you think you are going to find a foot-tall strawberry when you pop open the yogurt container in your hand, Dannon wants to disabuse you of the thought.

On big trucks featuring three giant cups of the company's Oikos brand Greek yogurt in Times Square recently, there was a message repeated in several places: "Not representative of product."

Swedish retail giant IKEA stresses on several-foot-high signs that hang from the rafters of some stores that the mammoth picture of its beef hot dog is "not actual size." And online ads for Dermitage, a skin product that touts "less wrinkles in only minutes," have shown half the face of a woman with smooth skin and the other half with serious wrinkles, noting that it was "simulated imagery."

No, they don't think you are an idiot.

Companies are supposed to avoid depicting their products in ways that are potentially misleading to consumers, but in some cases, their disclaimers seem pretty silly.

Dannon, a subsidiary of food and beverage conglomerate [Danone SA](#), wanted to emphasize the fruity flavor of the product so it designed oversize fruit for the yogurt-cup vehicle, says Michael Neuwirth, a Dannon spokesman.

"When you see that truck, and if you've never had this product, and you want to open a cup, you might—might, emphasis—have an expectation of ginormous strawberries or blueberries or whatever's featured on the vehicle," he said. He said the company wants "to avoid the remote possibility that anyone would ever" expect that.

No consumers have contacted the company about the trucks, nor did consumer confusion prompt the inclusion of the disclaimer, said Mr. Neuwirth.

Advertising is an art that often depends on metaphor and hyperbole. But advertisers that play fast and loose with the literal truth can put themselves at risk of legal action by consumers or the competition. In October, beverage company Red Bull GmbH agreed to pay more than \$13 million to settle a class-action lawsuit that alleged that the company's slogan "Red Bull gives you wings" inaccurately led consumers to believe the product would increase performance over the competition.

One way that companies believe will help them avoid allegations of deception is to slap on a disclaimer about how the material isn't real or representative of the typical experience. Hence, images of products like breakfast cereal might note, "enlarged to show detail."

Such disclosures are likely to only increase along with the regulation of advertising, according to Kesten Green, who teaches at the School of Commerce at the University of South Australia. He has studied the effects of disclaimers in advertising.

In September, the U.S. Federal Trade Commission issued warning letters to more than 60 companies—including 20 of the 100 largest advertisers in the U.S.—in an initiative dubbed Operation Full Disclosure. Among the complaints: Several weight-loss ads showcased people with extreme results without including a note about what typical consumers might achieve, said the FTC.

The FTC says that only disclaimers that contain information that prevents the ad from being misleading are important to consumers and these must be labeled in a "clear and conspicuous" manner, according to the agency.

"That means it can't be hidden in fine print or spoken too fast, or phrased in words consumers don't understand," says Mary Engle, director, FTC's Division of Advertising Practices.

But extreme caution can seem laughable and lead to unwelcome publicity, particularly in these days of rampant social media. Robert Rosenthal, founder and president of Contenteurs, a content marketing agency, highlighted the Dermitage ad in a company blog, calling it ludicrous—and ineffective.

The message is going to be missed by many consumers, he said. "It's an approach designed to just bury the point that says what you're looking at isn't real," said Mr. Rosenthal. "It's just such a bad idea."

Pat Donohue, the former chief executive of direct marketing company Iconic Labs LLC, which owns Dermitage, said that the ad with the wrinkled- and smooth-skin woman actually hurt the business. It was created by an affiliate marketer, and he shut it down, he said, adding that it hasn't been in use in several years. "They put these ridiculous pictures out there," he said.

For IKEA, disclaimers fulfill a “duty of care” to the general public to prevent risk or limit exposure to damages, according to spokesman Niclas Bengtsson.

The banner is supposed to be used in all U.S. IKEA stores and hung in the same location just before the cash lanes, and wasn’t based on customer feedback, according to Diane Valade-Pelletier, graphic communication manager for the U.S. “The disclaimer, while transparent, is also meant to add a touch of humor which is in keeping with IKEA values,” wrote Ms. Valade-Pelletier in an email provided by a spokeswoman. “We believe the message is lighthearted and friendly and helps to support retention.”

The nonprofit Center for America holds a contest for wacky warning labels each year that “entertains and alarms the nation about the lawsuit-happy culture and the lengths to which companies must go to avoid lawsuits.” In July, the grand prize was awarded for a cellphone battery booster label that warned “get rid of children” and second place for a football helmet that advises that no helmet can protect from serious brain injury and “to avoid these risks, do not engage in the sport of football.”

Bonnie Patten, executive director of consumer advocacy group TruthInAdvertising.org, said many corporate lawyers tell clients to use disclaimers, and at times they can provide a legal defense, but other times they’re “worthless or worse than worthless.”

“What they’re really trying to do is to indicate that the representation that the company has just made to you is not 100% truthful,” said Ms. Patten. “Because if it was 100% truthful, you wouldn’t need a disclaimer.”

And, disclaimers won’t necessarily prevent lawsuits. Last year, the Federal Trade Commission went after Nissan North America Inc. and its ad agency, TBWA Worldwide Inc., for deceptive advertising in a commercial in which a Nissan truck appeared to push a dune buggy to the top of a steep dune. The segment displayed a disclaimer in the lower right corner for the duration of the 30-second spot that said, “Fictionalization. Do not attempt.”

However, the FTC charged that the ad was still deceptive because it showed the truck doing something it couldn’t do—disclaimer or not. In fact both vehicles were being pulled with cables and the camera angle distorted the dune to make it appear steeper than it was.

“Nissan takes its commitment to fair and truthful advertising seriously. The company has been and remains committed to complying with the law,” Nissan said in a statement.

So what should a savvy consumer do? “Forget about anything you’ve read, just read the disclaimer,” said Ms. Patten.

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