



Consumer Protection at the FTC

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* Speaking only for myself and not for the FTC.

Section 5 of the FTC Act

- **“...unfair or deceptive acts or practices in or affecting commerce are declared unlawful.”**



Deception

- **Fraud / false claims**
- **Misleading claims**
 - **Overstatement**
 - **Implied claims**
 - **Incomplete claims**
- **Policy has evolved.**
- **1970s: prohibited claims that have the capacity to mislead the “ignorant, unthinking, and credulous.”**



Deception Policy Statement (1983)

“... representation, omission, or practice that is likely to mislead the consumer acting reasonably in the circumstances, to the consumer’s detriment.”



Deception issues

- **What claims do consumers receive?
(copy test with targeted consumers)**
- **Judge in context of the ad and background information ... framing can matter.**
- **How many misled? How many informed?**
- **Will competition fill in missing info?**
- **Does requiring more complete claims reduce incentive to provide info?**



Unfairness

- **Policy has evolved to reflect economic concerns.**
- **1964 criteria:**
 - **offends public policy,**
 - **immoral, unethical, oppressive, or unscrupulous, or**
 - **causes substantial injury to consumers.**



Unfairness Policy Statement (1980)

Injury

- **Must be substantial**
- **Not reasonably avoidable by consumers themselves**
- **Not outweighed by countervailing benefits to consumers or to competition**



Some Examples

- **Credit Practices Rule**
- **International Harvester case**
- **Mandated Disclosures**
 - **Care Labeling**
 - **Cigarette Warning**
 - **Gasoline Octane Ratings**
 - **R-Value Rules**
- **Spyware**

