

COMPETITIVE PROBLEMS IN THE DRUG INDUSTRY 13619

and contraindications may attend its use. Somewhat different size type may be used in presenting information with respect to side effects, contraindications, and warnings than that used in the eye-catching headlines. But the regulations would not permit the concealment, subordination, or deemphasis of this essential side effect and contraindication information to minimize its disclosure as a part of the total message the advertisement conveys. With this background, we will answer the first four questions.

This was placed in the record and was taken to be the understanding of the provision and regulations by all parties.

Moreover, this interpretation is consistent with other regulation in this field. The terms "false" and "misleading" have been uniformly interpreted to apply to an entire piece of labeling or advertising. Labeling is false and misleading if it contains ambiguities, exaggerations, half-truths, and over-emphasis in any respect. *United States v. 95 Barrels * * * Vinegar*, 265 U.S. 438, 442-443 (1924); *V. E. Irons, Inc. v. United States*, 224 F.2d 34 (C.A. 1, 1957), cert. den. 354 U.S. 923; *United States v. 46 Cartons * * * Fairfax Cigarettes*, 113 F. Supp. 336 (D.N.J., 1953). Nor do disclaimers in the piece cure false and misleading statements. *V. E. Irons, Inc. v. United States*, *supra*; *Research Laboratories v. United States*, 167 F.2d 410 (C.A. 9, 1948), cert. den. 334 U.S. 843.

The very same considerations apply to advertisements. See *Rhodes Pharmacal Co., Inc. v. Federal Trade Commission*, 208 F.2d 382, 387 (C.A. 7, 1953) and *Murray Space Shoe Corporation v. Federal Trade Commission*, 304 F.2d 270, 272 (C.A. 2, 1962) where the Court cites the Food and Drug case *United States v. 95 Barrels of Vinegar*, *supra*, for the proposition that the advertisement as a whole must be examined, and that if the advertisement contains statements capable of both a misleading and a truthful interpretation, the advertisement is misleading. *P. Lorillard, Inc. v. Federal Trade Commission*, 166 F.2d 44 (C.A. 4, 1950); *Beckenstette v. Federal Trade Commission*, 134 F.2d 369, 371 (C.A. 10, 1943). The entire context is examined to determine whether or not the overall impression is misleading and deceptive to the audience. *Federal Trade Commission v. Standard Education Society*, 303 U.S. 112 (1937); *P. Lorillard, Inc. v. Federal Trade Commission*, *supra*. Even though words and sentences of an advertisement may be literally and technically true, when they are framed in a setting which may mislead or deceive, the advertisement is violative. *Beckenstette v. Federal Trade Commission*, *supra*.

We enclose a redrafted information for your consideration which charges that the advertisements in their entirety do not include true statements as to effectiveness, side effects, and contraindications. We believe that this information is sufficient to withstand a motion for a directed verdict.

Very truly yours,

WILLIAM W. GOODRICH,
Assistant General Counsel,
Food and Drug Division.