*Chapter 13*

# Consumer Law

Answers to Learning Objectives/

Learning Objectives Check Questions

at the Beginning and the End of the Chapter

**Note that your students can find the answers to the even-numbered *Learning Objectives Check* questions in Appendix E at the end of the text. We repeat these answers here as a convenience to you.**

**1A.** ***When will advertising be deemed deceptive?*** Deceptive advertising occurs when a reasonable consumer is misled by an ad­vertising claim (although vague generalities and obvious exaggerations are permissible). Therefore, advertising that appears to be based on factual evidence but in fact is not reasonably supported by some evidence will be deemed deceptive. Similarly, advertising that contains half-truths that leads consumers to a false conclusion based on incomplete information will be deemed deceptive.

**2A** ***What information must be listed on the labels of food products?*** The Fair Packaging and Labeling Act requires that food product labels identify (1) the product, (2) the net quantity of the contents (and, if the number of servings is stated, the size of a serving), (3) the manufacturer, and (4) the packager or distributor.

**3A.** ***What law protects consumers against contaminated and misbranded foods and drugs?*** The Federal Food, Drug, and Cosmetic Act (FDCA) protects consumers against adulterated and misbranded foods and drugs. The FDCA establishes food standards, specifies safe levels of potentially hazardous food additives, and provides classifications of foods and food advertising.

**4A.** ***What does Regulation Z require, and how does it relate to the Truth-in-Lending Act?*** Regulation Z is a rule issued by the Federal Reserve Board or Governors to implement the Truth-in-Lending Act (TILA). Regulation Z applies to transactions involving installment sales contracts and certain real estate loans, and contains the TILA’s disclosure requirements. Under its provisions, a lender must disclose the annual percentage rate (APR), finance charge, amount financed, and total payments.

**5A** ***What federal statute is aimed at preventing inaccurate credit reporting?*** The Fair Credit Reporting Act (FCRA) is the federal statute that protects consumers against inaccurate credit reporting. The FCRA requires lenders and other creditors to report correct, relevant, and up-to-date information.

## Answers to Critical Thinking Questions

**in the Features**

# Adapting the Law to the Online Environment—Critical Thinking

***In the long run, is astroturfing likely to benefit a company that is selling an inferior product? Why or why not?*** In the long run, bad products do not survive no matter how many fake positive online reviews a company has paid for. In other words, the marketplace punishes companies that sell inferior products. Astroturfing benefits the most products that are actually a better deal for consumers and that will survive in the long run because it’s a good deal. For instance, if a novel is really bad, yet numerous five-star reviews that are paid for are posted on Amazon.com, that novel will ultimately fail anyway.

# Beyond Our Borders—Critical Thinking

***One chemist claims that the list of “dangerous” chemicals is an example of “chemophobia.” What do you think he meant?*** The chemist, Dr. Derek Lowe in an interview on ABC News said, “The thing is, I’m not reflexively saying people should eat all the food additives they can. I don’t myself. But the amount of understanding about these chemicals is minimal. It really pushed my buttons as a scientist.”

The Food and Drug Administration (FDA) has not banned any of the chemicals mentioned in this feature. The FDA used its own cost-benefit analysis to determine which chemicals in processed foods should be banned. In other words, if the risk of increased morbidity or mortality is so small that it insignificant, the FDA will not ban a chemical in processed foods. Other countries have their equivalent of the FDA and they come to different conclusions using their own cost-benefit analyses.

Answers to Critical Thinking Questions

**in the Cases**

**Case 13.1—Critical Thinking—Ethical Consideration**

***POM argued that it is unethical to require RCTs to substantiate disease-related claims about food products because “doctors cannot . . . ethically deprive a control group of patients of all Vitamin C for a decade to determine whether Vitamin C helps prevent cancer.” Is this a valid argument? Why or why not?*** No, POM’s argument that it is unethical to require RCTs to substantiate disease-related claims about food products because it is impossible to create a zero intake group for nutrients in an ethical manner is not a valid challenge to the FTC’s findings, conclusion, and order in this case.

There is no need for a study participant to undergo a decade-long deprivation of an essential nutrient. An ad can make a claim about the short-term benefits of consuming a certain product. This ad can be based on a short-term study. And whether or not it may be unethical to tell patients in a control group to stop consuming Vitamin C, there is no apparent reason to believe that it would be unethical to create a zero intake group for pomegranate juice.

**Case 13.2—What if the Facts Were Different?**

***Suppose that Lexmark had issued a retraction of its ad claims before this case reached the Supreme Court. Would the outcome have been different? Discuss.*** If Lexmark had issued a retraction of its advertising claims with respect to Static Control before this case had reached the Supreme Court, the retraction would have been another factor in the mix of considerations before the Court. But a retraction may not have changed the outcome in this case. The Court held here only that Static Control is entitled to a chance to prove its claim alleging Lexmark’s violation of the Lanham Act’s prohibition of false advertising. It is not likely that a retraction of the ads would have undercut this holding.

If there were a retraction, however, the ultimate effect may have been on the relief awarded to Static Control—assuming of course that the company proved its Lanham Act claim that Lexmark’s ads were false. In those circumstances, a cease-and-desist order or other injunctive remedy, might be unnecessary, because Lexmark would have already ceased the ads. A counteradvertising mandate to inform the public about the earlier alleged misinformation might also be duplicative because Lexmark would have issued a retraction, depending on what the retraction said. Damages would still be appropriate.

**Case 13.3—Critical Thinking—Legal Consideration**

***What does the interpretation of the law in this case suggest to businesspersons who sell products labeled with statements mandated by federal or state law?*** The result of the decision in the *Paduano* case may open the courtroom doors to other consumers dissatisfied with their vehicles’ fuel economy. This might not bode well for the motor vehicle industry, for the reasons stated in the answer to the previous question. Ultimately, there could be a positive impact, however, again for the same reasons stated above. In either situation, a businessperson who sells products labeled with statements required by law should be careful to phrase other advertising so that it does not contradict the required statements. A businessperson might also consider petitioning or protesting to the appropriate government agency to reevaluate the statements.

Answers to Questions in the Reviewing Feature

at the End of the Chapter

**1A.** ***Deceptive advertising***

The advertising would mislead a reasonable consumer who would show up at the store expecting the advertised item to be available. This is a classic example of bait and switch advertising—luring a customer in with a low priced item (the MetroRider EZ, the bait), then switching his or her interest to a more expensive item (the MetroRider FX).

**2A.** ***Dealer’s duty***

Under the FTC’s Mail or Telephone Order Merchandise Rule, as amended to include online sales, the dealer would be required to notify Sage when the order cannot be shipped on time. If Sage chooses to cancel her order, then the dealer is required to issue a refund within a specific period of time.

**3A.** ***Credit discrimination***

The Equal Credit Opportunity Act prohibits the denial of credit solely on the basis of race, religion, national origin, color, gender, marital status, or age. If the clerk required a cosigner on Sage’s loan because of her race or gender, a court would likely find that the dealer violated this act.

**4A.** ***Banning authority***

The CPSC is the Consumer Product Safety Commission, the organization responsible for setting safety standards for consumer products. The CPSC has the authority to ban the sale of products, such as scooters, that it deems potentially hazardous to consumers.

Answer to Debate This Question in the Reviewing Feature

at the End of the Chapter

***Laws against bait-and-switch advertising should be abolished because no consumer is ever forced to buy anything.*** Just because an advertised item is not available when a consumer goes to buy it does not mean that sellers should be prevented from “up-selling.”  That is to say, sellers should be free to offer higher-priced version of unavailable lower-priced advertised items.  After all, in a free society, consumers can just say no.

If sellers want to dupe consumers, they can always offer low-priced items but only have in stock higher-priced versions of the same items.  Consumers take time to visit stores that advertise items, so once in the stores, these consumers may end up paying for higher-priced versions of the same products.  Retailers must be prevented from using such unethical tactics.

Answers to Issue Spotters

at the End of the Chapter

**1A.** ***United Pharmaceuticals, Inc., believes it has developed a new drug that will be ef­fective in the treatment of AIDS patients. The drug has had only lim­ited testing, but United wants to make the drug widely available as soon as pos­sible. To market the drug, what must United show the Food and Drug Administration?*** Under an extensive set of proce­dures estab­lished by the U.S. Food and Drug Administration, which administers the federal Food, Drug and Cosmetic Act, drugs must be shown to be effec­tive as well as safe before they may be marketed to the public. In general, manufacturers are respon­sible for ensuring that the drugs they offer for sale are free of any sub­stances that could injure consumers.

**2A.** ***Gert buys a notebook computer from EZ Electronics. She pays for it with her credit card. When the computer proves defective, she asks EZ to repair or replace it, but EZ refuses. What can Gert do***? Under the Truth-in-Lending Act, a buyer who wishes to withhold pay­ment for a faulty product purchased with a credit card must follow specific procedures to settle the dispute. The credit card issuer then must intervene and attempt to settle the dispute.

Answers to Questions and Case Problems

**at the End of the Chapter**

**Business Scenarios and Case Problems**

**13-1A. *Unsolicited merchandise***

Andrew will not be required to pay for the cookbook because of federal consumer protec­tion law. The federal Postal Reorganization Act allows Andrew to retain or dis­card the cookbook without incurring any obligation, because it was unsolicited mer­chan­dise. The mailing of this unordered cookbook could also be considered an unfair trade practice. (As a California resident, Andrew is also pro­tected by the California Civil Code, which permits consumers to keep unso­licited goods.)

**13–2A. *Credit card rules***

The Truth-in-Lending Act (TILA) deals specifically with lost or stolen credit cards and the unauthorized use of credit cards. For credit cards solicited by the cardholder and then lost or stolen, the act limits the liability of the cardholder to $50 for unauthorized charges made before the card issuer is notified. There is no liability for any unauthorized charges made after the date of notice.

Therefore, for the Midtown Department Store credit card stolen on May 31, Ochoa is liable for $50 of the $500 charge made on June 1, which occurred before Ochoa notified the card issuer. Ochoa has no liability for the $200 charge on June 3 because it was made after the issuer was notified.

TILA prohibits the issu­ance of unso­licited credit cards. Unless an individual accepts an unsolicited card (such as by using it), she or he is not liable for any unauthorized charges if the card is lost or stolen. The person does not have to notify the issuer of an unsolic­ited, unac­cepted card to be relieved of all liability for un­authorized charges. Therefore, Ochoa owes $50 to Midtown Department Store and noth­ing to High-Flying Airlines.

**13-3A.** **Spotlight on Macdonald’s—*Food labeling***

Parents are often aware that doses of medicine are smaller for young children and that portion sizes of restaurant items, as well as clothing and other things, are differently sized for children. It may be only common sense to conclude that daily nutritional requirements would be different, too, especially for children under four. With that in mind, it could be argued that it would be unethical not to post the requirements differently for children under four. A consumer who is not familiar with nutrition standards, however, would likely not understand the NLEA’s different percentage requirements for products specifically intended for children under the age of four. A state court should not impose regulations under the NLEA for estab­lishing nutritional requirements for children under four. A state cannot impose obliga­tions that are different from those mandated by federal law, because non-uniformity among the states would result. In this case, too, the plaintiff was asking a state court to interpret a federal statute, which the court did not have the authority to do.

**13-4A. *Debt collection***

Yes. The filing of a lawsuit should be considered communication requiring a debt collector to provide a validation notice under the FDCPA. The court issued a summary judgment in favor of Goldman. Cohen appealed to the U.S. Court of Appeals for the Second Circuit, which affirmed the lower court’s judgment, “concluding that Cohen’s initiation of a lawsuit in state court seeking recovery of back rent and attorneys’ fees was an ‘initial communication’ within the meaning of” the FDCPA. The appellate court pointed out that in this context “communication” is “the conveying of information regarding a debt directly or indirectly to any person *through any medium.* .  .  . [A]ny construction of the FDCPA that exempted state legal proceedings from the definition of ‘initial communication’ would permit debt collectors to avoid the validation notice requirements of the statute simply by collecting debts through the medium of litigation.” Also, one of the goals of filing a suit against a debtor, and notifying the debtor of its filing, is to induce the debtor to pay the debt. This goal further qualifies the notice as contact for the purpose of attempting to collect payment.

**13–5A. *Deceptive advertising***

Yes. The court rejected the motion by the tobacco companies for judgment on the pleadings. Under Illinois law, the plaintiffs’ claim that the tobacco companies were unjustly enriched by deceptive claim that light cigarettes were healthier than regular cigarettes may proceed. The fact that the cigarette makers are allowed by the federal government to advertise their products does not mean that there is a right to engage in deceptive advertising. Hence, the plaintiffs may proceed to establish a class to be represented in litigation.

**13–6A. Business Case Problem with Sample Answer—*Fair debt collection practices***

Engler may recover under the Fair Debt Collection Practices Act (FDCPA). Atlantic is subject to the FDCPA because it is a debt-collection agency and it was attempting to collect a debt on behalf of Bank of America. Atlantic also used offensive tactics to collect from Engler. After all, Atlantic gave Engler’s employer the false impression that Engler was a criminal, had a pending case, and was about to be arrested. Finally, Engler suffered harm because he experienced discomfort, embarrassment, and distress as a result of Atlantic’s abusive conduct. Engler may recover actual damages, statutory damages, and attorneys’ fees from Atlantic.

**13–7A. *Deceptive advertising***

Yes, Ross can be held personally liable for a violation of the Federal Trade Commission (FTC) Act’s prohibition of deceptive acts or practices. Generally, deceptive advertising occurs if a reasonable consumer would be misled by the advertising claim. Advertising that appears to be based on factual evidence but that in fact cannot be supported will be deemed deceptive. An individual can be held personally liable under the FTC Act if the person (1) participated directly in the deceptive practices or had the authority to control them, and (2) had or should have had knowledge of them.

In this problem, the facts indicate that IMI’s ads were deceptive. Consumers were misled by the ads that appeared to be based on factual evidence but were not actually supportable—the ads claimed that a scan of the consumers’ computers had detected dangerous files, such as viruses, when in fact no scans were conducted. The issue is whether Ross can be held individually liable for these violations. She was an IMI co-founder and vice president, reviewed and edited the ads, and was aware of the many complaints about them. Thus, under the FTC Act, Ross met the standard for personal liability—she knew of the deceptive practices, she had the authority to control them, and she participated directly in them.

In the actual case on which this problem is based, in the FTC’s suit against Ross, a federal district court held her jointly and severally liable. On her appeal, the U.S. Court of Appeals for the Fourth Circuit affirmed.

**13–8A. A Question of Ethics—*Fair debt-collection practices***

**1.** Check Investors argued that the payors were criminals or tortfeasors because they had written “bad” checks, and that the amounts of the checks were not “debts” because they arose from criminal or tortious conduct. For the same reasons, asserted Check Investors, the payors were not “consumers” entitled to protection under the FDCPA. Check Investors also argued that the FDCPA did not apply because the firm was collecting NSF checks that it had bought from the original payees. Check Investors contended that it was acting as a creditor collecting its own obligations, not as a debt collector collecting obligations owed to a third party.

The court rejected Check Investors’ arguments and held it liable for the entire amount that its collection efforts had yielded. On appeal, the U.S Court of Appeals for the Third Circuit affirmed the judgment of the lower court. The appellate court held that an NSF check is a “debt,” reasoning that “[a]s long as the transaction creates an obligation to pay, a debt is created.” The court echoed the finding that Check Investors had failed to prove the intent required to establish a crime or tort and added that, even if intent had been shown, the FDCPA had no “fraud” exception. The court held that even if accepted the contention that the payors were criminals or tortfeasors, they would still qualify as consumers under the FDCPA.

To hold that Check Investors was a “debt collector,” the court focused on the status of the debt at the time it was acquired. “Check Investors acquired the defaulted checks only for collection purposes.” The court added that “[n]o merchant worried about goodwill or the future of his/her business would have engaged in the [same] kind of conduct.” In fact, “[n]ot only do we conclude that Appellants are ‘debt collectors’ rather than ‘creditors,’ we believe that their course of conduct exemplifies why Congress enacted the FDCPA.”

Check Investors’ practices were thus held to be illegal and were arguably unethical. The court noted that “the FDCPA includes examples of specific practices that are prohibited. Those prohibited practices could have been modeled on the various tactics Check Investors employed to collect the NSF checks it purchased. For example, the prohibition on harassing, oppressive or abusive practices precludes a debt collector from using abusive language, or from repeatedly calling a consumer. The prohibition on false, deceptive or misleading representations precludes a debt collector .  .  . from falsely representing that nonpayment will result in arrest or imprisonment or that a consumer committed a crime. The prohibition on unfair or unconscionable practices precludes a debt collector from adding any charge to the underlying debt unless that charge is authorized by law or the agreement creating the debt.”

**2.** Of course, there are, and likely always will be, persons who willfully refuse to pay legitimate debts. Recognizing this fact, the U.S. Court of Appeals for the Third Circuit in this case also pointed out, “Although Check Investors uses broad strokes to paint all of the payors of its NSF checks as deadbeats, criminals and/or tortfeasors, Congress's findings in enacting the FDCPA are to the contrary. .  .  . [O]ne of the most frequent fallacies concerning debt collection legislation is the contention that the primary beneficiaries are deadbeats. In fact, however, there is universal agreement among scholars, law enforcement officials, and even debt collectors that the number of persons who willfully refuse to pay debts is minuscule. Rather, .  .  . the vast majority of consumers who obtain credit fully intend to repay their debts. When default occurs, it is nearly always due to an unforeseen event such as unemployment, overextension, serious illness or marital difficulties or divorce.”

**Critical Thinking and Writing Assignments**

**13–9A. Business Law Critical Thinking Group Assignment**

**1.** Sellers in one state may be prohibited from engaging in a certain practice that is permissible in another. This may seem unfair in individual cases. But there are greater considerations—imposing uniform consumer legislation on all of the states would ex­tend national control over an area that has traditionally been within the states’ prerogative, and could be unconstitutional.

**2.** A business must comply with the laws of the jurisdiction in which it does business. Of course, dong business in more than one jurisdiction means complying with different sets of laws. A business would have to adjust its methods accordingly.

**3.** Inequitable regulation can lead to inequitable results in similar cases in different states. This can mean that the citizens of one state are subject to more chicanery on the part of some unscrupulous merchants and creditors than in other states. But forcing uniform federal consumer legislation on all of the states would be to ex­tend federal control into an area that has traditionally been within the states’ prerogative, and could be argued to be unconstitutional.