

# Can You Back Up the Hype? Gerber Lawsuit Highlights Legal Risks of Advertising

by Robert Levy on February 29, 2012

Earlier this month, Gerber Products Co. was hit with a potentially costly class action lawsuit in New Jersey over health claims related to several of its baby food products. According to the *New Jersey Law Journal*, the plaintiffs contend that Gerber falsely claims that baby foods containing certain additives and supplements are healthier and more nutritious than cheaper Gerber products that do not contain these ingredients.

While we can't speak to the merit of the claims, the lawsuit highlights the potential liabilities associated with advertising. While almost all New York and New Jersey businesses use some form of print or online advertising, many are not fully aware of the myriad of regulations that businesses must follow when it comes to touting their products and services.

Below is a brief summary of the most important rules, as required under the Federal Trade Commission Act.

- **Advertising must be truthful and non-deceptive.** According to the Federal Trade Commission (FTC), an advertisement is deceptive if it contains a misstatement that (1) is likely to mislead consumers acting reasonably under the circumstances; and (2) is "material" (meaning it is important to a consumer's decision to buy or use the product).
- **Advertisers must have evidence to back up their claims.** According to the FTC, before a company runs an advertisement, it must have objective evidence that supports its claim. Advertisements that make health or safety claims must be supported by "competent and reliable scientific evidence."
- **Advertisements cannot be unfair.** According to the FTC, an advertisement is unfair if it causes or is likely to cause substantial consumer injury that a consumer could not reasonably avoid; and it is not outweighed by the benefit to consumers.

In addition to these basic principles, there are additional state laws governing advertising. Some industries have specific rules and guidelines as well. Finally, it is important to note that the FTC rules apply to all forms of advertising, including online marketing.

If you are concerned about the legality of your advertisements or other marketing materials, it is imperative to consult with an experienced New York and New Jersey business attorney.