

Deceptive Advertising

Legal standard:

How likely is an ad to mislead a reasonable consumer in a decision to purchase?

Valentine v. Chrestensen (1942)

City sanitation ordinance against commercial leafleting

F.J. Chrestensen advertised U-boat tours

Second printing included political message.

Commercial ad & price on the front

“Political protest” printed on the back

Supreme Court held the handbill was primarily advertising lacking First Amendment protection.

*Pittsburgh Press v. Pittsburgh Human
Relations Comm. (1973)*

**Help Wanted ads separated into male
and female sections**

**Organization of ads enabled illegal
employment discrimination**

Didn't affect editorial content

**Dissents note problems w/ govt reviewing
newspaper layout**

Pennsylvania Human Rights Comm. v. Pittsburgh Press (1979)

PA Sup Ct ruling, cert denied by U.S. Sup Ct

**Distinguished between SITUATION Wanted
ads and HELP wanted**

**Jobseekers could list their own gender, as well
as race or religion, as law prohibits
discrimination in hiring by employers and
prohibition would have gone to individuals'
right to their own attributes**

Central Hudson Gas and Electric v. PSC of NY (1980)

Four-part test:

Is advertisement deceptive or product illegal?

Does the state have a valid interest in regulating the speech?

Does the law properly advance that interest?

Is the law narrowly tailored?

Greater New Orleans Broadcasting Assoc. v. U.S. (1998)

FCC banned broadcast of casino ads in Louisiana and Mississippi, though not tribal casinos or govt lotteries, and casinos could advertise on billboards and in newspapers

Federal ban unconstitutional as applied to Louisiana-based broadcasters because advertising legal service

Government's rationale that "powerful sensory appeal" of television and radio makes broadcast ads more enticing of gambling overturned.

Kasky v. Nike, Inc. (2002)

Nike responds to investigative reports on alleged overseas sweatshops with public statements disavowing poor conditions.

Kasky sues under CA false-advertising law.

CA Supreme Court notes because Nike's speech was intended to provide consumers with positive image of its products, that it was commercial speech and could be tested for truthfulness

US but remands without opinion. Kasky and Nike settle out.

Patronage

***Branti v. Finkel* (1980), public employment is not a right, but once the government hires you, it cannot fire you for your political affiliation.**

***Rutan v. Republican Party* (1990), patronage practices may not affect “promotion, transfer, recall and hiring decisions involving low-level public employees.”**

***Connick v. Meyers* (1983)**

Employee circulates survey implicitly criticizing management because of her reassignment and is fired.

Sup Ct ruled that a public employee's criticism of the government lacks constitutional protection if it does not involve a matter of public concern.