



Too Close to Home:

How local enforcement authorities are presenting an often overlooked regulatory threat to advertisers



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Introduction

Most of the regulatory focus in advertising law is directed at:

- Federal Trade Commission
 - Section 5
 - The Lanham Act
 - Rulemaking
- State Attorneys General
 - State consumer protection laws
 - State false advertising laws
 - Federal consumer protection laws

While these regulatory entities are of course important, industry analysis often overlooks a third area of law: local enforcement.

What are local enforcement powers?

- Local enforcement actions in consumer protection refer to actions taken by city or county regulators to enforce consumer protection laws within their jurisdiction. Including:
 - Civil investigatory powers
 - Administrative enforcement
 - Criminal enforcement
 - Litigation
- Cities
- Counties
- District attorneys

Recent national trends in local enforcement

- Local enforcement of consumer protection laws is on the rise
 - Cities around the country have begun passing ordinances that focus on consumer protection and false advertising claims, which have historically been left primarily to state attorneys general or the federal government.
 - Philadelphia (September 2024)
 - Baltimore (October 2023)
 - Los Angeles (AB 2766, January 2023)
 - Chicago (2008)
 - New York City (September 2022)
 - Washington, DC
 - Counties also can be a source of surprising enforcement powers:
 - Montgomery County, Maryland
 - Howard County, Maryland
 - California counties (AB 2766, January 2023)

New York City – Unfair Trade Practices Law

§ 20-700 – Unfair trade practices prohibited.

- “No person shall engage in any deceptive or unconscionable trade practice in the sale, lease, rental or loan or in the offering for sale, lease, rental, or loan of any consumer goods or services, or in the collection of consumer debts.”

§ 20-703 – Enforcement.

- Civil penalties range from \$350 to \$2,500 per violation
 - “Each individual statement, description or other representation or omission that constitutes a deceptive trade practice shall give rise to a distinct and independent violation.”
- Civil penalties of \$3,500 per “knowing” or “third” violation
- Restitution
- Injunctive relief
- “All other appropriate relief”

New York City – Law Enforcement Examples

- *Maddy’s Home Furniture and More, LLC* (2021)
 - NYC filed suit against a furniture company, Maddy’s Home Furniture and More, LLC, alleging 3900 violations of New York City’s Consumer Protection Law, which included:
 - 1) delivering used or damaged furniture
 - 2) false promises of fast delivery
 - 3) misleading “zero interest” ads
 - Outcome:
 - \$2.2 million judgment
 - \$250,000 to a customer restitution fund
 - \$1,963,500 in civil penalties
- *City of New York v. Exxon Mobil Corporation* (2021)
 - New York alleges that Defendant companies had violated NYC Consumer Protection Law by engaging in “greenwashing” and “false advertising and deceptive trade practices.”
 - Case was removed to SDNY federal court; on May 8, 2024, SDNY remanded the case back to state court.

New York City – Law Enforcement Examples

- *City of New York v. Berkeley Educational Services of New York, Inc.* (2022)
 - Defendants allegedly misled students about whether an accounting degree from the institution would prepare them for the CPA exam and engaged in other misleading practices.
 - Outcome:
 - \$350,000 in restitution
 - Berkeley also agreed to forgo the collection of \$20 million in outstanding student debt owed to Berkeley.
- *Polonetsky v. Better Homes Depot*, 97 N.Y.2d 46, 735 N.Y.S.2d 479 (2001)
 - Defendants, Better Homes Depot, purchase, repair, and resell homes in New York City.
 - NYC’s Department of Consumer Affairs sued Defendants, seeking fines and an injunction against Defendants’ allegedly deceptive practices in connection with their business.
 - Holding: Court ordered defendant to distribute \$526,300 among 36 consumer complaints.

Los Angeles – Consumer Protection Laws

- **Unfair Commercial Law (UCL)**
 - Business and Professions Code §§ 17200 *et seq.*
 - “As used in this chapter, unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by [§§ 17500]”
- **False Advertising Law**
 - Business and Professions Code §§ 17500 *et seq.*
 - “It is unlawful for any person, firm, corporation or association, or any employee thereof with intent directly or indirectly to dispose of real or personal property or to perform services, professional or otherwise . . . which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading”
 - Criminal penalties
- **California Consumer Legal Remedies Act (CLRA)**
 - Cal. Civ. Code §§ 1750 *et seq.*

Los Angeles – AB 2766

- **AB 2766 – UCL Enforcement Powers Extend to Local Enforcers.**
 - On January 1, 2023, California passed AB 2766.
 - AB 2766 grants all of the powers that are granted to the attorney general as the head of a state department to make investigations and prosecute actions regarding unfair competition laws, to:
 - The city attorney of any city having a population in excess of 750,000
 - To the county counsel of any county within which a city has a population in excess of 750,000
 - California’s Government Code authorizes the California attorney general, as a head of a state department, to investigate and prosecute actions concerning certain matters, including Unfair Commercial Law violations.
 - Prior to the passage and enactment of AB 2766, these entities were not afforded the same tools as the attorney general and district attorneys to investigate possible unfair competition cases.

Los Angeles – Enforcement Examples

Albertsons and Vons Settlement - Consumer Protection Lawsuit for Nearly \$4 Million for False Advertising and Unfair Competition

- **LADA’s Consumer Protection Division**, in partnership with the consumer protection units of the district attorneys’ offices of Marin, Alameda, Sonoma, Riverside, San Diego, and Ventura counties, filed the case in state court.
- Albertsons and Vons are required to pay **\$3,213,000** in civil penalties and **\$749,500** in costs and restitution.

Home Depot Settlement - Lawsuit Alleging Overcharging and False Advertising

- The civil complaint alleged that Home Depot charged customers prices higher than Home Depot’s lowest advertised or posted price. (“scanner violation”)
- The judgment requires Home Depot to pay **\$1,700,000** in civil penalties and **\$277,251** in costs and restitution.
- Brought by San Diego County District Attorney’s Consumer Protection Unit, along with LADA’s Consumer Protection Division and district attorneys of Alameda, Orange, San Bernardino, and Sonoma counties.

Chicago Municipal Code (MCC) 2-25-090 – Prohibited Acts – Consumer Fraud, Unfair or Deceptive Practices

Provisions:

- “(a) No person shall engage in any act of consumer fraud, unfair method of competition, or unfair or deceptive act or practice while conducting any trade or business in the city.”

Remedies:

- “(g) Whenever the Corporation Counsel has reason to believe that a violation of this section has occurred. . . may bring a civil action for **all available relief**, including fines as set forth in subsection (h), **restitution, disgorgement, equitable, injunctive, declaratory relief, and attorney’s fees and costs.**”
- “(h) Except as otherwise provided in this chapter, and in addition to any other penalty provided by law, any person who violates any of the requirements of this section shall be subject to a fine of **not less than \$500.00 nor more than \$10,000.00 for each offense.**”
 - “Each day that a violation continues or occurred . . . shall constitute a separate and distinct offense”

Chicago Consumer Protection – Enforcement Examples

- *Chicago v. Sun Badger Solar LLC*
 - Chicago filed suit alleging that Defendants committed deceptive acts in the course of selling residential solar panel systems to Chicagoans.
 - Complaint seeks order declaring that Defendants violated MCC, enjoining Defendants from engaging in business in Chicago, enjoining Defendants from engaging in unfair and deceptive business practices, assessing Defendants a fine for each violation of MCC, in the amount of \$10,000 for each day such violation has existed and continues to exist; restitution, and disgorged profits.
 - Complaint seeks \$425,948 in fines.
- *City of Chicago v. DoorDash, Inc.*, No. 21 C 5162, 2022 WL 704837 (N.D. Ill. Mar. 9, 2022)
 - Complaint seeks “fines for each violation” of MCC § 4-276-470, “not less than \$50.00 nor more than \$2,000.00” and fines “for each violation of” MCC § 2-25-090, of “not less than \$500.00 nor more than \$10,000.00.”
 - Case is currently in discovery phase of litigation.

Chicago Consumer Protection – Enforcement Examples

- *City of Chicago v. Purdue Pharma LP*, No. 14 CV 4361, 2021 WL 1208971 (N.D. Ill. Mar. 31, 2021)
 - Chicago filed suit seeking:
 - Civil penalties
 - An injunction against further acts in violation of MCC § 2-25-090
 - Costs of the suit, including attorneys' fees
 - Costs of Chicago services reasonably related to defendants' violations of the law.
 - The case is still being litigated as to most of the defendants, but the claims against at least two defendants (Allergan and Teva) have been dismissed with prejudice pursuant to a nationwide settlement agreement.
 - The settlement agreement includes injunctive relief, restitution, attorneys' fees and costs, annual payments to the settlement fund, and other payments.

Washington, DC Consumer Protection Procedures Act (CCPA)

§ 28–3904. Unfair or deceptive trade practices.

- “It shall be a violation of this chapter for any person to engage in an unfair or deceptive trade practice, whether or not any consumer is in fact misled, deceived, or damaged thereby, including to:
 - (a) represent that goods or services have a source, sponsorship, approval, certification, accessories, characteristics, ingredients, uses, benefits, or quantities that they do not have;
 - (b) represent that the person has a sponsorship, approval, status, affiliation, certification, or connection that the person does not have;
 - (c) represent that goods are original or new if in fact they are deteriorated, altered, reconditioned, reclaimed, or second hand, or have been used;
 - (d) represent that goods or services are of particular standard, quality, grade, style, or model, if in fact they are of another;
 - (e) misrepresent as to a material fact which has a tendency to mislead;”

Penalties:

- Civil penalties ranging from \$5,000 to \$10,000.
- “Economic damages”
- Injunctive relief

Washington, DC CPPA – Enforcement Examples

In the Matter of: Capital Area Title, LLC d/b/a Universal Title and Affiliates (2024)

- DC obtained a \$500,000 settlement from a title insurance company for participating in an illegal kickback scheme.
- Investigation concerned the illegal kickback scheme’s impact on “homebuyer’s ability to shop for the best price and service when purchasing title insurance and escrow services.”

District of Columbia v. Solo Funds, Inc. (2023) (settlement included injunctive relief and \$30,000 payment)

- *SoLo Funds Inc.*, allegedly “deceived consumers about the true cost of the loans on its platform and facilitated loans with over 500% APR on average—far exceeding the District's 24% usury cap.”
- DC obtained injunctive relief to stop Solo from engaging in “deceptive practices” and \$30,000 payment, “which will include reimbursement to District borrowers for the tips and donations that they paid to get their loans, as well as a payment to the District.”

District of Columbia v. StubHub, Inc. (2024) (case is ongoing)

- Lawsuit filed on July 30, 2024
- DC filed suit against StubHub for deceptive pricing and junk fees under the CCPA
- Lawsuit accuses StubHub of “hiding mandatory junk fees” and failing to disclose how the fees are calculated.

Baltimore City, Maryland

- In October 2023, Baltimore City passed **ordinance 23-266**, which allows Baltimore to investigate and bring actions against businesses that engage in unfair and deceptive trade practices that harm Baltimore residents.
- The law gives Baltimore subpoena power so it can conduct comprehensive investigations of potential bad actors.
- The ordinance prohibits a person from engaging in unfair, abusive, or deceptive trade practices in a variety of business-related endeavors in Baltimore City.
- The State CPA explicitly authorizes local jurisdictions, including Baltimore City, to enact and enforce local consumer protection laws that are at least as strict as the State's. See § 13-102(b).
- The ordinance limits the prohibition to activity “in Baltimore City.” Baltimore may only enact laws with “local effect” under the home rule provisions of the Maryland Constitution.
- No enforcement actions have been brought yet.

Maryland County-level Enforcement

Montgomery County, MD

- Chapter 11 of the Montgomery County Code – Consumer Protection (Ch. 11 Montgomery County Code)
 - Prohibits merchants from engaging in deceptive, unfair, or unconscionable trade practices.
 - Lists 26 “[d]eceptive, unfair, or unconscionable” trade practices.
 - Prohibits merchants from engaging in unfair trade practices when providing internet service.
 - Requires certain legal protections in the employment contracts of domestic workers.
 - Requires gasoline stations to display accurate signage regarding credit price.
 - Allows consumers to file complaints with the Office of Consumer Protection.
 - Only the director of OCP can bring an action in court pursuant to the ordinance.

Montgomery County Enforcement Activity

- Montgomery County Office of Consumer Protection Warns Homeowners of Rise in Driveway-Paving Scams
 - OCP has pursued “civil and criminal charges” against individuals performing unlicensed home improvement work. OCP also temporarily or permanently suspended websites associated with driveway-paving scams.
- Montgomery County Office of Consumer Protection Warns Residents to Be Aware of “Forced Arbitration” Clauses After Issues Raised with Some Jiffy Lube Locations
 - OCP warned consumer about “potentially deceptive and misleading information in the receipts that some Jiffy Lube® locations provide for purchasing oil changes or auto repair services.”
 - At least two Jiffy Lube locations provided receipts that included an arbitration clause that did not inform customers that any issue would have to be settled using a specific mediation/arbitration service “owned and operated by the merchant’s attorney.”
 - Receipts were updated with this material information after OCP opened an investigation.
- Montgomery County Office of Consumer Protection Hires Investigator to Address Complaints Regarding New Home Builders
- The Montgomery County Office of Consumer Protection (OCP) hired a new home inspector as part of the office’s “ongoing efforts to ensure quality and safety in the construction of homes and to effectively address consumer disputes against new home builders.”

Howard County, Maryland

- Local ordinance code §17.403 gives the Howard County Office of Consumer Protection the power to investigate and mediate consumer complaints, investigate and mediate landlord-tenant disputes (§17.1004), and enforce the County's consumer protection laws with regard to deceptive and unfair trade practices.
- §17.403 lists 27 types of deceptive or unfair trade practices. Including but not limited to:
 - A misrepresentation as to a material fact which has a tendency to mislead.
 - Advertising or offering merchandise, goods, or services without intent to sell them or sell them as advertised or offered.
 - Representations that merchandise, goods, or services have sponsorship, approval, accessories, characteristics, ingredients, uses, benefits or quantities that they do not have.
- Permits consumers to bring a private right of action (§17.406).

Philadelphia Consumer Protection Law

- **Philadelphia, PA**
 - Recent Consumer Protection Ordinance enables the City of Philadelphia to respond to scams and fraud harming Philadelphia consumers and obtain tangible relief for those who need it the most.
 - Ordinance lists numerous examples of deceptive practices, including but not limited to:
 - “Making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions”
 - “Causing likelihood of confusion or misunderstanding as to the source, sponsorship, approval or certification of goods or services”
 - No enforcement actions yet taken.
 - Ordinance passed just weeks ago.

Recommendations/Takeaways

- Takeaways:
 - Local enforcement is a powerful regulatory tool.
 - Local enforcement can be costly and expensive.
 - Local enforcement will likely become increasingly relevant in the years to come.

Recommendations:

- Stay up to date on your local consumer protection laws.
- Do not take your local city or county for granted.
- Do not assume that the local consumer protection laws simply mirror the state-level laws or federal laws.



Questions?

Thank You!



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