How should you respond to a charge of deceptive advertising? How can you challenge a competitor’s unfair claims? How can you be sure that your sweepstakes, rebates, and other promotions comply with federal and state laws?

These and many other related issues challenge sellers, distributors and promoters of goods and services on a daily basis. There are many traps for the unwary. The penalties for non-compliance can include withdrawal of costly advertising, regulatory investigations, lawsuits and loss of competitive edge.

To help guide and inform marketers, lawyers in the Advertising, Marketing and New Media Group of Venable LLP have created *The Guide to Federal and State Regulation of Advertising*. The Guide is an essential first step to developing a lawful marketing campaign – designed to demystify the complex myriad of state and federal laws, and help you be more successful in your marketing and promotion.

*For more information on The Guide to Federal and State Regulation of Advertising, updated 2007, or to purchase the complete Guide or one or more sections, contact Melissa Landau Steinman at mlsteinman@venable.com, direct phone (202) 344-4972 or fax (202) 344-8300.*
“Invoice” Pricing

Most consumers believe that a reference to an “invoice” is a reference to the seller’s cost in acquiring the product. A claim that merchandise is being sold at a certain amount over invoice price will be misleading if the invoice claim is not, in fact, the seller’s acquisition cost. Several states have regulations specifically prohibiting the use of the term “invoice,” or similar terms such as “wholesale” or “cost” in advertising to imply savings. For example, in Joe Conte Toyota, Inc. v. Louisiana Motor Vehicle Comm’n., 24 F.3d 754 (5th Cir. 1994), the United States Court of Appeals for the Fifth Circuit applied Louisiana’s regulation prohibiting use of the term “invoice” in motor vehicle advertising. The court, upholding the regulation against a First Amendment challenge, found that a car dealer was not allowed to advertise at “$49.00 over factory invoice” even when the proposed ad had a disclaimer stating that the invoice price did not represent the actual dealer cost. In another instance, the Supreme Court of Missouri found that advertising an automobile’s invoice price was inherently misleading and deceptive and upheld the Missouri Motor Vehicle Commission’s reprimand of the dealer for such advertisements. Adams Ford Belton, Inc. v. Missouri Motor Vehicle Comm’n., 946 S.W.2d 199, 201 (Mo. 1997).