



2nd Annual Venable Advertising Law Symposium
Network Challenges and Disclosures

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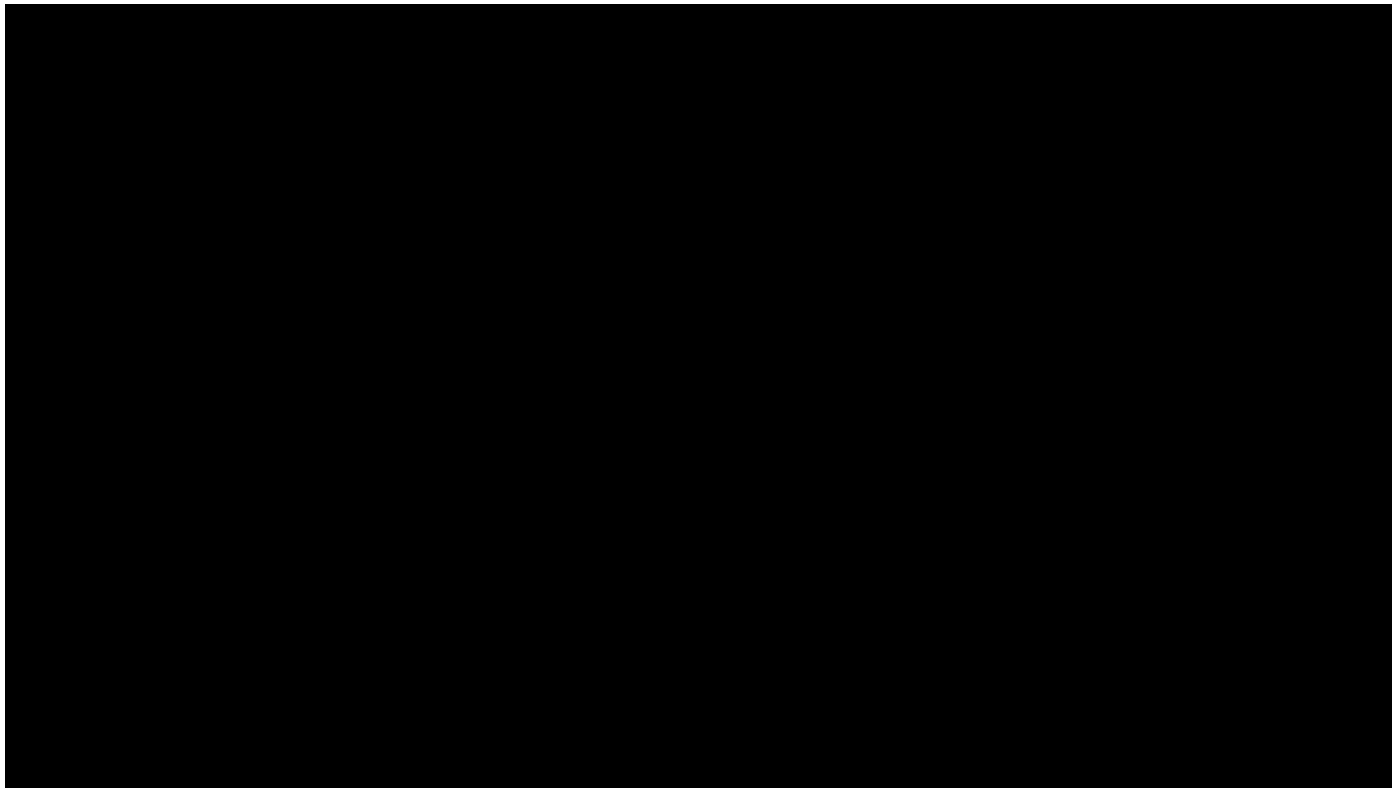
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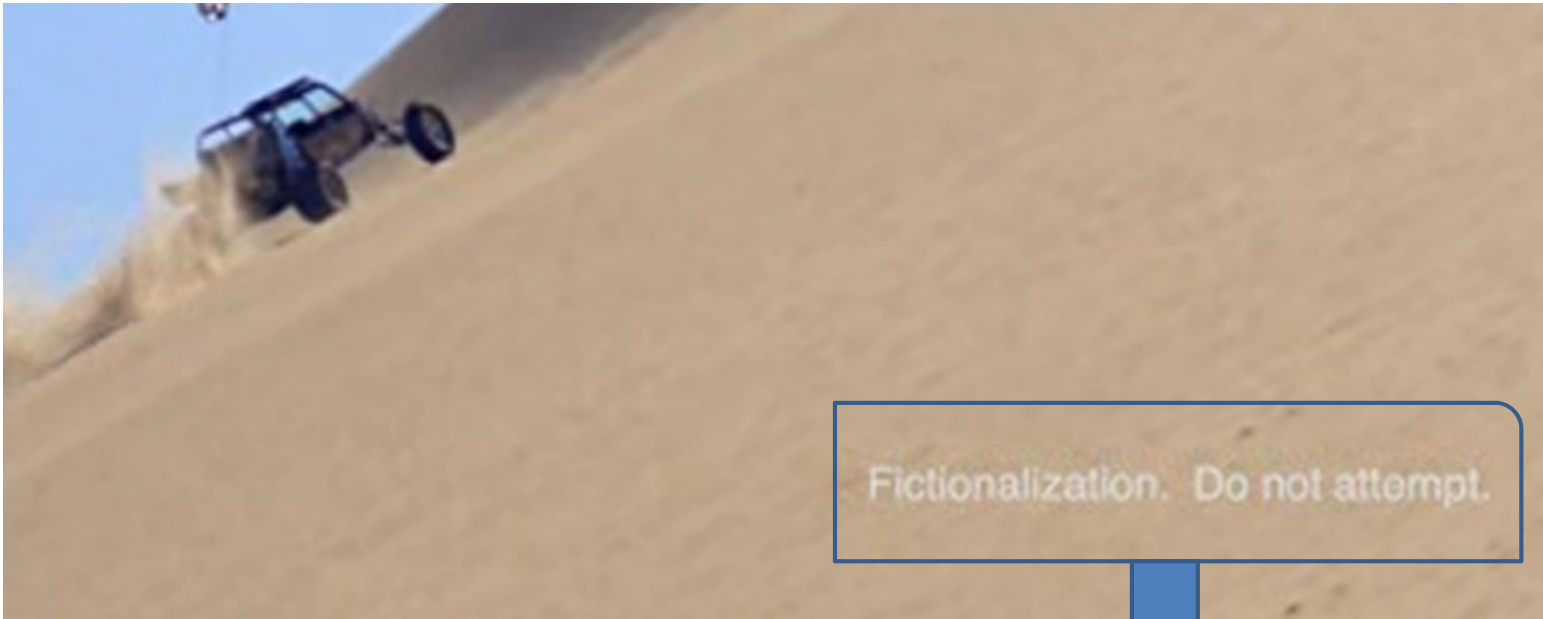


Nissan North American, Inc., FTC,
No. C-4454 (9/18/14)

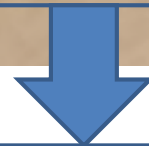








Fictionalization. Do not attempt.



Fictionalization. Do not attempt.



The 4Ps of Clear and Conspicuous Disclosures

- **P**rominence
 - Is it big enough for consumers to notice and read?
- **P**resentation
 - Is it worded in a way consumers will understand?
- **P**lacement
 - Is it where consumers are likely to look?
- **P**roximity
 - Is it close to the claim it modifies?



NBC Guidelines

VISUAL SUPERS, DISCLAIMERS, AND HORIZONTAL CRAWLS

- I. Visual disclaimers cannot be used to contradict or materially alter a claim.
- II. When superimposed copy is used to qualify advertising claims, it must be presented so it can be read easily against a plain contrasting background and must be located within the safe title area of the television screen.
- III. Visual disclaimers should be a preferred vertical size of 54 lines and in an anti-aliased font. The first line should appear on screen for at least 3 seconds. Each additional line should appear for 1 second (e.g., 5 seconds for a 3-line disclaimer).
- IV. As a general rule, visual disclaimers should appear in a font that is easy to read and remain on the screen long enough to be noticed, read, and understood by an average viewer and audio disclaimers should be clear and loud enough to be easily heard and understood by an average viewer.
- V. The use of horizontal crawls in the lower 1/3 of the screen is unacceptable.



ABC TELEVISION NETWORK

ADVERTISING STANDARDS AND GUIDELINES



SUPERS

STANDARD

When superimposed copy is required, it must be displayed clearly and conspicuously. As a general rule, supers must be presented against a contrasting background, and must be displayed for sufficient duration and in large and bold, well-spaced letters, words, and lines of copy to be read easily.

Visual supers may not be used to materially alter a claim (e.g., by substantially narrowing a general superiority claim). Supers may provide only minor clarification and must be so limited.

GUIDELINES

- I. All supers must be clearly legible.



- II. Each line of every *required* super must occupy at least 22 scan lines (or the equivalent of 5% of the active picture) of the television screen for SD formatted commercials; a minimum of 29 scan lines for HD formatted commercials.
- III. Minimum on-display time should be three seconds for all one-line supers. Supers of two or more lines should remain in view as follows: three seconds for the first line of text plus one second for each additional line (thus a four-line super requires a minimum six-second display).
- IV. Supers which vertically “roll” over the screen may be permissible; those which horizontally “crawl” across the bottom one-third of the screen are reserved exclusively for use by the News Department and may not appear in commercial announcements.
- V. ABC reserves the right to modify these requirements as circumstances may warrant. For example, supers concerning mandatory BATF and automotive advertising disclosures may be exempted from the requirements of Guidelines II and III, above, provided that they are clearly readable (preferably employing a thin drop shading) and they are placed against a clear, contrasting background.



CBS TELEVISION NETWORK PROGRAM PRACTICES

PRODUCTION STANDARDS FOR SUPERS/HORIZONTAL CRAWLS

All supers must be clearly legible and on-screen for sufficient time to be read by the average viewer.

While variables may affect the legibility of supers (i.e., contrasting backgrounds, edge drop shadowing, time on screen, etc.) the following standards will generally be applied:

- Minimum Size:
CAPITAL and LOWER CASE LETTERS- 22 video scanlines
(including lower case descending tails as in g/j/p/q)

CAPITAL LETTERS ONLY- 18 video scanlines
- Minimum Duration:
One line- two seconds
Two lines- three seconds
Three lines- five seconds
Supers over three lines in length are subject to editorial discretion
- Lettering should be clear and contrasting; edge-drop shadowing is encouraged when it enhances legibility



**OPERATION
FULL DISCLOSURE**



DirectTV, FTC, #3:15-cv-01129 (3/11/15)





PACKAGE OFFERS STARTING AT

\$24⁹⁹
mo.

Limited
Time

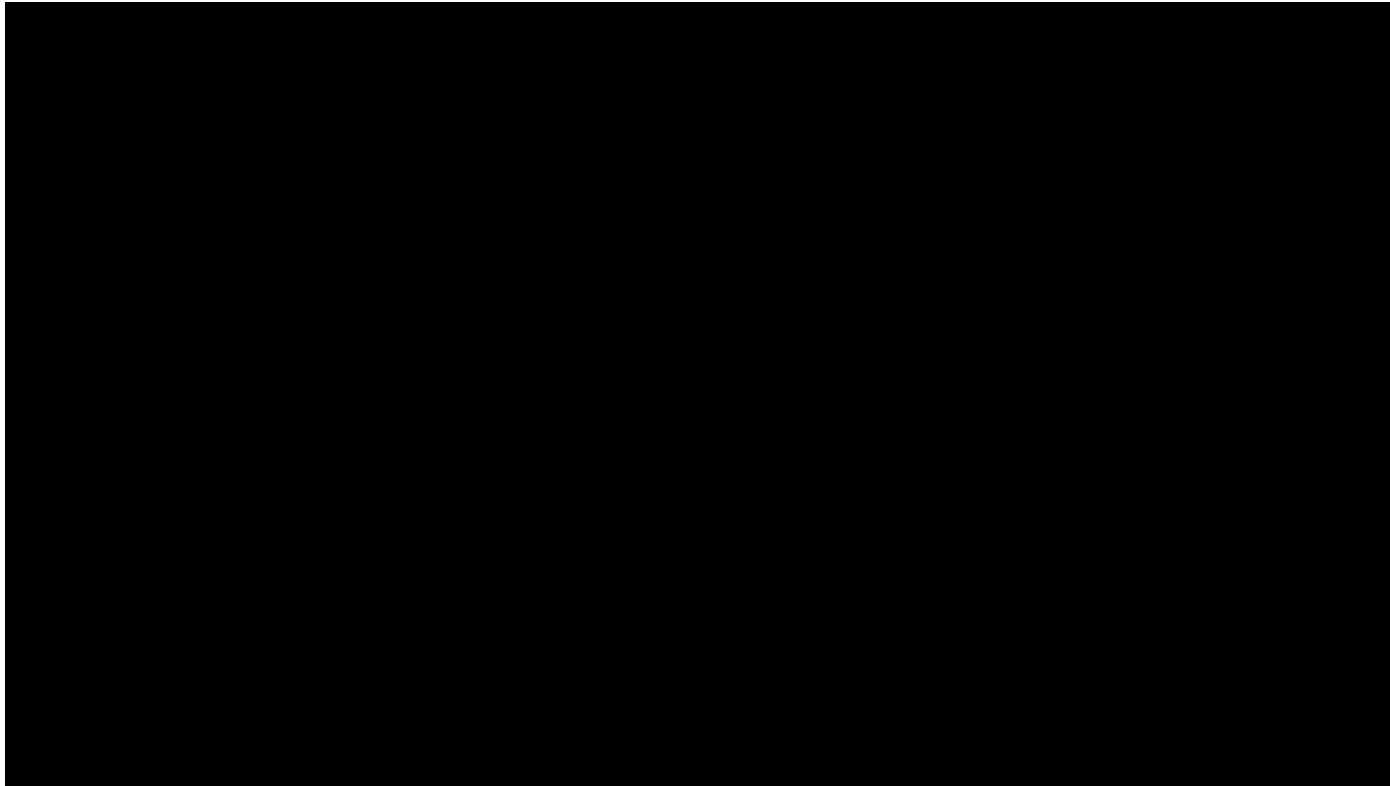
For 12 months after instant savings. 24-mo. agrmt req'd.

directv.com 1-800-DIRECTV

ENTERTAINMENT Package offer ends 7/31/13.
Hardware available separately. Conditions and add'l fees apply. Visit directv.com for details. ©2013 DIRECTV.



DirectTV, LLC (Picture, Sound, Signal Reliability and Customer Service Advertising), NAD Case Reports #5820 (3/25/15)





Rob Lowe ✓
@RobLowe



 **Follow**

Recent events have underlined my belief that for something to be truly original, funny and subversive, there must also be fallout. #Life



RETWEETS

433

FAVORITES

916



10:59 AM - 8 Apr 2015



Bank of America Corporation (1-2-3 Cash Rewards Advertising Campaign), NAD Case Reports #5522 (11/13/12)






Bank of America Corporation (1-2-3 Cash Rewards Advertising Campaign), NAD Case Reports #5522 (11/13/12)

CRYPTON
V . F . X

18 EAST 16TH ST
NY, NY 10003
212-206-0660

Date: 07/11/12
Agency: BBDO NY
Client: Bank of America
Spot Title: 2012 Q3 Cash Rewards "Road Trip" (NAF version) (ALT Music) (Stouffers Logo) :30
Ad Id: QBKW1338000
Duration: :30
NTSC

©2012 Bank of America Corporation. ARY4F3J1

 10



ACTIVATE YOUR 5% CASH BACK
ON UP TO \$1500 IN PURCHASES

At Gas Stations
and Restaurants

July - September 2012





Some Favorites

- "Professional driver; closed course"
- "Use as directed"
- "Dramatization"
- "Don't try this at home"
- "Void where prohibited"
- "No Security Deposit Required"
- "Screen image simulated"
- "batteries not included"
- © 2015. Brand, Inc. All rights reserved.



Bottom Line on All Disclosures

- Disclosures must be presented “clearly and conspicuously”
- The FTC’s “clear and conspicuous” standard is a performance standard, and not a font size or a minimum number of seconds
- Disclosures should be easily noticeable, without consumers having to hunt
- Disclosures should be close to the claims they relate to and not hidden or buried in footnotes or in blocks of text people are not likely to read
- Understand the limitations of a particular platform on which an ad is disseminated and modify claims and disclosures accordingly
- Analyze disclosures in the same way you analyze whether a main claim is meaningful and resonates with the target audience
- Disclosures can only qualify or limit a claim to avoid a misleading impression; they cannot cure a false claim



Takeaways for TV Ads

- Is the claim too good to be true?
 - Can you incorporate the qualifying language into the claim itself?
- Can you streamline and simplify disclosures to make them more digestible?
- Take a step back and analyze like a consumer asking “would I notice this and be likely to take it in?”
- Avoid disclosures
 - With small print (no mouse type)
 - With poorly contrasting print (no gray on gray)
 - With drive-by language appearing for too short a time
 - Forgotten at the bottom of the screen or appearing after the claim
 - With kitchen sink or confusing language
 - With distracting elements