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[The Seasonality of Materiality?](#)

Posted on June 15, 2011 by [Steve Baird](#)



A false advertising case filed yesterday in Minnesota federal district court caught my eye: [Splash Products, Inc. v. Twinco Romax, LLC and Twinco/Romax Wisconsin, Inc.](#)

It is a rather straightforward false advertising case with the typical legal claims you'd expect to see, but what caught my eye is that the parties are going to be fighting over whether the defendant's windshield washer fluid avoids freezing at 20 degrees below zero, Fahrenheit.

Seems like a rather academic discussion for June, and hopefully the next 5 months, even in Minnesota. Nevertheless, it leaves me wondering about the necessary element of materiality.

To succeed in proving a false advertising claim the plaintiff must show that the defendant's false statement or misrepresentation is "material" -- in other words: does it have an effect on consumers' purchasing decisions?

I suspect most consumers don't care -- even in Minnesota -- whether their windshield washer fluid protects against minus 20 degree temperatures, many months out of the year. My motivation in going through jug after jug especially this time of year, is simply to remove bug carcasses from my automobile windshield.



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And, putting aside those who may stock their garage with enough jugs to last an entire year, when the price is right, I'm still left wondering, because I haven't seen a case address this specific point before, can materiality depend, not in which way the wind is blowing, but can it actually vary by season, and vary by average temperatures during a season, at least for some kinds of products?

I'm certainly not suggesting that products should be able to claim performance levels they don't reach, anytime, but if this case were to become all about the money and the calculation of damages, it will be interesting to see whether anyone focuses on the seasonality of materiality.



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