

False Advertising

Class Action Defense



Class Action Defense
“Practice Group of the Year
(2014)” – Law360

Recent class certification decisions involving price comparison ads are prompting a large number of copycat suits, and retailers nationwide are carefully evaluating their sales advertising practices. Whether comparisons are to regular or previously advertised prices or to the prices of competitors, consumers are increasingly challenging comparison advertising in court. Alleged state and nationwide class actions have been filed against numerous companies in California, Illinois, Ohio, Pennsylvania, New Jersey, Massachusetts and other states, and BakerHostetler expects this type of retail advertising litigation to continue to climb.

The BakerHostetler Advantage

BakerHostetler’s retail class action team defends retailers involved in advertising and other class action matters across the country. Our seasoned defense lawyers represent retailers in every facet of class action proceedings – from removal under the Class Action Fairness Act to motions to dismiss, class certification proceedings, discovery, trial, settlement and appeal. To defeat complex cases in the rapidly growing area of class actions, our attorneys combine their knowledge of consumer protection laws with their successful class action experience to defend the legal claims on which false advertising cases are based.

As a result of our exceptional reputation and notable class action successes, our class action defense team was named a Law360 “Practice Group of the Year” in 2014, and members of our team are consistently recognized in *Chambers USA* for Commercial Litigation.

Unique Insight

Statutes and regulations prohibiting misleading price comparisons are not new. The Federal Trade Commission has had guidelines in place for the use of price comparisons in advertising since the 1960s. However, recent court decisions involving JCPenney and Overstock.com indicate that courts are becoming more receptive to consumer arguments about being deceived by comparisons to claimed fictitious or unsupported reference prices. Our retail advertising class action defense team is equipped to handle these challenges with a broad range of retail-related class action experience relating to:

- State unfair competition laws
- Federal Trade Commission Act
- State false advertising laws
- Defeating class certification
- Obtaining a dismissal of claims
- Negotiating favorable settlement terms

Representative Experience



Defended Tween Brands Inc. in a retail pricing class action in Ohio that settled on a favorable, claims-made basis.



Defended a leading U.S. children's clothing retailer in a retail pricing class action, challenging price comparisons to "regular" or "original" prices.



Defended a national tool supplier in a retail pricing class action challenging price comparisons to "regular" or "original" prices. The action settled in mediation, and the multi-office team resolved two alleged class actions against the client in California and Ohio.



Represented an international consumer goods manufacturer in a multi-state consumer class action in which the plaintiffs allege that the company's advertising and marketing of its probiotic supplement violates various state consumer protection laws.



Won a complete dismissal of data breach class action involving a Consumer Fraud Act claim.

Class action team members listed in *Chambers USA* 2016 for Commercial Litigation

The Best Lawyers in America® 2017:
Nine team members recognized



Client Service 30

Named to the **BTI Client Service 30** for the third year in a row, and selected as a **BTI Best Value Leader**.

Contacts

Rodger L. Eckelberry **Paul G. Karlsgodt**
reckelberry@bakerlaw.com pkarlsgodt@bakerlaw.com
T +1 614.462.5189 T +1 303.764.4013

Joel C. Griswold
jcggriswold@bakerlaw.com
T +1 312.416.6238

bakerlaw.com

Recognized as one of the top firms for client service, BakerHostetler is a leading national law firm that helps clients around the world to address their most complex and critical business and regulatory issues. With five core national practice groups – Business, Employment, Intellectual Property, Litigation and Tax – the firm has more than 940 lawyers located in 14 offices coast to coast. For more information, visit bakerlaw.com.

Baker & Hostetler LLP publications inform our clients and friends of the firm about recent legal developments. This publication is for informational purposes only and does not constitute an opinion of Baker & Hostetler LLP. Do not rely on this publication without seeking legal counsel.