

PRO TE: SOLUTIONTM

If It Walks Like a Duck...

As we consider the history of [consumer protection claims]... an old adage comes to mind: if it looks like a duck, swims like a duck, and quacks like a duck, then maybe it is a duck.

Dear Client

Welcome to 2019! We hope that your New Year's resolutions included time to sit down and enjoy our latest edition of *Pro Te: Solutio*. We have three intriguing articles in this edition, which are sure to provide useful information.

The first article, *If It Walks Like a Duck...*, addresses the similarities and important differences between traditional product liability litigation and consumer protection litigation filed by State Attorneys General. We include some advice on how to prevent the state from attempting to substitute product liability evidentiary standards with those required in consumer protection litigation.

The second article, *Who's on First: The FDA or the FTC*, outlines the different, but sometimes overlapping, areas of control occupied by the Food and Drug Administration and the Federal Trade Commission.

Lastly, we have *A 50-State Survey of Consumer Protection Acts and Their Connections to the Federal Trade Commission Act*. The survey identifies which states have tied their definition of "unfair or deceptive acts or practices" to the language in the Federal Trade Commission Act and highlights the different prohibitions found in the core provision of each state's consumer protection act.

- Pro Te: Solutio Editorial Board



Elizabeth E.
Chance



Caroline E.
Creson



Mark A.
Dreher



Brenda C.
Jones



Christopher D.
Morris



Orlando R.
Richmond



Joshua J.
Wiener



Thomas E.
Williams

TABLE OF CONTENTS

If It Walks Like a Duck...

As we consider the history of [consumer protection claims]... an old adage comes to mind: if it looks like a duck, swims like a duck, and quacks like a duck, then maybe it is a duck.

Who's on First: The FDA or the FTC?

Abbott and Costello's "Who's on First" comedy routine never gets old [...]. But in the context of food, drug, device, and cosmetic lawsuits brought under consumer protection acts, we are faced with a similar, though far less humorous, circular conversation.

50-State Survey

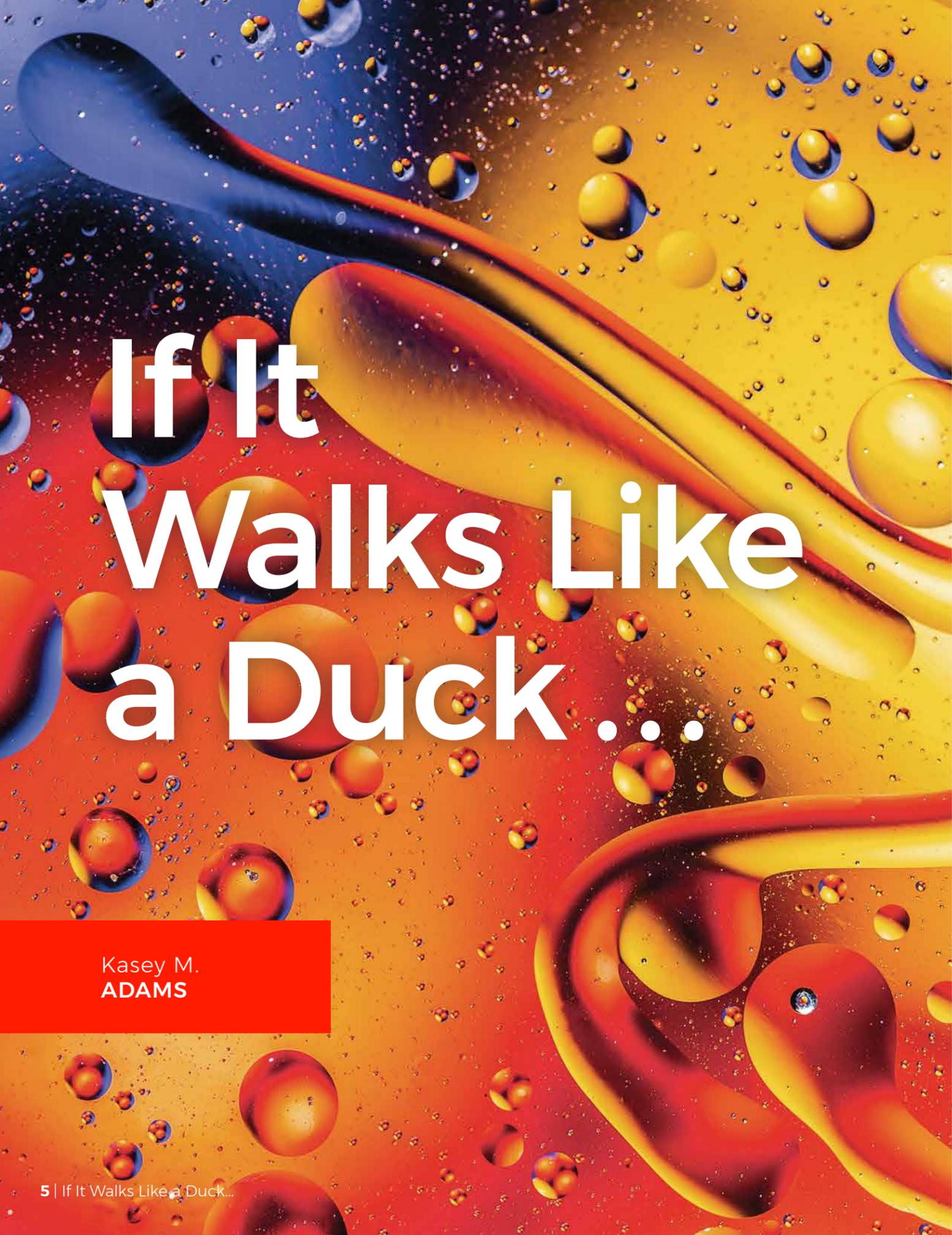
A 50-state survey of consumer protection acts and their connections to the Federal Trade Commission Act.

Author Profiles

Learn more about the experts behind this issue.

PRO

SO



If It Walks Like a Duck...

Kasey M.
ADAMS

My grandmother used to own a large farm in Franklinton, Louisiana. One of my favorite things about visiting the farm as a child was getting to see Doc - the chicken who thought he was a dog. Doc roamed the farm with his three mutt friends, ate dog food, played fetch, and even chased after other chickens. I truly believe he would have barked if his vocal cords allowed. Until the day he died, Doc believed he was, in fact, a dog.

You may be asking yourself what Doc has to do with consumer protection act claims. But as we consider the history of these claims, including recent trends toward modeling consumer protection cases as failure to warn product liability claims, an old adage comes to mind: if it looks like a duck, swims like a duck, and quacks like a duck, then maybe it is a duck. In Doc's case, regardless of attributes on paper that made him seem like a dog, at the end of the day, he looked like a chicken, sounded like a chicken, and was a chicken. Likewise, despite the comparisons we will discuss between product liability claims and consumer protection act claims, at the end of the day, we often face consumer protection act claims pretending to be product liability claims.

The impact this can have on the pharmaceutical industry can be astronomical. Just because you have an executed global settlement of product liability claims does not mean the litigation is over just yet. Sometimes before the ink on the resolution is even dry, the next wave

of lawsuits hits from an unexpected source: individual state attorneys general. And yes, that could potentially mean up to 50 separate lawsuits, filed by up to 50 different state attorneys general, alleging various violations from up to 50 different state's consumer protection acts.

History of Consumer Protection

Nearly 80 years before Doc was in the picture, President Woodrow Wilson signed the bipartisan Federal Trade Commission (FTC) Act of 1914. What was the underlying purpose of the Act, and why was it so important to President Wilson? Interestingly enough, the initial focus was to combat trusts. Over the years, however, the Act was given more teeth - including amendments in 1938 to prohibit unfair and deceptive acts and practices.¹ It is this language in particular that has since been utilized to file lawsuits under the Act against pharmaceutical manufacturers.

According to the FTC's website, the FTC has a "unique dual mission to protect consumers and promote competition."² Since its inception, and as discussed elsewhere in this publication, states around the country have followed suit, adopting state versions of the federal Act, presumably with the same goal - to protect consumers and promote competition. But in application, these acts have been used by various state attorneys general to file what

is essentially a mass tort personal injury claim on behalf of an entire state under the guise of “consumer protection.”

Under the plain language of the Act, the FTC is directed to “prevent . . . corporations . . . from using unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce.”³ This charge in the federal code makes sense when viewed in light of the organization’s mission – to protect consumers and promote competition. And the same or similar language has been adopted in state consumer protection act statutes. Historically, we have seen this (at least in the pharmaceutical context) in cases brought by state attorneys general against pharmaceutical companies due to alleged price fixing or misleading price increases. But the question is – are the product liability-type cases we are seeing today brought against pharmaceutical companies in line

with this mission? Is a claim that a manufacturer allegedly failed to warn of a risk of a product equivalent to a manufacturer “using unfair or deceptive acts or practices in or affecting commerce”? Or, are state consumer protection acts being used to encourage the chicken that thinks it is a dog, or in this case, the consumer protection claim that thinks it is a product liability claim?

Consumer Protection in Practice

Looking at national trends may help shed light on the discussion. What is interesting is that despite the fact that state consumer protection acts have existed for decades in many instances, pharmaceutical cases filed under state consumer protection acts are a more recent trend. Why is this? One consideration is that states are generally not subject to the same statute of limitation defenses that plaintiffs in typical product liability lawsuits find themselves fighting – so there is often no limit to how far back a state attorney general can go with respect to a consumer protection act claim. But it begs the question – particularly in the field of warning claims regarding pharmaceutical products – if the particular drug or device has been sold in a particular state for “X” number of years without the warning the state now claims is

false or misleading, why wait to file suit until years after an undisclosed number of state citizens have allegedly been injured?

One potential answer is product liability litigation. We first saw the “modern” approach to consumer protection act claims in the context of tobacco litigation. In 1998, a master settlement agreement settled 46 state attorney general lawsuits against the tobacco industry, bringing in a significant amount of money to the states involved.⁴ Prior to this point, there were multiple waves of individual product liability claims against tobacco manufacturers, many of which were initially unsuccessful. It was actually not until *after* the successful master settlement that the first big win for a plaintiff in a tobacco product liability action occurred.⁵ But in the pharmaceutical context, the tendency is the other way around – successful product liability actions first, attempted consumer protection act claims second.

When you look at the history of these actions, this is not surprising. A quick web search reveals multiple examples of state consumer protection actions following high-dollar plaintiff verdicts in personal injury product liability claims. On a national scale, we have seen this most often in the context of air bag cases, with state consumer protection act claims filed on the heels of class action litigation that gained substantial media attention. But we are seeing it in other areas as well, including

pharmaceutical product liability claims. Because of this, it is unclear how much investigative discovery state attorneys general are doing on the science behind these claims prior to filing consumer protection act lawsuits. This is particularly the case considering that private litigation attorneys (who have often worked on these same cases in the product liability context) are regularly hired as “deputized” special outside counsel to the state attorney general to work up the case.

But claims under state consumer protection acts are *not* product liability lawsuits, despite how much they may try to look like and act like a typical product liability lawsuit. These two legal theories are often the source of confusion, particularly when considering the evidence actually presented in these cases. Complaints against manufacturers for consumer protection act claims often cite to studies and literature that form the basis of allegations in product liability

lawsuits. More importantly, company documents – only discovered through product liability litigation – are used as key evidence in consumer protection act claims. And in the course of discovery, particularly when attempting to defend the facts forming the core basis of their claims, state attorneys general often refer to successful product liability cases as “evidence” that the company defrauded or misled consumers in that state. Ultimately, the same evidence, the same theories, the same experts, and the same legal arguments are being raised by state attorneys general (via specially-deputized personal injury lawyers) in an attempt to try what is in actuality, a very different case.

And just in case the basic issue of what these claims really are is not enough, the idea of specially-deputized attorneys general presents a whole other arena of unique challenges (and opportunities). The outside counsel hired by the attorney general are more familiar, often intimately so, with the product liability claims regarding these products, but constitutional questions can arise with respect to this deputizing process. It is important to understand the context in which this could play a role in whatever jurisdiction a lawsuit is pending. For example, the Supreme Court of Pennsylvania has noted “that substantial concern has been

expressed about the use by public agencies of outside counsel, with personal financial incentives, to spearhead litigation pursued in the public interest.”⁶ In Mississippi, contingent fee contracts with outside counsel are governed by statute.⁷ The statute even provides that such contingency fee contracts “shall be posted on the Attorney General’s website for public inspection” unless the attorney general determines, subject to approval by a separate oversight commission, that doing so would negatively affect the state.⁸ In jurisdictions where this is the case, it is important to review such an agreement at the outset of the lawsuit.

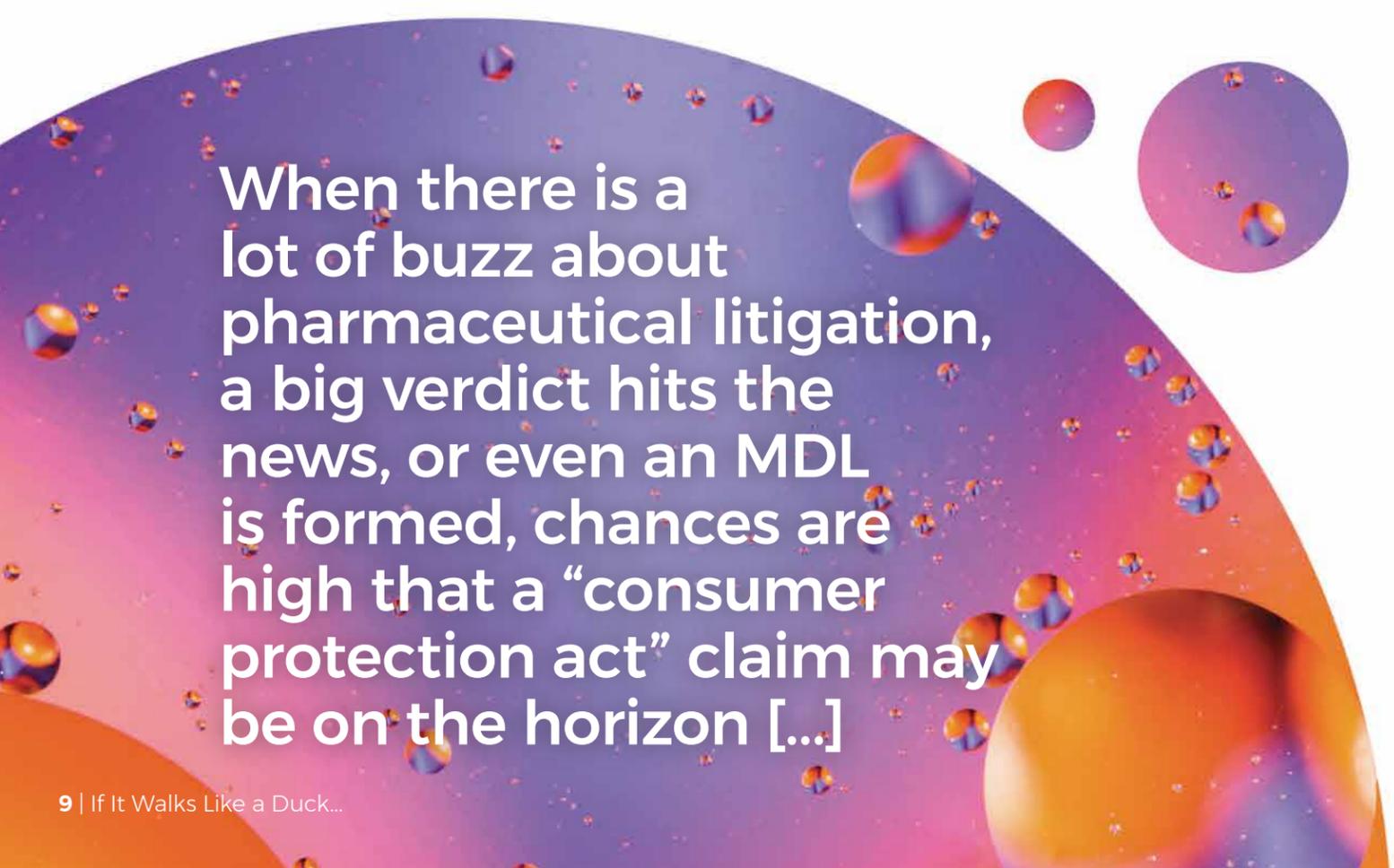
We are seeing example after example of these consumer protection lawsuits being filed against pharmaceutical companies, and it is often uncertain if they are filed at the request of specially-deputized outside counsel. When there is a lot of buzz about pharmaceutical litigation, a big verdict hits the news, or even an MDL is formed, chances are high that a “consumer protection act” claim may be on the horizon, particularly in areas where attorneys involved with the product liability litigation have an influence.

Another trend we are seeing in this context deals with the ever-elusive area of Medicaid. These have come in the form of states attempting to mask consumer protection act claims as something else – subrogation

claims. The importance of exposing the true nature of these claims is even more critical because subrogation claims on a state’s Medicaid lien require proof of the underlying tort (i.e., the product liability failure to warn claim). But to get the information needed to defend these claims and to understand exactly what proof the state will be required to put on, it is important to expose the claims for what they truly are.

How to Expose the Duck

In consumer protection act cases alleging unfair or deceptive trade practices based on failure to warn of a pharmaceutical product’s alleged risk, there are a few things that can be done to combat this merging of two very different legal theories. From the outset, it is important to use this knowledge to your advantage. Unlike most “new” litigation, early preparation can be done based on the basic theories, evidence, and experts that plaintiffs have already used in product liability claims. This can allow for more aggressive and pointed discovery. A more vigorous approach can be taken based on the language of the consumer protection act of the particular state in which the case is pending. Defense counsel should force the state to specifically identify what false, misleading, unfair, or deceptive statements were made to any individuals in that state. Force the state to admit what efforts it made prior to filing its lawsuit to determine this information. Force the state to identify every instance



When there is a lot of buzz about pharmaceutical litigation, a big verdict hits the news, or even an MDL is formed, chances are high that a “consumer protection act” claim may be on the horizon [...]

in which it alleges you violated that state's consumer protection act.

More often than not, when faced with questions regarding specific proof of consumer protection violations, the state will default to the same evidence raised in the product liability claims. But this cannot, and should not, be enough. Make it clear to the state from the outset that you see through its attempt to mask its claim. If it looks like a consumer protection act claim, swims like a consumer protection act claim, and quacks like a consumer protection act claim, it is a consumer protection act claim no matter how the state tries to frame it. By recognizing these disguised consumer protection act claims from the beginning, familiarizing yourself with the language of your state's consumer protection act, and understanding how the proof required is different than your typical product liability claim, you will be able to better position yourself for a strong defense.



¹ Andrew Glass, *Woodrow Wilson Creates Federal Trade Commission*, Sept. 26, 1914, Politico, (Sept. 26, 2012, 04:35 AM), <https://www.politico.com/story/2012/09/this-day-in-politics-081672>.

² Federal Trade Commission, *About the FTC, What We Do* (November 1, 2018), <https://www.ftc.gov/about-ftc/what-we-do>.

³ 15 U.S.C.A. 45(a)(2).

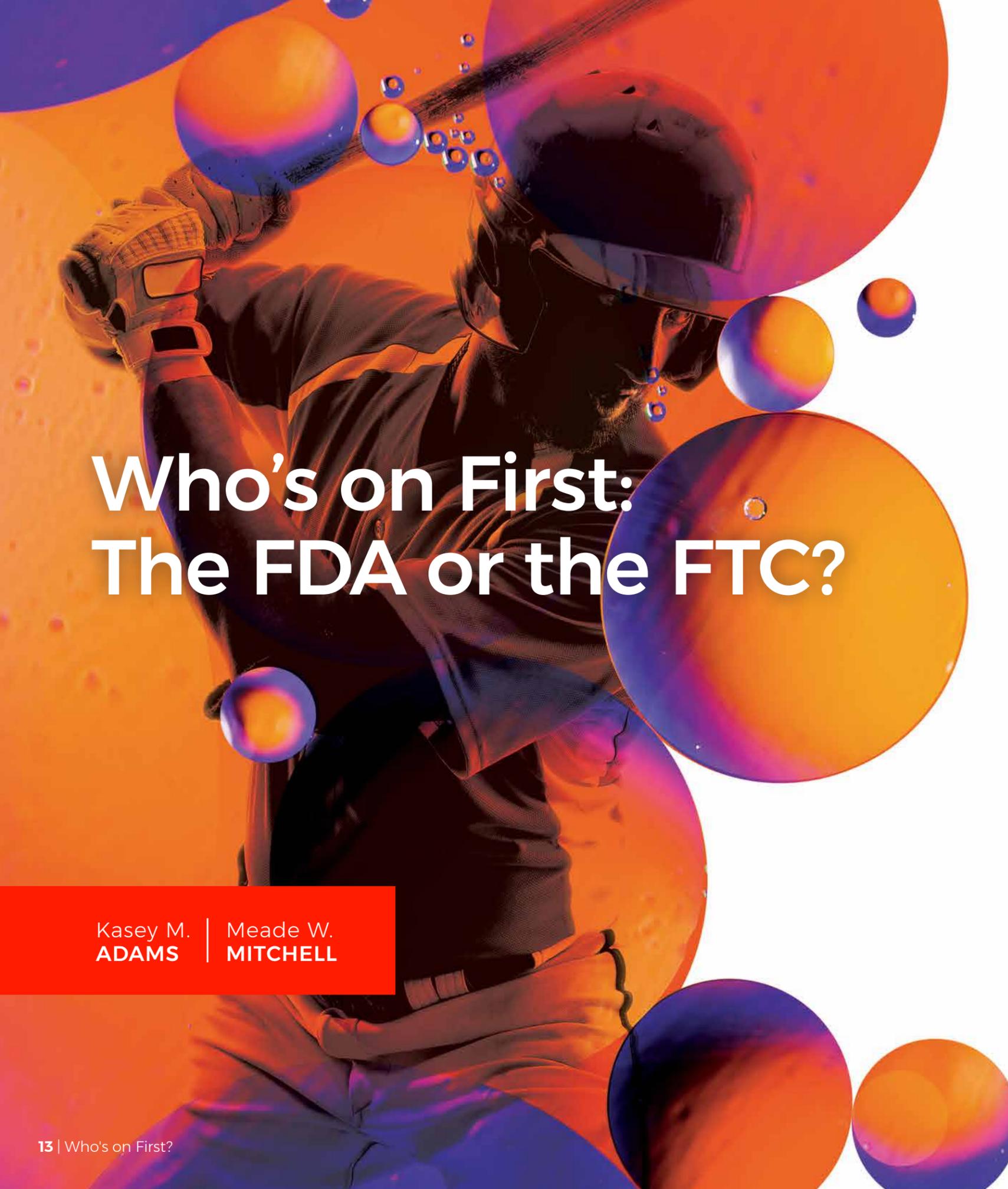
⁴ Richard P. Leyoub and Theodore Eisenberg, *State Attorney General Actions, the Tobacco Litigation, and the Doctrine of Parens Patriae*, 74 Tul. L. Rev. 1859 (2000).

⁵ Barry Meier, *\$51 Million Verdict Awarded to Smoker Is Biggest of Its Kind*, The New York Times, (Feb. 11, 1999), <https://www.nytimes.com/1999/02/11/us/51-million-verdict-awarded-to-smoker-is-biggest-of-its-kind.html>.

⁶ *Commonwealth of Pennsylvania v. TAP Pharmaceuticals Products, Inc.*, 94 A.3d 350, 364 at n. 19 (Pa. 2014).

⁷ Miss. Code Ann. § 7-5-8.

⁸ *Id.* at 5(a).



Who's on First: The FDA or the FTC?

Kasey M. ADAMS | Meade W. MITCHELL

Abbott and Costello's "Who's on First" comedy routine never gets old –

and it is a quintessential example of a circular conversation. But in the context of food, drug, device, and cosmetic lawsuits brought under consumer protection acts, we are faced with a similar, though far less humorous, circular conversation. Because the question these lawsuits raise, or at least *should* raise, is who is really in charge: the Food and Drug Administration (FDA) or the Federal Trade Commission (FTC).

The FDA is charged with protecting the public by evaluating the safety and efficacy of, among other things, drugs and medical devices before they are put on the market.¹ The FTC is charged with protecting “consumers by stopping unfair, deceptive or fraudulent practices in the marketplace.”² Both the FDA and FTC are empowered by Congress through a statutory framework, which gives both organizations the power to enforce their respective regulations.³

The FDA has an extensive regulatory framework that provides detailed requirements for pharmaceutical manufacturers to follow with respect to labeling and advertising of prescription drugs, even specifically noting what information must be included in a prescription drug advertisement.⁴ The FDA regularly publishes guidance documents to assist companies with compliance. If the FDA believes that labeling

or advertising for a prescription drug omits important safety information or is misleading, the statutory framework provides multiple routes the FDA can take to enforce its regulations: warning letters, forced label changes, recalls, asking companies to withdraw advertisements, and even seeking civil penalties.⁵ The statutes empowering the FTC also provide methods of oversight including litigation, injunctions, and recovery of civil penalties.⁶

As a natural consequence of oversight in their respective fields, the FDA and FTC have some areas of overlap. Given the broad charge of the FTC, it is understandable that the organization cooperates with other groups and federal agencies. The FTC specifically addresses such cooperation in its regulations, stating: “It is the policy of the Commission to cooperate with other governmental agencies to avoid unnecessary overlapping or duplication of regulatory functions.”⁷ The FDA and FTC have both recognized and acknowledged the importance and value of working together in the areas in which they overlap, particularly given limited resources and time demands on both organizations.

One effort at clearing up any confusion, particularly with regard to the scope of the powers of the FDA versus the FTC, is in the plain language of the Federal Trade Commission Act (FTCA), which expressly exempts product labeling from the statute’s reach.

Specifically, the FTCA defines an “unfair or deceptive act or practice” to include “the dissemination or the causing to be disseminated of any false advertisement”⁸ meant to induce the purchase of “food, drugs, devices, services or cosmetics.” The FTCA then goes on to define a false advertisement as “an advertisement, *other than labeling*, which is misleading in a material respect.”⁹

In an effort to further memorialize this relationship and prevent potential conflict, the FDA and FTC entered into a formal Memorandum of Understanding. The current Memorandum has been in effect since 1971, and it updated and replaced two prior agreements between the organizations enacted in 1954 and 1958.¹⁰ There is no question that the two agencies share a common objective to prevent deception to the public, as the Memorandum states: “It is agreed that the common objective

of preventing injury and deception of the consumer requires that the statutory authorities and procedures, and the manpower and other resources available to each agency are so employed as to afford maximum protection to the consumer.”¹¹

The Memorandum not only addresses purpose and intention, but it specifically lays out the primary responsibilities of each agency:

- “*With exception of prescription drugs*, the Federal Trade Commission has primary responsibility with respect to the regulation of the truth or falsity of all advertising (*other than labeling*) of foods, drugs, devices, and cosmetics.”
- The FDA, on the other hand, has the primary responsibility for preventing *misbranding* (mislabeling) of foods, drugs, devices, and cosmetics and for “regulation of the truth or falsity of prescription drug advertising.”¹²

The Memorandum is particularly deferential to the FDA when it comes to the complicated and scientific

[...] when it comes to regulating areas involving prescription drugs, medical devices, food, and cosmetics, the FDA is “on first.”

areas it is charged with regulating. “In the absence of express agreement between the two agencies to the contrary, the Food and Drug Administration will exercise primary jurisdiction over all matters regulating the labeling of foods, drugs, devices, and cosmetics.”¹³ On its face then, when it comes to regulating areas involving prescription drugs, medical devices, food, and cosmetics, the FDA is “on first.” But unfortunately for the pharmaceutical and medical device industry, and even the cosmetics industry, state attorneys general have attempted to circumvent what should be a distinct delineation of responsibility between the FDA and FTC.

As discussed in detail in the 50-State Survey in this issue, 30 states, plus the

District of Columbia, have explicitly instructed that their state consumer protection acts be interpreted consistently with the interpretations of Section 5(a)(1) of the FTCA by the FTC and federal courts. For example, the Mississippi Consumer Protection Act specifically notes: “It is the intent of the Legislature that in construing what constitutes unfair or deceptive trade practices that the courts will be guided by the interpretations given by the [FTC] and the federal courts to Section 5(a)(1) . . . , as from time to time amended.”¹⁴

This is plain language of statutory construction and intent: follow the interpretations of the FTCA. Given the plain language in the Memorandum, the FTCA does not extend to the labeling of food, drugs, devices, and

cosmetics because such labeling is exempted from the FTCA's reach. For all states that look to the FTC for guidance, it follows that their "Little FTC Acts" also do not reach the issue of labeling of food, drugs, devices, and cosmetics because labeling claims are outside the scope of those acts.

And when looking at the issue, such deference makes complete sense. Why would the FTC not defer to the agency tasked with overseeing the complex regulatory and scientific arena of prescription drugs and medical devices? It is the FDA, not the FTC, that has scientists, epidemiologists, physicians, and pharmacists on staff to fully delve into the medical issues behind warnings and safety information.

But recently, trends are showing an increase in claims filed by individual states against pharmaceutical and medical device companies under these "little FTC's." In these actions, states allege that companies have violated the consumer protection act of that state by failing to disclose a material risk in its prescription drug or device labeling. But as we already discussed, the plain language of the FTC, combined with FTC's deference to the FDA in the realm of prescription drugs and devices as set out in the Memorandum of Understanding, should make this a dead end. Thus, in states with "little FTC acts," the state court should defer to the way the FTC has interpreted such claims in deciding what conduct is actionable. And the FTC,

for all intents and purposes, would defer to the FDA.

Unfortunately for many companies, however, this seemingly clear directive is being overlooked, underused, and misstated to confuse the issues, making "who's on first" a mystery. Federal courts have recognized this limitation of the FTCA's reach.¹⁵ And because many state consumer protection acts specifically rely upon the FTCA in construing what constitutes an unfair or deceptive act, the state consumer protection acts should be similarly constrained. But state courts have so far been less receptive to recognizing the limitation of the statute's reach. Instead, some cases are surviving initial motions to dismiss in lawsuits where state attorneys general are filing claims for monetary penalties against pharmaceutical and medical device companies for labeling decisions that the FTCA does not cover and that FTC would decline to address.

But it is not enough to be personally armed with the knowledge of who *should* be on first. This is an issue that, if you have not confronted yet, you are likely to face at some point as long as these types of lawsuits continue to trend. Practically, it is important not to be discouraged just because some courts are not applying the law in the way that seems proper. Instead, keep fighting for the plain language to apply. Raise awareness regarding the relationship between the FDA and

the FTC and the Memorandum of Understanding and point out the clear limitations on the reach of the FTCA. Make the arguments every chance you get. Keep repeating that state consumer fraud statutes that defer to the FTC should be interpreted consistently with the FTC's approach – and thus, that prescription drug, medical device, food, and cosmetic labeling (and advertising of prescription drugs) should *not* fall within the scope of such acts. And maybe, the argument will fall on sympathetic ears and resolve the "who's on first" debate once and for all. ■

¹ U.S. Food and Drug Administration, *About FDA, What We Do* (November 14, 2018), <https://www.fda.gov/AboutFDA/WhatWeDo/default.htm>.

² Federal Trade Commission, *About the FTC, What We Do* (November 1, 2018), <https://www.ftc.gov/about-ftc/what-we-do>.

³ 21 U.S.C. 301 et seq.; 15 U.S.C. 41 et seq.

⁴ 21 U.S.C. § 352(n).

⁵ 21 U.S.C. §§ 332-335.

⁶ 15 U.S.C. § 45.

⁷ 16 C.F.R. § 4.6.

⁸ 15 U.S.C. § 52.

⁹ 15 U.S.C. § 55(a)(1) (emphasis added).

¹⁰ Memorandum of Understanding Between the Federal Trade Commission and the Food and Drug Administration, 36 Fed. Reg. 18539-02 (September 16, 1971).

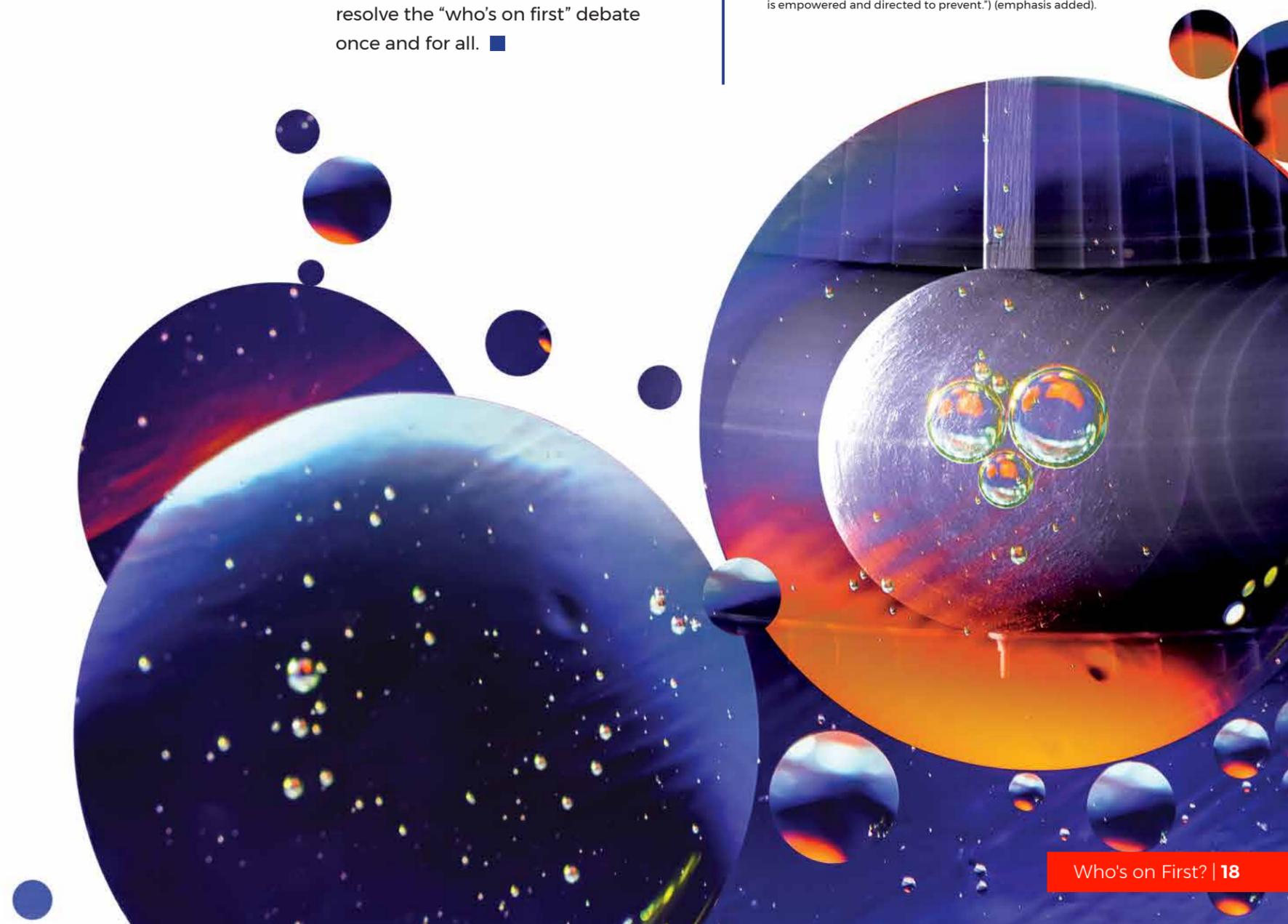
¹¹ Memorandum of Understanding, 36 Fed. Reg. 18539-02 (September 16, 1971).

¹² *Id.*

¹³ *Id.*

¹⁴ Miss. Code Ann. § 75-24-3(c).

¹⁵ See, e.g., *Miles Labs., Inc. v. FTC*, 50 F. Supp. 434, 437 (D.D.C. 1943) ("The dissemination of a 'false advertisement' by a corporation *otherwise than on the labels* carried by its products is an unfair or deceptive act or practice which is declared unlawful and which the Federal Trade Commission is empowered and directed to prevent.") (emphasis added).



50-State Survey

A 50-State Survey of Consumer Protection Acts and Their Connections to the Federal Trade Commission Act

Chad A.
BYRD

Since its inception in 1914, the Federal Trade Commission (FTC) has served the function of protecting consumers and promoting competition among businesses in the United States. In its original form, the FTC Act was limited in scope, proscribing only “unfair methods of competition.”¹ Thus, under the original provisions of the Act, the FTC had the power to restrict only those practices that were unfair to a business’s competitors.² However, in 1938, the Wheeler-Lea Act amended Section 5 of the FTC Act to include a more general prohibition against “unfair or deceptive acts or practices in commerce.”³ This amendment gave the FTC jurisdiction over a broader range of business practices that harmed consumers, regardless of whether they were deemed unfair to competitors. Following the amendment of Section 5 of the FTC Act, state legislatures began to adopt their own Consumer Protection Acts (CPAs) as a way of complementing the FTC’s enforcement authority while providing citizens with the private right of action that the FTC Act lacked.⁴ This surge of state legislative action reached a crescendo in the late 1960s and early 1970s, and by 1981 every state had adopted some form of CPA.⁵ Many of these CPAs can be traced to one of three model

acts: the Uniform Deceptive Trade Practices Act, the Unfair Trade Practices and Consumer Protection Law (UTPCPL), and the Uniform Consumer Sales Practices Act.⁶

The UTPCPL is of particular interest, not only because it was the model act adopted by the majority of states, but also because it was created as a collaborative effort between the Council of State Governments and the FTC itself.⁷ The UTPCPL offered three alternative formats for defining the scope of activities to be regulate, only two of which were ever adopted by state legislatures.⁸ The FTC’s influence in the drafting of the UTPCPL is clearly demonstrated in the first format, which has come to be known as the “Little FTC Act.” This format simply borrows the FTC Act’s broad prohibition against “unfair methods of competition and unfair or deceptive acts or practices,” without providing any illustrative examples of prohibited acts.⁹ Section 3 of the UTPCPL established an even stronger link between the FTC Act and state CPAs by instructing that “due consideration and great weight shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to Section 5(a)(1) of the Federal Trade Commission Act . . . ”¹⁰

Today, the CPAs of 15 states contain the same broad prohibitions against both “unfair methods of competition” and “unfair or deceptive acts or practices” that appear in Section 5(a)(1) of the FTC Act. In a way, these CPAs could be considered the “true” Little FTC Acts, as they provide no further explanation for what specific conduct constitutes “unfair or deceptive acts or practices.” Five other states have adopted the FTC Act’s prohibition against unfair or deceptive acts or practices but excluded the prohibition against methods of unfair competition. An additional 14 states have supplemented the FTC Act’s broad prohibitions with more precise provisions designed to restrict more specific conduct. But perhaps most importantly, 30 states and the District of Columbia have explicitly instructed that their CPAs should be interpreted consistently with the interpretations given by the FTC and the federal courts to Section 5(a)(1) of the FTC Act. Thus, while CPAs are by no means uniform from state to state, it is clear that a majority of states consider their CPAs to be Little FTC Acts for all practical purposes, even if their core provisions do not mirror those of the FTC Act.

The objective of this survey of state CPAs is to identify the states that have tied their definition of “unfair or deceptive acts or practices” to that of the FTC Act and to highlight the

different types of prohibitions found in the core provisions of each state’s CPA.

Alabama

FTC Act Reference: “It is the intent of the Legislature that in construing Section 8-19-5, due consideration and great weight shall be given where applicable to interpretations of the [FTC] and the federal courts relating to [Section 5(a)(1)], as from time to time amended.” Ala. Code § 8-19-6.

Prohibited Conduct: Twenty-six specific prohibited acts, with a “catch-all” provision that prohibits “[e]ngaging in any other unconscionable, false, misleading, or deceptive act or practice in the conduct of trade or commerce.” Ala. Code § 8-19-5.

Alaska

FTC Act Reference: “In interpreting AS 45.50.471 due consideration and great weight should be given to the interpretations of [Section 5(a)(1)] . . .” Alaska Stat. § 45.50.545.

Prohibited Conduct: General prohibition against “unfair methods of competition and unfair or deceptive acts or practices,” with 57 examples of specific prohibited acts. Alaska Stat. § 45.50.471.

Arizona

FTC Act Reference: “It is the intent of the legislature, in construing subsection A, that the courts may

use as a guide interpretations given by the [FTC] and the federal courts to 15 United States Code §§ 45, 52, and 55(a)(1).” Ariz. Rev. Stat. Ann. § 44-1522(C).

Prohibited Conduct: General prohibition against deceptive or unfair acts or practices, but no prohibition against methods of unfair competition. Ariz. Rev. Stat. Ann. § 44-1522(A).

Arkansas

FTC Act Reference: None.

Prohibited Conduct: Eleven illustrative examples of prohibited “deceptive and unconscionable trade practices.” Ark. Code Ann. § 4-88-107.

California

FTC Act Reference: The California Unfair Competition Law does not explicitly reference the FTC Act, but California courts have held that federal court decisions and FTC interpretations of the FTC Act are persuasive authority for construing the state act. See *People ex rel. Mosk v. Nat’l Research Co. of Cal.*, 201 Cal.App.2d 765, 772-73 (1962) (“Although the wordings of the state and federal statutes are not identical, the differences are not of a degree to impair comparison . . . In view of the similarity of the language and the obvious identity of purpose of the two statutes, decisions of the federal court on the subject are more than ordinarily persuasive.”).

Prohibited Conduct: General prohibition against “any unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising . . .” Cal. Bus. & Prof. Code § 17200.

Colorado

FTC Act Reference: None.

Prohibited Conduct: Fifty-two specific examples of “deceptive trade practice[s].” Colo. Rev. Stat. Ann. § 6-1-105.

Connecticut

FTC Act Reference: “It is the intent of the legislature that in construing subsection (a) of this section, the commissioner and the courts of this state shall be guided by interpretations given by the [FTC] and the federal courts to [Section 5(a)(1)], as from time to time amended.” Conn. Gen. Stat. Ann. § 42-110b(b).

Prohibited Conduct: General prohibition against “unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.” Conn. Gen. Stat. Ann. § 42-110b(a).

Delaware

FTC Act Reference: None.

Prohibited Conduct: Twelve specific examples of “deceptive trade practice[s].” Del. Code Ann. tit. 6, § 2532.

District of Columbia

FTC Act Reference: “In construing the term ‘unfair or deceptive trade practice’ due consideration and weight shall be given to the interpretation by the [FTC] and the federal courts of the term ‘unfair or deceptive act or practice,’ as employed in [Section 5(a)(1)] . . .” D.C. Code Ann. § 28-3901(d).

Prohibited Conduct: Thirty-nine specific examples of “unfair or deceptive trade practice[s].” D.C. Code Ann. § 28-3904.

Florida

FTC Act Reference: “It is the intent of the Legislature that, in construing subsection (1), due consideration and great weight shall be given to the interpretations of the [FTC] and the federal courts relating to [Section 5(a)(1)] as of July 1, 2017.” Fla. Stat. Ann. § 501.204(2).

Prohibited Conduct: General prohibition against “[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.” Fla. Stat. Ann. § 501.204(1).

Georgia

FTC Act Reference: “It is the intent of the General Assembly that this part be interpreted and construed consistently with the interpretations given by the [FTC] in the federal courts to Section 5(a)(1) . . . as from time to time amended.” Ga. Code Ann. § 10-1-391(b).

Prohibited Conduct: General prohibition against “[u]nfair or deceptive acts or practices in the conduct of consumer transactions and consumer acts or practices in trade or commerce,” with 36 examples specific prohibited acts. Ga. Code Ann. § 10-1-393.

Hawaii

FTC Act Reference: “In construing this section, the courts and the office of consumer protection shall give due consideration to the rules, regulations, and decisions of the [FTC] and the federal courts interpreting [S]ection 5(a)(1) . . . , as from time to time amended.” Haw. Rev. Stat. Ann. § 480-2(b).

Prohibited Conduct: General prohibition against “unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.” Haw. Rev. Stat. Ann. § 480-2(a).

Idaho

FTC Act Reference: “It is the intent of the legislature that in construing this act due consideration and great weight shall be given to the interpretation of the [FTC] and the federal courts relating to [S]ection 5(a)(1) . . . , as from time to time amended [.]” Idaho Code Ann. § 48-604(1).

Prohibited Conduct: Nineteen specific “unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.” Idaho Code Ann. § 48-603.

Illinois

FTC Act Reference: “In construing this section consideration shall be given to the interpretations of the [FTC] and the federal courts relating to Section 5(a) . . .” 815 Ill. Comp. Stat. Ann. § 505/2.

Prohibited Conduct: General prohibition against “[u]nfair methods of competition and unfair or deceptive acts or practices.” 815 Ill. Comp. Stat. Ann. § 505/2.

Indiana

FTC Act Reference: None.

Prohibited Conduct: General prohibition against “unfair, abusive, or deceptive act[s], omission[s], or practice[s] in connection with a consumer transaction,” with 37 examples of specific prohibited acts. Ind. Code Ann. § 24-5-0.5-3.

Iowa

FTC Act Reference: None.

Prohibited Conduct: General prohibition against “[t]he act, use or employment by a person of an unfair practice, deception, fraud, false pretense, false promise, or misrepresentation, or the concealment, suppression, or omission of a material fact with intent that others rely upon the concealment, suppression, or omission, in connection with the lease, sale, or advertisement of any merchandise or the solicitation of contributions for charitable purposes,” but no prohibition against unfair

competition. Iowa Code § 714.16(2)(a).

Kansas

FTC Act Reference: None.

Prohibited Conduct: General prohibition against “any deceptive act or practice in connection with a consumer transaction,” with 14 examples of specific prohibited acts. Kan. Stat. Ann. § 50-626. “[U]nconscionable act[s] or practice[s] in connection with a consumer transaction” are generally prohibited, as well. Kan. Stat. Ann. § 50-627.

Kentucky

FTC Act Reference: None.

Prohibited Conduct: General prohibition against “[u]nfair, false, misleading, or deceptive acts or practices in the conduct of any trade or commerce.” Ky. Rev. Stat. Ann. § 367.170(1). “[U]nfair shall be construed to mean unconscionable.” Id. at (2).

Louisiana

FTC Act Reference: The Louisiana Unfair Trade Practices and Consumer Protection Law does not explicitly reference the FTC Act, but Louisiana courts have held that federal court decisions and the FTC’s interpretations of the FTC Act are persuasive authority for construing the state statute. See *Guste v. Demars*, 330 So. 2d 123 (La. Ct. App. 1976) (“Because of the variety of possible unfair and deceptive practices, the [FTC Act] was intentionally broadly written, leaving the determination of individual violations to the Commission and the

courts. Our legislature has expressed a similar intention in patterning our law so closely on the Federal statute. Therefore, we may and should consider interpretations of the Federal courts and of the [FTC] relative to such similar statutes to adjudge the scope and application of our own statute.”

Prohibited Conduct: General prohibition against “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.” La. Rev. Stat. Ann. § 51:1405(A).

Maine

FTC Act Reference: “It is the intent of the Legislature that in construing this section the courts will be guided by the interpretations given by the [FTC] and the Federal Courts to [Section 5(a)(1)] . . . , as from time to time amended.” Me. Rev. Stat. Ann. tit. 5, § 207(1).

Prohibited Conduct: General prohibition against “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.” Me. Rev. Stat. Ann. tit. 5, § 207.

Maryland

FTC Act Reference: “It is the intent of the General Assembly that in construing the term ‘unfair or deceptive trade practices’, due consideration and weight shall be given to the interpretations of [Section 5(a)(1)] by the [FTC] and the federal courts.” Md. Code Ann., Com. Law § 13-105.

Prohibited Conduct: Fifteen specific examples of “[u]nfair, abusive, or deceptive trade practices.” Md. Code Ann., Com. Law § 13-301.

Massachusetts

FTC Act Reference: “It is the intent of the legislature that in construing paragraph (a) of this section in actions brought under sections four, nine, and eleven, the courts will be guided by the interpretations given by the [FTC] and the Federal Courts to [S]ection 5(a)(1) . . . , as from time to time amended.” Mass. Gen. Laws Ann. ch. 93A, § 2(b).

Prohibited Conduct: General prohibition against “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.” Mass. Gen. Laws Ann. ch. 93A, § 2(a).

Michigan

FTC Act Reference: None.

Prohibited Conduct: Thirty-eight specific examples of “[u]nfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce.” Mich. Comp. Laws Ann. § 445.903.

Minnesota

FTC Act Reference: None.

Prohibited Conduct: General prohibition against “[t]he act, use, or employment by any person of any fraud, false pretense, false promise, misrepresentation, misleading statement or deceptive practice, with

the intent that others rely thereon in connection with the sale of any merchandise.” Minn. Stat. Ann. § 329F.69(1).

Mississippi

FTC Act Reference: “It is the intent of the Legislature that in construing what constitutes unfair or deceptive trade practices that the courts will be guided by the interpretations given by the [FTC] and the federal courts to Section 5(a)(1) . . . , as from time to time amended.” Miss. Code Ann. § 75-24-3(c).

Prohibited Conduct: General prohibition against “[u]nfair methods of competition affecting commerce and unfair or deceptive trade practices in or affecting commerce,” with 13 examples of specific prohibited acts. Miss. Code Ann. § 75-24-5.

Missouri

FTC Act Reference: None.

Prohibited Conduct: General prohibition against “[t]he act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce or the solicitation of any funds for charitable purposes.” Mo. Stat. Ann. § 407.202(1).

Montana

FTC Act Reference: “It is the intent of the legislature that in construing 30-14-103 due consideration and weight shall be given to the interpretations of the [FTC] and the federal courts relating to [S]ection 5(a)(1) . . . , as amended.” Mont. Code Ann. § 30-14-104(1).

Prohibited Conduct: General prohibition against “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.” Mont. Code Ann. § 30-14-103.

Nebraska

FTC Act Reference: None.

Prohibited Conduct: General prohibition against “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.” Neb. Rev. Stat. Ann. § 59-1602.

Nevada

FTC Act Reference: None.

Prohibited Conduct: Fifteen enumerated examples of “deceptive trade practice[s],” with a catch-all provision that prohibits “[k]nowingly mak[ing] any other false representation in a transaction.” Nev. Rev. Stat. Ann. § 598.0915. The Nevada Deceptive Trade Practices Act contains ten additional provisions defining specific categories of deceptive trade practices. See Nev. Rev. Stat. Ann. §§ 598.0916 – 0925.

New Hampshire

FTC Act Reference: “It is the intent of the legislature that in any action or prosecution under this chapter, the courts may be guided by the interpretation and construction given Section 5(a)(1) . . . by the [FTC] and the federal courts.” N.H. Rev. Stat. Ann. § 358-A:13.

Prohibited Conduct: General prohibition against “any unfair method of competition or any unfair or deceptive act or practice in the conduct of any trade or commerce,” with 17 examples of specific prohibited acts. N.H. Rev. Stat. ann. § 358-A:2.

New Jersey

FTC Act Reference: None.

Prohibited Conduct: General prohibition against “[t]he act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact with the intent that others rely on such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid.” N.J. Stat. Ann. § 56:8-2.

New Mexico

FTC Act Reference: “It is the intent of the legislature that in construing section 3 of the Unfair Practices Act the courts to the extent possible will be guided by the interpretations given by the [FTC] and the federal courts.” N.M. Stat. Ann. § 57-12-4.

Prohibited Conduct: General prohibition against “[u]nfair or deceptive trade practices and unconscionable trade practices in the conduct of any trade or commerce.” N.M. Stat. Ann. § 57-12-3.

New York

FTC Act Reference: Section 349 of the New York General Business Law does not explicitly reference the FTC Act, but New York courts have held that federal court decisions and the FTC’s interpretation of the FTC Act are persuasive authority for construing

Section 349. See *Lefkowitz v. Colo. St. Christian Coll. of Church of Inner Power, Inc.*, 346 N.Y.S.2d 482, 487 (N.Y. Sup. Ct. 1973) (“It is thus clear that the legislative purpose in enacting § 349 of the General Business Law was to follow in the steps of the Federal Trade Commission with respect to the interpretation of deceptive acts and practices outlawed in Section 5 of the Federal Trade Commission Act . . .”).

Prohibited Conduct: General prohibition against “[d]eceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service.” N.Y. Gen. Bus. Law § 349(a).

North Carolina

FTC Act Reference: The North Carolina Unfair Trade Practices Act does not explicitly mention the FTC Act, but North Carolina Courts have held that federal court decisions and the FTC’s interpretations of the FTC Act may be used as guidance in construing the state act. See *Marshall v. Miller*, 276 S.E.2d 397, 399 (N.C. 1981) (“It is established by earlier decisions of this Court that federal decisions interpreting the FTC Act may be used as guidance in determining the scope and meaning of [N.C. Gen. Stat. Ann. §] 75-1.1.”).

Prohibited Conduct: General prohibition against “[u]nfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce.” N.C. Gen. Stat. Ann. § 75-1.1(a).

North Dakota

FTC Act Reference: None.

Prohibited Conduct: General prohibition against “[t]he act, use, or employment by any person of any deceptive act or practice, fraud, false pretense, false promise, or misrepresentation, with the intent that others rely thereon in connection with the sale or advertisement of any merchandise,” as well as “[t]he act, use, or employment by any person of any act or practice, in connection with the sale or advertisement of any merchandise, which is unconscionable or which causes or is likely to cause substantial injury to a person which is not reasonably avoidable by the injured person and not outweighed by countervailing benefits to consumers or to competition.” N.D. Cent. Code Ann. § 51-15-02.

Ohio

FTC Act Reference: “In construing division (A) of this section, the court shall give due consideration and great weight to [FTC] orders, trade regulation rules and guides, and the federal courts’ interpretations of [Section 5(a)(1)], as amended.” Ohio Rev. Code Ann. § 1345.02(c).

Prohibited Conduct: General prohibition against “unfair or deceptive act[s] or practice[s] in connection with a consumer transaction,” with ten examples of specific prohibited acts. Ohio Rev. Code Ann. § 1345.02(a)-(b).

Oklahoma

FTC Act Reference: None.

Prohibited Conduct: Thirty-two enumerated unlawful practices. 15 Okla. Stat. Ann. § 753.

Oregon

FTC Act Reference: None.

Prohibited Conduct: Twelve enumerated “unlawful trade practice[s].” Or. Rev. Stat. Ann. § 646.607.

Pennsylvania

FTC Act Reference: The Pennsylvania Consumer Protection Law does not explicitly mention the FTC Act, but Pennsylvania courts have held that federal court decisions and the FTC’s interpretations of the FTC Act may be used as guidance in construing the state act. See *Commonwealth, by Creamer v. Monumental Properties, Inc.*, 329 A.2d 812, 817-18 (Pa. 1974) (internal citations and quotations omitted) (“The [Pennsylvania] Consumer Protection Law has regularly been interpreted by the Commonwealth Court as being based on the Federal Trade Commission Act and the Lanham Trademark Act . . . Indeed in all relevant respects the language of section 3 of the Consumer Protection Law and Section 5 of the FTC Act is identical . . . We thus agree with the Commonwealth Court that ‘we may look to the decisions under those Acts for guidance and interpretation.’”).

Prohibited Conduct: Twenty enumerated examples of “‘unfair methods of competition’ and ‘unfair or deceptive acts or practices,’” with a catch-all provision that prohibits “[e]ngaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or misunderstanding.” 73 Pa. Stat. Ann. § 201-2.

Rhode Island

FTC Act Reference: “It is the intent of the legislature that in construing §§ 6-13.1-1 and 6-13.1-2 due consideration and great weight shall be given to the interpretations of the [FTC] and the federal courts relating to [Section] 5(a) . . . , as from time to time amended.” R.I. Gen. Laws § 6-13.1-3.

Prohibited Conduct: General prohibition against “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.” R.I. Gen. Laws § 6-13.1-3.

South Carolina

FTC Act Reference: “It is the intent of the legislature that in construing paragraph (a) of this section the courts will be guided by the interpretations given by the [FTC] and the Federal Courts to [Section] 5(a)(1) . . . , as from time to time amended.” S.C. Code Ann. § 39-5-20(b).

Prohibited Conduct: General prohibition against “[u]nfair methods of competition and unfair or deceptive acts or practices in the

conduct of any trade or commerce.” S.C. Code Ann. § 29-5-20(b).

South Dakota

FTC Act Reference: None.

Prohibited Conduct: Fifteen enumerated “deceptive act[s] or practice[s].” S.D. Codified Laws § 37-24-6.

Tennessee

FTC Act Reference: “This part, being deemed remedial legislation for the protection of the consumers of the state of Tennessee and elsewhere, shall be construed to effectuate the purposes and intent. It is the intent of the general assembly that this part shall be interpreted and construed consistently with the interpretations given by the [FTC] and the federal courts pursuant to [Section] 5(a)(1) . . .” Tenn. Code Ann. § 47-18-115.

Prohibited Conduct: General prohibition against “[u]nfair or deceptive acts or practices affecting the conduct for any trade or commerce,” with 52 examples of specific prohibited acts. Tenn. Code Ann. § 47-13-104(a)-(b).

Texas

FTC Act Reference: “It is the intent of the legislature that in construing Subsection (a) of this section in suits brought under Section 17.47 of this subchapter the courts to the extent possible will be guided by . . . the interpretations given by the [FTC] and federal courts to Section 5(a)(1) . . .” Tex. Bus. & Com. Code Ann. § 17.46(c)(1).

Prohibited Conduct: General prohibition against “[f]alse, misleading, or deceptive acts or practices in the conduct of any trade or commerce,” with 33 examples of specific prohibited acts. Tex. Bus. & Com. Code Ann. § 17.46(a)-(b).

Utah

FTC Act Reference: “This act shall be construed liberally to promote the following policies: . . . to make state regulation of consumer sales practices not inconsistent with the policies of the [FTC] relating to consumer protection.” Utah Code Ann. § 13-11-2(4).

Prohibited Conduct: General prohibition against “deceptive act[s] or practice[s] by a supplier in connection with a consumer transaction,” with 23 examples of specific prohibited acts. Utah Code Ann. § 13-11-4(a)-(b).

Vermont

FTC Act Reference: “It is the intent of the Legislature that in construing subsection (a) of this section, the courts of this state will be guided by the construction of similar terms contained in Section 5(a)(1) . . . as from time to time amended by the [FTC] and the courts of the United States.” Vt. Stat. Ann. tit. 9, § 2453(b).

Prohibited Conduct: General prohibition against “[u]nfair methods of competition in commerce and unfair or deceptive acts or practices in commerce.” Vt. Stat. Ann. tit. 9, § 2453(a).

Virginia

FTC Act Reference: None.

Prohibited Conduct: Fifty-eight enumerated “fraudulent acts or practices committed by a supplier in connection with a consumer transaction.” Va. Code Ann. § 59.1-200.

Washington

FTC Act Reference: “The legislature hereby declares that the purpose of this act is to complement the body of federal law governing restraints on trade, unfair competition and unfair, deceptive, and fraudulent acts or practices in order to protect the public and foster fair and honest competition. It is the intent of the legislature that, in construing this act, the courts shall be guided by final decisions of the federal courts and final orders of the [FTC] interpreting the various federal statutes dealing with the same or similar matters . . .” Wash. Rev. Code Ann. § 19.86.920.

Prohibited Conduct: General prohibition against “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.” Wash. Rev. Stat. Ann. § 19.86.020.

West Virginia

FTC Act Reference: “The Legislature hereby declares that the purpose of this article is to complement the body of federal law governing unfair competition and unfair, deceptive and fraudulent acts or practices in order to protect the public and foster fair and honest competition. It is

the intent of the Legislature that, in construing this article, the courts be guided by the policies of the [FTC] and interpretations given by the [FTC] and the federal courts to Section 5(a) (1) . . . , as from time to time amended, and to the various other federal statutes dealing with the same or similar matters.” W. Va. Code Ann. § 46A-6-101(1).

Prohibited Conduct: General prohibition against “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.” W. Va. Code Ann. § 46A-6-104.

Wisconsin

FTC Act Reference: None.

Prohibited Conduct: General prohibition against “[u]nfair methods of competition in business and unfair trade practices in business,” with five examples of specific prohibited acts. Wis. Code Ann. § 100.20(1).

Wyoming

FTC Act Reference: None.

Prohibited Conduct: Fifteen enumerated “deceptive trade practice[s],” with a catch-all provision that prohibits “[e]ngag[ing] in unfair or deceptive acts or practices.” Wyo. Stat. Ann. § 45-12-105. ■

¹ Federal Trade Commission Act of 1914, ch. 311, § 5, 38 Stat. 719.

² See *Fed. Trade Comm'n v. Raladam Co.*, 51 S. Ct. 587, 592 (1931) (holding that the FTC lacked jurisdiction to restrain unfair competition, where the activities at issue did not substantially injure the business of competitors).

³ Wheeler-Lea Act of 1938, ch. 49, § 3, 52 Stat. 111; 15 U.S.C. § 45(a)(1).

⁴ See *Bank of the West v. Superior Ct.*, 833 P.2d 545, 551 (Cal. 1992) (noting that the 1938 amendment to the FTC Act “became the model for state regulatory statutes”).

⁵ Henry N. Butler and Joshua D. Wright, *Are State Consumer Protection Acts Really Little-FTC Acts?*, 63 Fla. L. Rev. 163, 167-169 (2011).

⁶ Dee Pridgen and Richard M. Alderman, *Consumer Protection and the Law* § 2:10 (Nov. 2017 update).

⁷ *Id.*

⁸ Jack E. Karns, *State Regulation of Deceptive Trade Practices Under “Little FTC Acts”: Should Federal Standards Control?*, 94 Dickinson L. Rev. 373, 376 (1990).

⁹ 29 Council of State Gov'ts, 1970 Suggested State Legislation 142, 146 (1969).

¹⁰ *Id.* at 147.



Author Profiles



Kasey M. Adams

Kasey Adams focuses her practice on all types of pharmaceutical, medical device, and healthcare litigation, including drug and device litigation and product liability litigation.

She holds a B.S. degree in Business Administration from the University of Southern Mississippi and obtained her J.D. from Mississippi College School of Law. Kasey is admitted to the Mississippi State Bar, both districts of the U.S. District Court of Mississippi, and the 5th Circuit of the U.S. Court of Appeals.

She is active in a number of professional organizations, including Defense Research Institute, Mississippi Defense Lawyers Association, and Jackson Young Lawyers, among others. She served as an attorney coach of Mississippi College School of Law's Arbitration Team, which was named the 2016 National Champions of the American Bar Association's Arbitration Competition.



Charles A. Byrd

Chad Byrd is a member of Butler Snow's litigation department and practices within the Pharmaceutical, Medical Device and Healthcare Group. From 2013-2018, he clerked for Chief Justice William L. Waller of the Supreme Court of Mississippi. He also served as a legal writing adjunct professor at Mississippi College from 2013-2015.

Chad completed his undergraduate education at the University of Southern Mississippi and earned his Juris Doctor from Mississippi College School of Law. He is admitted to the Mississippi State Bar and the U.S. Supreme Court. Chad is a member of the Capital Area Bar Association and the Mississippi Bar Association. He is also a member of the Phoenix Club of Jackson.



Meade W. Mitchell

Meade Mitchell is an accomplished litigator and concentrates his practice on product liability defense, toxic tort defense, transportation law and trucking defense, energy litigation, insurance defense, and personal injury defense. Meade is also the coordinator of the Firm's asbestos and silica product liability practice.

He is AV-rated by Martindale-Hubbell and has been named to The Best Lawyers in America® and Mid-South Super Lawyers® for his work. Additionally, Meade is a graduate of the International Association of Defense Counsel Trial Academy and has chaired numerous committees for the American Bar Association and Mississippi Bar Association and serves as a Firm Representative for the Lex Mundi Legal Network.

Meade obtained his J.D. from the University of Mississippi and is admitted to the Mississippi State Bar and the U.S. Court of Appeals for the Fifth Circuit.