



## **BUSINESS SOLUTIONS ASSOCIATION**

### **Brand Guidelines and Best Practices BSA Guideline 13-14**

**Proposed Effective Date: January 1, 2015**

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#### **A. Purpose:**

The purpose of this specification is to establish a set of guidelines and best practices for brand representation and communications of brand online and in printed and visual material specifically when making brand comparisons, showing compatibility or references to other brands.

The guidelines and best practices apply to company brand related assets including content, logos, trademarks, phrases and in conjunction with product images.

Throughout the document the term brand is intended to apply to all types of brands including but not limited to corporate, umbrella or family brands; endorsed or sub-brands; and individual product brands and ingredient brands.

## B. Goals and Objectives:

The guidelines and best practices contained in this specification address:

- 1) How brands and sub brands are referenced in comparison to other brands and sub brands and to assure the content we provide is reasonable. The guidelines and standards included in this document are intended to limit misrepresentation or misuse of brands by non-owners to ensure clarity for consumers.
- 2) Establish clear communication to customers on the aspects of separate brand, including clarity on source and origin and assure that marketers use accurate terms or comparisons when referencing other brands.

These guidelines and best practices support the critical need for marketers to respect another marketer's copyrights and trademarks to avoid inappropriate representation. There are 3 specific areas of brand representation and communications referenced in this document:

- 1) Comparative
- 2) Compatibility
- 3) Ingredient/Formula

**1) Comparative advertising** is an advertisement in which a particular product, or service, specifically mentions a competitor by name for the express purpose of showing why the competitor is inferior to the product naming it. Comparative advertising, also referred to as 'knocking copy', is loosely defined as advertising where "the advertised brand is explicitly compared with one or more competing brands and the comparison is oblivious to the audience."<sup>[1]</sup>

The FTC and the National Advertising Division of the Council of Better Business Bureaus, Inc. (NAD), govern the laws of comparative advertising in the United States including the treatment of comparative advertising claims. FTC stated that comparative advertising could benefit consumers and encourages comparative advertising, provided that the comparisons are "clearly identified, truthful, and non-deceptive".<sup>[2]</sup>

Although comparative advertising is encouraged, NAD has stated "claims that expressly or implicitly disparage a competing product should be held to the highest level of scrutiny in order to ensure that they are truthful, accurate, and narrowly drawn."<sup>[3]</sup>

Another major law is the trademark protective [Lanham Act](#), which states that one could incur liability when the message of the comparative advertisement is untrue or uncertain, but has the intention to deceive consumers through the implied message conveyed.

**2) Compatibility claims** are statements made by one party that its products can be used with, or are compatible with, the goods of another party. For example, the

statement “Brand X parts work with Brand Y products” is a compatibility claim. Such claims are generally made to inform consumers about the purpose and uses of the product. It is important the claim be clear about the relationship between the brands, notably not imply association or endorsement of one brand by another if that association or endorsement does not exist. These differ from the more controversial comparative claims, which evaluate and compare two products by pointing out either the similarities or differences. The claim that “Brand X products are more efficient and last longer than Brand Y products” is an example of a comparative claim. These guidelines suggest that consideration be taken when stating controversial comparative claims and if such claims are made, empirical data exists to back up the claim in all cases.

**3). Ingredient Branding** is the brand policy (goals, strategies, instruments) concerning a branded object (necessary condition) of materials, components, or parts (raw materials, component materials, or component parts) that represents a brand for the respective target group (sufficient condition). <sup>[4]</sup>

Recognizing the proper use of the brand name when tied to product names is important to ensure any associated marks are used correctly and in the brand owner's specified placement as approved by the U.S. Patent & Trademark Office. For example, Quartet Matrix® is approved by the U.S. Patent & Trademark Office, and other versions where the registered mark might appear differently is not approved.

Any questions regarding proper usage of product brand or product names must be approved by the brand owner.

Practical Definitions:

*Wikipedia:* In [marketing](#), **ingredient-branding** is creating a [brand](#) for an ingredient or component of a product, to project the high quality or performance of the ingredient. Ingredient-branding takes a special position in marketing, as it cannot be clearly allocated to either [industrial](#) or consumer goods marketing. On the one hand, the consumer is the [end-user](#) of the ingredient, but at the same time is not part of the [buying decision](#) for the component, as this is up to the producer of the end product. On the other hand the producer will only decide on the usage of the ingredient - or at least take it into account in the communication policy - if the image of this ingredient will have an effect on the consumer, meaning a positive influence on his or her buying decision.

1. T.E Bary & R.L. Tremblay, “Comparative advertising: perspectives and issues”, *Journal of Advertising*, Vol. 4, No. 4, 1975, pp. 15-20.
2. J. E. Villafranco, “Devoted to Intellectual Property Litigation & Enforcement”, Wolters Kluwer Law & Business, Aspen Publishers, Vol. 16, No. 1, 2010, [http://www.kelleydrye.com/publications/articles/1335/res/id=Files/index=0/Villafranco\\_Law%20of%20Comparative%20Advertising%20in%20the%20US\\_010210.pdf](http://www.kelleydrye.com/publications/articles/1335/res/id=Files/index=0/Villafranco_Law%20of%20Comparative%20Advertising%20in%20the%20US_010210.pdf), viewed 2 September 2011.
3. **Jump up** A Sherwin-Williams Company, Report # 3988 ( NAD/CARU Case Reports December 2002), citing AT&T Broadband, Report # 3914 ( NAD/CARU Case Reports June 2002)
4. Baumgarth, Carsten (1998): Ingredient Branding – Begriff, State of the Art & empirical data, Working Paper, Department of Marketing University of Siegen, Siegen

### C. Related Information:

Businesses who advertise on the Internet must remember that many of the same rules that apply to other forms of advertising apply to electronic marketing. These rules and guidelines not only protect businesses and consumers, but they help the Internet maintain its credibility as an advertising medium. The Federal Trade Commission (FTC) has prepared a very detailed guide, the major points include:

- Advertising must tell the truth and not mislead consumers
- All claims must be substantiated

On the topic of General Offers and Claims for Products and Services:

The Federal Trade Commission Act allows the FTC to act in the interest of all consumers to prevent deceptive and unfair acts or practices. In interpreting Section 5 of the Act, the FTC has determined that a representation, omission, or practice is deceptive if it is likely to mislead consumers or affect consumers' behavior or decisions about the product or service.

In addition, an act or practice is considered unfair if the injury it causes, or is likely to cause, is:

- Substantial
- Not outweighed by other benefits or
- Not reasonably avoidable

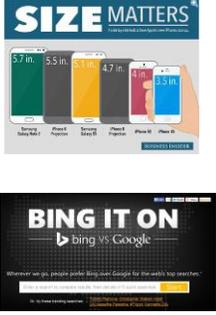
Reference: <http://www.sba.gov/content/best-practices-advertising-and-marketing-internet>

The Division of Advertising Practices protects consumers from unfair or deceptive advertising and marketing practices that raise health and safety concerns, as well as those that cause economic injury. It brings law enforcement actions in federal district court to stop fraudulent advertising practices, coordinates FTC actions with federal and international law enforcement agencies sharing authority over health and safety products and services, and monitors advertising and some marketing areas. The Division also brings administrative lawsuits to stop unfair and deceptive advertising.

The division includes specific enforcement priorities; it develops, reviews, and enforces a variety of consumer protection laws, regulations, and Guides, and coordinates and addresses current consumer protection issues with state, federal, and international law enforcement agencies, as well as with industry self-regulation groups.

Reference: <http://www.ftc.gov/about-ftc/bureaus-offices/bureau-consumer-protection/our-divisions/division-advertising-practices>

**D. Technical Specifications and recommendations:**

Best Practices and Elements of Consideration		
<p><b>Example of appropriate Comparison advertising:</b></p>	<p>FTC developed the Statement of Policy Regarding Comparative Advertising. Comparisons must not be misleading. Comparative advertising is appropriate where the comparisons are clearly identified, truthful, and non-deceptive.</p> <p>The National Advertising Division of the Better Business Bureau requires that “claims that expressly or implicitly disparage a competing product should be held to the highest level of scrutiny in order to ensure that they are truthful, accurate, and narrowly drawn”.</p>	
<p><b>Example of appropriate use of Compatibility claims:</b></p>	<p>With compatibility references it is important that source and origin of product are clear. Best practice is to lead with the brand of the manufacturer of the product being sold and ensures that endorsement by the manufacturer of the product subject to the compatibility claim is not implied when not appropriate.</p>	 <p><b>Innovera Remanufactured Toner Cartridge alternative for HP Q2612A(12A)</b></p>  <p><i>Oreck XL Vacuum Bags by 3M Filtrete</i></p>
<p><b>Ingredients/Formulas reference and artwork:</b></p>	<p>Ingredient branding increases awareness and communicates to a wide audience the benefits that products and services can provide.</p> <p>The product being included is called the “ingredient.” The product that incorporates the ingredient is called the “host.”</p>	

Reference / Sources	
<b>Sources for Additional Information</b>	<a href="http://www.ftc.gov">www.ftc.gov</a> - Federal Trade Commission <a href="http://www.sba.gov">www.sba.gov</a> - US Small Business Administration <a href="http://www.ama.org">www.ama.org</a> - American Marketing Association <a href="http://www.bbb.org/council/the-national-partner-program/national-advertising-review-services/national-advertising-division/">http://www.bbb.org/council/the-national-partner-program/national-advertising-review-services/national-advertising-division/</a> - National Advertising Division of the Better Business Bureau

### **E. Implementation**

Implementation of the guidelines for Brands will commence on January 1, 2015, or sooner.