Government Affairs

Advocating on behalf of consumer healthcare on the Hill and in the states

OTC Drug Advertising

Safe and effective over-the-counter (OTC) medicines—easily available to consumers without a prescription—play a vital and cost-effective role in the nation's healthcare system. The marketing of these drugs is subject to strict oversight by the U.S. Federal Trade Commission (FTC) which has a long history of enforcement against improper OTC drug advertising.

The Non-Prescription Drug Modernization Act of 2007 (H.R. 4083/S. 2311), introduced by Representative Henry Waxman (D-Calif.) and Senator Edward Kennedy (D-Mass.) in October 2007, instead would charge the U.S. Food and Drug Administration (FDA) with oversight of OTC medicine advertising.

Congress, however, should reject any effort to shift OTC advertising oversight from the FTC to FDA. FDA, however, is an already overwhelmed agency that does not have the resources to carry out this added responsibility. In contrast, the FTC is an active regulator with robust legal authority and an established infrastructure for continuing its vigorous enforcement of OTC drug advertising.

The numbers tell the story—over the past decade, the FTC has initiated more than 229 enforcement actions challenging false and misleading health and safety claims for products whose claims ranged from weight-loss to curing cancer. From April 2006 through August 2007, the FTC initiated or resolved 19 law enforcement actions involving 31 products allegedly making deceptive health claims.

The National Advertising Division (NAD) of the Council of Better Business Bureaus (CBBB) also maintains a vigorous advertising oversight program that frequently adjudicates challenges to OTC drug advertising. Between 2004 and 2007, the NAD adjudicated over ten challenges to advertising claims for OTC drugs such as wart removers, internal analgesics, athlete's foot treatments, anti-itch products, acne treatments, and cold and flu products.

Related link:

- CHPA position paper on the OTC drug provisions of the "Nonprescription Drug Modernization Act"

Federal Affairs Staff

Andrew Fish
Senior Vice President
Legal & Government Affairs

Allen Segal
Director, Federal Affairs

Justin Neumann
Manager, Federal Affairs