

Customer Complaints: Dealer Liability for False Advertising Claims

All dealers have experienced customers that complain about the equipment they purchased from you. Before you make a decision on how to respond, you will likely ask two questions: What is the right thing to do for the customer relationship? What is my liability if I can't satisfy the customer? If your decision is based on your liability to the customer, most of your attention will be focused on the warranty involved. For new equipment, the issue is whether the manufacturer will cover a claim and for used equipment, your liability often depends on whether or not the equipment was sold "AS-IS". But even though warranties are usually the place to start, a determined customer that believes he or she has been wronged may also look to another source of dealer liability: false advertising. In the right circumstances, a false advertising claim can create liability for you even in an AS-IS sale and even when you based your advertising on claims made by the manufacturer. Under the FTC Act and similar state laws found in many states, dealerships can be liable for false and misleading claims made in advertisements about the equipment you are selling. The general standard under the FTC Act is that all product claims must have a reasonable basis before the claim is made through advertising. The FTC has indicated that dealers may be liable for false advertising even if you are only using advertising or claims provided by your manufacturer. It is important to note that product claims that pose the most risk are specific claims about the performance or specifications of the equipment (e.g., horsepower). Subjective claims about performance like "superior performance" are often referred to as "puffery" and do not create a significant risk for a false advertising claim. **What can you do to protect yourself?**

- Check your dealer agreements. For new equipment issues, your best protection could be your dealer agreement. In this situation, if your manufacturer has agreed to indemnify you for the advertising materials it provides, promised you that the information is correct (or can be substantiated) or required you to use the advertising, you will likely have a claim against your manufacturer and these circumstances will hopefully motivate your manufacturer to get involved to either resolve the situation or reimburse you for your losses.
- Do not use product claims in your advertising. It will be difficult for a customer to make a false advertising claim if you simply refer to the equipment in your advertisement without making any other claims. Another way to protect yourself would be to simply refer a customer to the manufacturer website for more information. Even though this is not completely bullet proof, as long as you don't know the information on a manufacturer website is wrong, it will give you the ability to say that you are not the person responsible for making the claim about the equipment.
- Rely solely on the manufacturer's advertising. If your manufacturer gives you marketing materials, you can increase your chances of manufacturer indemnification by simply using and displaying the marketing materials provided.
- Get substantiation. You will normally have a defense against a false advertising claim if you can show you had a "reasonable basis" for making the claims in the advertising. This is often called "substantiation". Although it would be good practice to ask your manufacturer or supplier to provide substantiation in connection with any claims made, we recommend that you prioritize requests for substantiation relating to claims about new product lines or features or claims that are outside of the norm for equipment advertising.

As you know, it is impossible to please all customers and complaints are inevitable. But it is always advisable to put in place practices to help limit the chances of complaints that pose a risk of actual

liability and your advertising practices are no exception.