

Advertising Law Alert

The Brand Trophy Paradox: How to Market Brand Recognition and Avoid Legal Risk

02.05.2025 By [Kyle-Beth Hilfer](#) and [Avanthi M. Cole](#)

Brands are delighted to receive an award or a seal of approval. Marketing those trophies requires careful consideration of intellectual property and advertising law principles.



Types of Awards

Third-party industry watchdogs may reward a brand with an award, seal of approval, or beneficial ranking on a comparison website or through an independent certification program. In other instances, a company might self-certify that its product meets certain industry standards or requirements. Brands will often deploy these awards, designations, or certifications in marketing materials to help drive sales, build consumer trust, and elevate brand recognition.

Intellectual Property Considerations

When using logos or seals from a third party, businesses need to secure the necessary permissions to avoid potential infringement claims. Unauthorized use of a third-party seal that is a service mark or certification mark (whether or not registered) can lead to accusations of infringement, dilution, or false association, damaging the relationship between the brand and the certifying organization.

Similarly, businesses should ensure that they have authorization to use in marketing materials any copyrighted materials associated with the award, such as detailed written reviews, proprietary logos, or guidelines associated with the award.

FTC Guidelines on Endorsements

While brands may quickly realize that there are intellectual property considerations in referring to third-party awards, they should also consider the issue from an advertising law perspective. Lack of disclosure, unsubstantiated claims, or improper self-certification may lead to false advertising charges from the FTC or a challenge from a competitor.

First, a brand should develop its marketing materials considering the Federal Trade Commission's (FTC) [2023 Endorsement and Testimonial Guides and associated guidance](#) ("FTC Guidelines"). The FTC Guidelines emphasize the necessity to disclose to consumers "material connections" between the brand and an endorser. If a brand is incentivizing a third party—whether through payment, discounts, or other perks—to grant an award, the brand must disclose this relationship clearly and conspicuously in all marketing materials. The FTC highlights that this requirement is particularly crucial when a substantial portion of the audience may not be aware of or expect such a connection.

Second, brand endorsements from expert organizations must be supported by expertise. Brands should consider the background of a third party giving an award or certification to ensure there are sufficient objective standards or expert evaluations to support the award. Without such substantiation, the brand award may be seen as deceptive or unfair advertising. For example, a seal from an environmental group should be supported by recognized industry environmental standards, not merely a favorable assessment with no evidentiary support (16 CFR Part 260.2). Similarly, if a chiropractic association endorses a product, that endorsement should be based on a genuine chiropractic assessment, not just a paid promotion (16 CFR Part 255.4).

Third, marketers need to be aware of possible "dark pattern" accusations by a regulator or a consumer class action related to the third-party award. In recent years, the FTC and other state regulators have decried such deceptive practices that subtly influence or manipulate consumer behavior. These tactics can include using misleading visuals or confusing language to exaggerate the importance or meaning of a third-party award or to obscure the financial relationships behind an endorsement or certification. In particular, the basis for the third-party award should be commercially relevant to the consumer's use of the product in its typical use. Depending on how the award is used in marketing materials, the third-party award could be seen as a type of superiority claim relative to competitors. If the award or seal is relevant to a product attribute that does not demonstrate itself in typical consumer use, it may fail as substantiation for any implied superiority claim and create a valid claim of dark pattern marketing.

Third-Party Ranking Services and Comparison Websites

Another area of concern for businesses involves third-party ranking services and comparison websites, especially when financial incentives are at play. The FTC's guidelines provide detailed instructions on how to handle these scenarios.

If a business is paying a third-party ranking site for favorable placement, it must not create the

impression that the rankings are unbiased or objective. The FTC requires that consumers be informed about any financial ties that could affect the ranking of products or services.

In May 2020, the FTC issued an [order](#) against LendEDU, a website that compares financial products such as student loans, personal loans, and credit cards. LendEDU presented itself as an objective resource, but it was discovered that the company accepted payments from lenders, which led to higher rankings and ratings for those lenders on the company's website. The FTC's order prohibited LendEDU from misrepresenting the objectivity of its rankings and failing to disclose compensation-related influences.

If payments are influencing the rankings or recommendations, disclosing this information is mandatory. Such disclosures, however, even if clear and conspicuous, may not protect a business from accusations of deceptive practices. For instance, if a headphone review website accepts payments from headphone manufacturers to raise their products' rankings, the website's practices would be considered deceptive, even if the payment relationship is disclosed (16 CFR Part 255.4, Example 3). By contrast, for example, if a website operator receives payments from manufacturers for affiliate link referrals, such practices would not be considered deceptive provided the website operator clearly and conspicuously discloses that it receives payment when such link is used.

Self-Certifications: A Word of Caution

Self-certifications, namely company-created seals or awards, are another area where businesses must tread carefully. Unlike third-party certifications, self-certifications involve the company evaluating its own products. This practice can lead to regulatory scrutiny based on bias and accuracy concerns.

The FTC Guidelines underscore the importance of substantiation for self-certifications to avoid allegations of deceptive advertising if the company overstates the benefits or attributes of its products. Self-certifications and related marketing claims related to health, safety, or environmental impact are likely to face a high level of scrutiny. For instance, if a business advertises its product as "eco-friendly" or "organic" based on its own criteria, it must have concrete, scientific evidence to substantiate these statements.

The FTC's complaint against Moonlight Slumber, a baby mattress manufacturer in Illinois, highlights this problem. In December 2017, the FTC alleged that Moonlight Slumber's "Green Safety Shield" certification—a self-awarded label—was misleading. FTC asserted that the company's claims about the mattresses being organic and plant-based were unsupported. In addition, FTC highlighted that Moonlight Slumber had failed to disclose that the seal was the brand's own designation. Moonlight Slumber settled the charges and agreed to prohibitions against misleading representations. The settlement also required the brand to have competent and reliable evidence supporting its claims and to avoid misrepresenting any tests or study results. Finally, the settlement prohibited the company from disseminating misleading certifications or failing to disclose any material connection to an endorser. Accompanying these prohibitions, the brand agreed to five years of record-keeping and future investigation compliance.

By contrast, in November 2024, the Southern District of New York interpreted generously the FTC's "clear and conspicuous" standard for disclosures relating to a certification process for a green claim. [Dorris et al. v. Danone Waters of America](#). The Court found that Danone Waters of America ("Danone"), the producer of Evian water bottles, had not engaged in false advertising

by labeling Evian water as “carbon neutral.” Danone’s back label of Evian water bottles included a reference to Evian’s website with information about carbon neutrality and the standards and certification processes for its claim. The Court reasoned that those website disclosures were sufficient to mitigate concerns that consumers could have been misled at the point of sale. The case was fact-specific. Brands should not rely on website disclosures to clarify marketing claims on certifications.

Best Practices

Awards, rankings, and certifications can be powerful marketing tools, but businesses must exercise caution to ensure compliance with legal requirements and consumer expectations.

- **Obtain permission:** Ensure that any use of intellectual property is authorized or appropriately licensed.
- **Be clear and conspicuous:** Dark patterns can lead to significant penalties for a business, so clear and honest marketing is critical. Avoid using confusing language or otherwise misleading consumers.
- **Disclose material connections:** If the brand has a material connection to the issuer of the award (or has self-certified), such connection must be disclosed clearly and conspicuously. The FTC is particularly interested in material connections to third-party ranking services.
- **Support claim:** Ensure that any claims included in marketing materials can be supported with adequate evidence. In addition, all awards or certifications should relate to normal consumer use of a product.
- **Review for compliance:** Regularly review all marketing materials that include awards, rankings, or self-certifications to ensure compliance with FTC Guidelines. Additionally, ensure that employees who focus on marketing materials are trained on FTC requirements and the importance of clear and conspicuous disclosures.

By understanding the legal landscape and avoiding common pitfalls, companies can use third-party awards and self-certifications to their advantage without risking legal repercussions.

For further information, please contact [Kyle-Beth Hilfer](#), [Avanthi M. Cole](#), or your CLL attorney.

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Kyle-Beth Hilfer has over thirty years' experience providing legal counsel to advertising, marketing, promotions, intellectual property, and new media clients. Leveraging her deep understanding of branding, Kyle-Beth ensures regulatory compliance for her clients' advertising and marketing campaigns. She also helps clients create, monetize, and protect their trademark and copyright portfolios in a global marketplace.

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