ADVERTISING | INDUSTRY | LEGAL | PROFESSIONAL DEVELOPMENT

# When Networkers Compare Products and Opportunities

*Can network marketing distributors use a competitor's trademark in comparing the relative qualities of competitive goods or services without running afoul of trademark laws or unfair competition laws?*

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## Economic Marketplace vs. Legal Marketplace

The economic marketplace is not the only battleground for direct selling companies. Market share is also won and lost in the courts. Network marketing distributors and companies are busy with their daily lives of sales and recruitment, but they should be aware that, in the shadows of the market, the legal world, everyday disputes are being fought about how far one competitor can go in comparing their product or opportunity to another.

***It is not necessary for you to become a lawyer or expert, but you will be a better networker with a rudimentary understanding of the rules of comparative advertising.***

## Comparative Advertising: What Networkers Should Know

The federal Lanham Act is the weapon of choice in suits between competitors challenging unfair competition. It is used to challenge false claims and market confusion as to the source or origin or properties of products. The outcome of such litigation can produce a dramatic impact

on sales volume, product branding, customer acquisition and distributor recruitment.

Can networkers talk about competitors' products and opportunities as they market? The simple answer is that ***comparative advertising*** is "okay," but networkers need to know the rules of the "legal" road.

Every day we see it. On the TV screen and the billboards, Verizon and Sprint are challenging America to save money by switching from AT&T. Coke and Pepsi challenge each other in taste tests and car manufacturers challenge the effectiveness of each other's products. And direct selling companies, as well, dive into comparative advertising to solicit customers and distributors with comparisons of products and payouts in compensation plans. So, the question is can "in your face advertising" be utilized by network marketing companies and their distributors in chasing after competitors? Can network marketing distributors use a competitor's trademark in comparing the relative qualities of competitive goods or services without running afoul of trademark laws or unfair competition laws? The short answer is yes, if fair play is involved. But a true understanding of this important issue requires a longer explanation.

In 1910, the great justice Oliver Wendell Holmes wrote an opinion upholding the right of a seller of mineral water to use a competitor's trademark to tell the public he was selling identical mineral water:

> *They have the right to tell the public what they are doing, ... if they do not convey but, on the contrary, exclude, the notion that they are selling the plaintiff's goods, it is a strong proposition that when the article has a well known name, they have a right to explain by that name what they imitate.*

For example, it would be impossible for automakers to compare their products with the competition if they were forced to refer to the competition as "a large automobile manufacturer based in Michigan" as opposed to Ford.

> ***The cardinal rule, however, is:* A seller must make sure that the content of the comparative ads is entirely truthful.**

## Some Helpful Guidelines for Networkers and Advertising

Here are some constructive guidelines adopted by the television and advertising industries:

1. Be sure that the intent and connotation of the advertisement is to inform and never to discredit or unfairly attack competitors or competing products;
2. If a competitive product is named it should be one that is truly significant competition;
3. The competition should be fairly and properly identified, but not in a manner or tone of voice that degrades the competitor;
4. If the products and/or services are compared, the similar properties of the service or product should be compared dimension to dimension, feature to feature;
5. The identification of competition should be for honest comparison and not to upgrade by association;
6. If there is testing to be done, it should be done by an objective testing source, preferably an independent testing source; and
7. The competitor's trademark should not be used in a more prominent fashion than your own, as this could lead to confusion as to source or sponsorship.

## CONCLUSION

So, if you are a network marketer and you have a better product than your competitor, you have a right to make the consumer aware of this fact. You can use the name of your competitor in making the comparison in the advertising, but before making those comparisons, make sure that they are truthful and claims of superiority are substantiated. Good luck!

Visit www.mlmlegal.com to see much more on guidelines for Network Marketing and Advertising.

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On any given day you can catch Jeffrey Babener, Babener & Associates, lecturing on Network Marketing at the University of Texas or the University of Illinois, addressing thousands of distributors in Los Angeles, Bangkok, Tokyo and Russia, or writing a new

book on Network Marketing, an article for *Entrepreneur Magazine* or a chapter for a University textbook.

Over two decades he has served as marketing and legal advisor to some of the world's largest direct selling companies. An active spokesperson for the industry, he has assisted in new legislation and served on the Lawyer's Council and Government Relations Committee of the Direct Selling Association (DSA) as well as serving as General Counsel for the Multilevel Marketing International Association.

He is an MLM attorney supplier member of the DSA and has served as legal counsel and MLM consultant on MLM law issues for many DSA companies. He has chaired more than 50 national conferences on the subject of “Starting and Running the Successful MLM Company”. He is editor of one of the most informative and popular websites on Network Marketing, Direct Selling and MLM, www.mlmlegal.com.