Insights: Alerts

T-Mobile NAD Challenge of Charter Advertising Results in Referral to FTC Upon Charter Declining to Participate

MARCH 27, 2024 Written by Bryan J. Wolin

The National Advertising Division ("NAD") has referred two advertising claims made by Charter Communications to the Federal Trade Commission (FTC) after Charter declined to participate in self-regulatory challenges to those claims filed by T-Mobile.

T-Mobile provides, among other things, home internet connection through its 5G Home Internet ("T-HINT") product, while Charter sells competing home internet service. T-Mobile challenged advertising claims made by Charter that T-HINT "is too slow to use because it is 'blocked' by a home's walls" and that T-HINT is "Cell Phone Internet." In a commercial broadcast during Super Bowl LVIII, Charter depicted a family that had to smash holes in the walls of their home to achieve better internet connectivity because they subscribed to T-HINT. T-Mobile alleged that the commercial included an unsubstantiated implied claim that T-HINT customers will "experience slow speeds" due to T-HINT signals being blocked by walls and overstated T-HINT's actual limitations.

T-Mobile also argued that Charter's claim that T-HINT is "Cell Phone Internet" was expressly false because T-HINT differs from cellular internet service. T-Mobile submitted several arguments including that T-HINT is a dedicated home internet service that offers a "more consistent performance" and provides unlimited data for "multiple connected devices in the customer's home."

Charter declined to respond to the T-Mobile challenges and declined to participate at all in the NAD self-regulatory process with respect to these claims.

Due to Charter's refusal to participate, the NAD will refer both claims to the FTC and other "appropriate regulatory authorities." In addition, the NAD will also ask the platforms that host the challenged claims (e.g., YouTube and social media platforms) to "review the advertising" to assess whether "it is consistent with platform advertising standards or policies."

As these decisions make clear, while the NAD is technically a voluntary forum where decisions are mere recommendations, declining to participate can lead to potentially worse outcomes than simply losing a challenge —including inviting close scrutiny from governmental authorities that do have substantial enforcement powers. We will be monitoring to see if any of these agencies, or the platforms hosting Charter's ads, take further action to curtail the challenged claims.

If you have any questions or concerns about advertising challenges at the NAD, or any advertising claims, please feel free to contact us. Kilpatrick's Advertising and Marketing team

Related People



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