

**§255.5 Disclosure of material connections.**

When there exists a connection between the endorser and the seller of the advertised product which might materially affect the weight or credibility of the endorsement (i.e., the connection is not reasonably expected by the audience) such connection must be fully disclosed. An example of a connection that is ordinarily expected by viewers and need not be disclosed is the payment or promise of payment to an endorser who is an expert or well known personality, as long as the advertiser does not represent that the endorsement was given without compensation. However, when the endorser is neither represented in the advertisement as an expert nor is known to a significant portion of the viewing public, then the advertiser should clearly and conspicuously disclose either the payment or promise of compensation prior to and in exchange for the endorsement or the fact that the endorser knew or had reasons to know or to believe that if the endorsement favors the advertised product some benefit, such as an appearance on TV, would be extended to the endorser.

*Example 1:* A drug company commissions research on its product by a well-known research organization. The drug company pays a substantial share of the expenses of the research project, but the test design is under the control of the research organization. A subsequent advertisement by the drug company mentions the research results as the "findings" of the well-known research organization. The advertiser's payment of expenses to the research organization need not be disclosed in this advertisement. Application of the standards set by Guides 3 and 4 provides sufficient assurance that the advertiser's payment will not affect the weight or credibility of the endorsement.

*Example 2:* A film star endorses a particular food product. The endorsement regards only points of taste and individual preference. This endorsement must of course comply with §255.1; but even though the compensation paid the endorser is substantial, neither the fact nor the amount of compensation need be revealed.

*Example 3:* An actual patron of a restaurant, who is neither known to the public nor presented as an expert, is shown seated at the counter. He is asked for his "spontaneous" opinion of a new food product served in the restaurant. Assume, first, that the advertiser had posted a sign on the door of the

restaurant informing all who entered that day that patrons would be interviewed by the advertiser as part of its TV promotion of its new soy protein "steak". This notification would materially affect the weight or credibility of the patron's endorsement, and, therefore, viewers of the advertisement should be clearly and conspicuously informed of the circumstances under which the endorsement was obtained.

Assume, in the alternative, that the advertiser had not posted a sign on the door of the restaurant, but had informed all interviewed customers of the "hidden camera" only after interviews were completed and the customers had no reason to know or believe that their response was being recorded for use in an advertisement. Even if patrons were also told that they would be paid for allowing the use of their opinions in advertising, these facts need not be disclosed.

[Guide 5]

[45 FR 3873, Jan. 18, 1980]

## PART 256—GUIDES FOR THE LAW BOOK INDUSTRY

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AUTHORITY: 38 Stat. 717, as amended; (15 U.S.C. 41-58).

SOURCE: 40 FR 33436, Aug. 8, 1975, unless otherwise noted.

**§ 256.0 Definitions.**

(a) *Industry product.* Any law book, case book, publication, series, service, law research materials, supplements and other printed materials of similar nature as well as materials appearing in microform, film, tape or other nonprint format designed primarily for use by members of the law profession and by law schools, excluding second-hand or used law materials.

(b) *Treatise or text.* An exposition—critical, evaluative, interpretive or informative—which analyzes one or more areas of the law. Generally, a legal treatise is more exhaustive in scope than an encyclopedia, and is considered a secondary aid.

(c) *Set.* A group of books published as a unit by virtue of such unifying characteristics as common authorship, editorship, relevance, or subject.

(d) *Series.* A number of separate works or sets, usually related to one another in subject or otherwise, issued in succession, normally by the same publisher or in uniform style, with a collective title.

(e) *Looseleaf (binder).* A law book or series of law books that consist of ring or post-bound (compression-type) binders used to hold separate looseleaf sheets as opposed to the bound book format wherein pages are permanently attached to the binder.

[40 FR 33436, Aug. 8, 1975; 40 FR 36116, Aug. 19, 1975]

**§ 256.1 General disclosures.**

Direct-mail promotional materials<sup>1</sup> or oral representations soliciting the sale of specific industry products should clearly and conspicuously disclose:

- (a) Name and address of publisher;

<sup>1</sup>Where the direct-mail advertising of specific industry products consists of a promotional package containing more than one advertising piece (e.g., a brochure and/or cover letter, order form, and/or reply card), the disclosures required by §§ 256.1–256.3, 256.5–256.8 and 256.17 must appear clearly and conspicuously in the place where they are most likely to be noticed, on at least one piece of the promotional advertising package.

(b) Full title including any sub-titles, and edition name or number if not the first;

(c) Surname and given name or initials of authors, editors or compilers or designate if authored, edited or compiled by publisher's editorial staff;

(d) Latest copyright date and whether supplemented; or in the event of a looseleaf or post-bound (compression-type) publication, other appropriate identification of currency (latest copyright date not necessary for open-ended, ongoing type works such as reports and digests);

(e) In the case of a reprint by other than the original publisher, the publisher and copyright date of the original work, name and address of the reprint publisher and reprint dates;

(f) Whether part of a set or series and, if so, the full title of said set or series;

(g) Where the title of the advertised industry product is general, when in fact coverage therein is more limited than the title implies, a synoptic description of the limited coverage of subject matter, except in cases where chapter headings are listed and adequately reflect the limited subject matter;

(h) Type of binding (e.g., permanently bound with pocket parts, looseleaf including post-bound, compression-binder type or paperback);

(i) Where the price of the industry product appears, a description of what the price includes (e.g., the number of volumes in a set) and whether there are any extra charges such as postage, handling, shipping or other surcharges. [Guide 1]

**§ 256.2 Disclosures relative to supplementation.**

Direct mail promotional materials or oral representations soliciting the sale of specific industry products should, where an industry product is being supplemented, or supplementation is being contemplated, clearly and conspicuously disclose:

- (a) The general type of supplementation currently being supplied, a description of what is included in that supplementation (e.g., pocket part supplements [bound, unbound or pamphlet type], replacement pages, cumulative

supplements, revised volumes, split volumes, replacement volumes), and the anticipated frequency of supplementation (e.g., annually or monthly);

(b) Any charge for the latest pocket parts or supplements, and the clearly identified period of time within which supplementation will be supplied without additional charge;

(c) The specific nature of any offer of credit or discount for supplements in connection with the original purchase, and the clearly identified period of time for said offer;

(d) Whether supplementation to the industry product has been abandoned, or is knowingly to be abandoned within 1 year after issuance of the solicitation, and the date or approximate date for abandonment of supplementation;

(e) Minimum supplementation cost for each of the past 2 calendar years, or such shorter period in which the publication has been available. [Guide 2]

### §256.3 Disclosures relative to texts and treatises.

Direct-mail promotional materials or oral representations soliciting the sale of specific texts and treatises should clearly and conspicuously disclose:

(a) For a multivolume set the number or estimated number of volumes which are anticipated to complete the set, and the estimated publication schedule;

(b) Where offer is of a set, a general description of subjects covered under said set title;

NOTE: Industry member should clearly indicate general scope of the work, e.g., set may be titled *Encyclopedia of Hawaiian Law*. If the work is not a full encyclopedic treatment of Hawaiian law, it should be disclosed that it covers only certain areas which are to be clearly identified.

[Guide 3]

### §256.4 New revisions or replacement sets or series.

Where a publisher sells an industry product whose replacement or substantial revision is scheduled to be offered for sale within 1 year following the date of sale of the precursor work, such publisher should notify the purchaser, prior to consummating the sale, that the industry product will be replaced

or revised and the approximate date of such replacement or revision. If the purchaser has not been so notified, the publisher should offer to the purchaser either:

(a) Full refund for the obsolete work within the 1 year period, less reasonable charges for the period of use of the work, or

(b) Full credit on the obsolete work within the 1 year period towards purchase of the new work, less reasonable charges for the period of use of the obsolete work.

NOTE: This section does not apply when the publisher continues full supplementation of the precursor set or series.

[Guide 4]

[40 FR 33436, Aug. 8, 1975; 40 FR 36116, Aug. 19, 1975]

### §256.5 Representations, express or implied, describing a work as "new", "current" or "up-to-date".

No direct-mail promotional materials or oral representations soliciting the sale of specific industry products should:

(a) Expressly or impliedly represent that the industry product is new when said industry product was first distributed more than 18 months prior to the time of the offer or dissemination of the advertisement (some examples, but not all inclusive, of terms suggesting new publications are: "Announcing", "newly revised", "New 8th Edition", "Up-to-date", "New");

(b) Represent an industry product as current or up-to-date unless the work itself, or the supplementation thereto, is current or up-to-date, considering the amount and nature of legal activity in the particular area of law covered on the date of issuance of the advertisement; but in no event should any representation be made that the industry product is current or up-to-date when either the copyright date, printing date or end of coverage date for supplementation of such industry product is more than 18 months from the date of issuance of the advertisement.

NOTE: Some areas of the law and thus some works may require monthly supplementation to be considered current while others may be

## § 256.6

kept sufficiently current by annual or, in exceptional cases, even less frequent supplementation. In some exceptional cases, for example, where legislatures only meet on a biannual basis, supplementation based thereon may be designated as current and up-to-date.

[Guide 5]

[40 FR 33436, Aug. 8, 1975; 40 FR 36116, Aug. 19, 1975]

### **§ 256.6 Disclosures relative to misleading titles of texts and treatises.**

Direct-mail promotional materials or oral representations soliciting the sale of specific texts or treatises should clearly and conspicuously disclose:

(a) Where a title contains the name of a person who did not author or edit or only partially authored or edited the actual texts or treatises, the names of authors or editors who contributed substantial parts of an industry product. The names of such authors or editors should appear at least once in immediate conjunction with the title where it most prominently appears in the advertisement;

(b) Other or prior titles and last copyright date where the advertised industry product or substantially the same industry product is or was published separately and/or as part of a set or as part of two or more sets, under identical or different titles (e.g., "Smith on Mortgages" is also published as Volume 9 of "The Symposium on Real Property Law" (1980); or \* \* \* Smith on Mortgages is substantially the same book as \* \* \* or is based on \* \* \* or is composed of material also found in \* \* \* Volume 9 of "The Symposium on Real Property Law" (1980) [or words to that effect]);

(c) Other or prior titles and last copyright date where the industry product or substantially the same industry product is or was published elsewhere and/or in another format under identical or different titles (e.g., "Brown on Leases," Revised Edition, published under the title of "Landlord & Tenant" (1980); or "Brown on Leases," Revised Edition, is composed primarily of materials from Landlord & Tenant (1980) [or words to that effect]);

(d) The identity of any sources, by title and last copyright date or other

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identification of currency, where the material in the industry product is substantially extracted from such sources [e.g., chapter 1 of this book is based on the author's article in "97 Harvard Law Review 283" (1980)];

(e) For 5 years after issuance of a revision or a new edition of another title, the original title and last copyright date or other identification of currency of the precursor industry product.

NOTE: Where an industry product is composed of innumerable, short excerpts from other sources, such as a lawyer's desk aid and lawyer's almanac, then disclosure that the work is such a compilation will suffice without identifying all sources of the material therein.

[Guide 6]

### **§ 256.7 Representations relative to works not yet published.**

Representations soliciting the sale of specific industry products should not expressly or impliedly hold out a publication as having been printed or published at the time of the offer when such is not the fact. Solicitations relative to works not yet published should clearly and conspicuously disclose that the publication is being planned or contemplated and that inquiries or orders are being solicited to determine demand for the publication, or words to that effect. [Guide 7]

### **§ 256.8 Representations relative to jurisdictional designations.**

Representations soliciting the sale of an industry product should not expressly or impliedly describe such product as being designed for a particular jurisdiction unless the contents of said industry product are designed primarily for and contain significant amounts of materials for use in the jurisdiction so designated. Nor should the promotional materials for an industry product have a designation or title that expresses or implies that a broader or more general jurisdiction is covered when in fact the industry product is designed primarily for a jurisdiction more limited in scope (e.g., "The New Rules of Evidence" is actually a work which applies to new evidence rules enacted in one State only). [Guide 8]

**§ 256.9 Catalogs.**

Catalog listings and descriptions of law publications should conform to §§ 256.1 to 256.3, 256.5 to 256.8, and 256.17 of this part, and such catalogs should clearly and conspicuously disclose the printing or coverage dates on the front cover. [Guide 9]

**§ 256.10 Subscription renewal notices.**

(a) A subscription renewal notice for industry products should not be sent to any person, firm, library, or entity, where the recipient thereof is not currently subscribing to the industry product to which the renewal notice refers or relates.

(b) A subscription renewal notice should clearly designate the number of the notice (e.g., "First Renewal Notice" or "Second Renewal Notice"). [Guide 10]

**§ 256.11 Disclosures on publications.**

Texts or treatises, separately published or published in sets or series, should clearly and conspicuously disclose on the title page or pages, half title page and/or verso of title page:

(a) Full title of the book, including any sub-titles;

(b) If part of a set or series, the title of same;

(c) The number of the edition if not the first;

(d) For 5 years after issuance of a revision or a new edition of another title, the original title and last copyright date or other identification of currency of the precursor industry product;

(e) Unambiguous identification of authors, editors or compilers; or whether authored, edited or compiled by the publisher's editorial staff. However, if authors, editors or compilers are listed in the table of contents or credits, this paragraph need not apply;

(f) Name, city and State of publisher;

(g) Where the industry product or substantially the same industry product is or was published separately or as part of one or more sets under identical or different titles, or is or was published in various places or formats under identical or different titles, the prior titles and the place and date of previous publication. However, if such disclosures appear in the table of con-

tents or credits, this paragraph need not apply;

(h) When the industry product is substantially extracted from other sources, the identity of sources by titles and copyright dates unless such disclosures appear in the table of contents or credits;

(i) Where the title contains the name of a person who did not author or edit, or only partially authored or edited the industry product, the names of authors, editors or publisher's editorial staff who contributed substantial parts of the industry product, and such disclosures should appear on the title page in conspicuous type or print. [Guide 11]

[40 FR 33436, Aug. 8, 1975; 40 FR 36116, Aug. 19, 1975]

**§ 256.12 Jurisdictional designations of publications.**

No industry product should be titled with a jurisdictional designation (e.g., "Maryland Edition"; or "Montana Real Estate Law") unless the contents of said industry product are designed primarily for and contain significant amounts of material for use in that jurisdiction. Nor should an industry product have a title which expresses or implies that a broader or more general jurisdiction is covered when in fact the industry product is designed primarily for a jurisdiction more limited in scope (e.g., "The New Rules of Evidence" is actually a work which applies to new evidence rules enacted in one State only). [Guide 12]

**§ 256.13 Disclosures on supplements.**

Supplements issued to industry products should clearly and conspicuously disclose:

(a) On title page or verso of pocket parts and of stapled or bound supplemental units and on cover page or pages or their versos for replacement or supplemental pages:

(1) Full title of the industry product; and where part of a set or series, title of said set or series;

(2) Surname and given name of authors, editors or compilers of the titled industry product or if prepared by the publisher's editorial staff;

(3) Surname and given name of authors, editors or compilers of supplement if different from that of the titled book;

(4) Coverage date or date of issuance for the supplement.

(b) On each replacement sheet, the month and year of issuance. [Guide 13]

#### § 256.14 Upkeep service.<sup>2</sup>

Prior to the formation of any contract, or other agreement, whether written or oral, for the purchase of industry products containing provisions for subsequent automatic shipment of materials for upkeep purposes, the seller should:

(a) Clearly and conspicuously define the nature and extent of basic upkeep service. Basic upkeep service should include only those parts of upkeep which are absolutely essential and without which a set cannot remain functional (this might include such parts as pocket part supplements, replacement pages, releases and inserts, advance sheets, and replacement, revised, recompiled or split volumes); and

(b) Make available for purchase such basic upkeep service on an automatic shipment basis without requiring the purchase of other additional upkeep services whether on an automatic basis or otherwise.

<sup>2</sup>Upkeep service is also sometimes referred to as "Standing Order", "Continuations", "Subscription", or "Subscription Upkeep".

Once a customer invests in a work, his investment serves as a compelling factor in his decision of whether or not to continue future upkeep. Financial practicality and limited choices offered by sellers of particular types of works in a heavily concentrated industry tend to keep the buyer confined to the work in which he has already invested; therefore, the buyer will not or is reluctant to switch to a competitive work (if there is one) when he cannot purchase the type of upkeep he wants or needs.

Customers have varied needs and wants relating to upkeep. For example, the customer may want to enter his subscription or order for automatic upkeep of supplements (i.e., pocket part supplements, replacement pages, releases, inserts), advance sheets, replacement, revised, recompiled or split volumes, but he may want to be notified of and given the opportunity to order any additional, companion or related volumes, series or sets, new editions, or any related titles.

NOTE 1: Nothing in this section is meant to preclude a seller from offering to buyers the option of ordering and receiving all parts of upkeep on an automatic basis, including basic supplementation and all other extra parts of supplementation, or any other method of upkeep such as alternate year supplementation, as long as other requirements of this section are met.

NOTE 2: The purpose of this section is to furnish the seller and buyer with a clear understanding of what is being ordered. There has been dissension and confusion in the law-book industry as to what constitutes upkeep service and as to what the customer expects to receive or thinks he ordered under the upkeep provision, and as to which parts or units of the upkeep service the customer considers necessary or unnecessary for his particular requirements.

NOTE 3: Where a customer chooses to purchase individual parts of the upkeep service on a non-automatic basis [see paragraph (b) of this section], the total price for each part so ordered should not exceed the cost of such parts when ordered automatically [see Note 1 of this section], unless any increased charges are based upon the actual increased costs to the seller directly attributable to such sale and/or delivery.

NOTE 4: The Federal Trade Commission Act will be enforced in accordance with Section 3009 of the Postal Reorganization Act which designates that "(a) \* \* \* the mailing of unordered merchandise or of communications prohibited by paragraph (c) of this section constitutes an unfair method of competition and an unfair trade practice. \* \* \*

"(b) Any merchandise mailed in violation of paragraph (a) of this section, or within the exceptions contained therein, may be treated as a gift by the recipient, who shall have the right to retain, use, discard, or dispose of it in any manner he sees fit without any obligation whatsoever to the sender. All such merchandise shall have attached to it a clear and conspicuous statement informing the recipient that he may treat the merchandise as a gift to him and has the right to retain, use, discard, or dispose of it in any manner he sees fit without any obligation whatsoever to the sender.

"(c) No mailer of any merchandise mailed in violation of paragraph (a) of this section, or within the exceptions contained therein, shall mail to any recipient of such merchandise a bill for such merchandise or any dunning communications."

[Guide 14]

#### § 256.15 Billing practices.

(a) Sellers of industry products should notify all customers in a clear and conspicuous manner:

(1) To mark conspicuously their account numbers (if any) or other appropriate identifying data on all correspondence and payments, including checks, sent by customers to the seller;

(2) That, upon request for clarification of an account, any customer may receive a statement of accounts, showing each purchase, payment or credit itemized for the current or all pertinent, preceding months;

(3) That, where the seller can apply payments to specific items under its billing procedures, to indicate or identify to the seller or payee the item or items to which any payment is to be applied.

(b) The publisher or seller of industry products should:

(1) When receiving communications showing account numbers, have the responsibility of applying all correspondence and payments to the correct account, and where there is any question, notify the customer before entering the pertinent data into the computer system;

(2) Provide a statement of accounts when requested by the customer;

(3) Where seller can apply payments to specific items under its billing procedures, apply payments or credits as designated by the buyer or payor.

(c) The seller of industry products, in oral or written communications with the buyer, should not use fictitious names, but should use names of live persons who are actively participating in the business.

(d) Billing statements to purchasers of industry products should show:

(1) Date and customer's account number, if any;

(2) Invoice numbers or, where items are listed, a clear and readable description of each item or unit. If abbreviations are used which are not readily understandable, the statement should have thereon or attached thereto a clear interpretation of said abbreviations (e.g., a table);

(3) A price for each item, or invoice totals, or the total of invoice totals;

(4) Penalty, interest, or carrying charges, if any, clearly and separately identified;

(5) Purchases sent on approval, if any, clearly and separately identified.

(e) All industry product invoices should:

(1) Be dated, numbered or adequately identified, and should show customer's account number, if any;

(2) Show a clear and readable description of each item or unit. If abbreviations are used which are not readily understandable, the invoice should have thereon or attached thereto a clear interpretation of said abbreviations;

(3) Show a price for each item, and clearly state terms of sale and amount of discount, if any;

(4) Clearly show the time period for approval orders, by showing specific opening and termination dates.

NOTE: This section is meant to suggest some basic information that should be provided for the billing process although the seller may prefer to use some other system or method which furnishes essentially the same information as provided by this section. Further, this section does not relieve an industry member of his responsibilities to comply with the Fair Credit Billing Act, 15 U.S.C. 1601, and law book sellers should note with particularity section 161 of that Act dealing with "Correction of Billing Errors".

[Guide 15]

**§ 256.16 Added materials—germane subject matter.**

The adding of volumes or other materials, the overall content of which is not substantially germane to the subject matter of the basic work, constitutes an unfair trade practice.

[Guide 16]

**§ 256.17 Misrepresentations (general).**

An industry product should not be advertised, published or otherwise represented in any manner which may have the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers concerning the grade, quality, material, size, contents, authorship, editorship, use, value, price, origin, preparation, manufacture or date of publication or copyright of any industry product or of any supplementation thereto, or the current or up-to-date character thereof, or concerning any service offered in connection therewith, or in any other material respect. [Guide 17]

NOTE. If a fixed fee per period is charged for a current topic reporting upkeep service which is supplemented monthly or more frequently, §§256.2, 256.3, 256.13(a) and 256.14 do not apply.

## PART 259—GUIDE CONCERNING FUEL ECONOMY ADVERTISING FOR NEW AUTOMOBILES

Sec.

259.1 Definitions.

259.2 Advertising disclosures.

AUTHORITY: 15 U.S.C. 41–58.

### §259.1 Definitions.

For the purposes of this part, the following definitions shall apply:

(a) *New automobile*. Any passenger automobile or light truck for which a fuel economy label is required under the Energy Policy and Conservation Act (42 U.S.C. 6201 *et seq.*) or rules promulgated thereunder, the equitable or legal title to which has never been transferred by a manufacturer, distributor, or dealer to an ultimate purchaser. The term *manufacturer* shall mean any person engaged in the manufacturing or assembling of new automobiles, including any person importing new automobiles for resale and any person who acts for and is under control of such manufacturer, assembler, or importer in connection with the distribution of new automobiles. The term *dealer* shall mean any person, resident or located in the United States or any territory thereof, engaged in the sale or distribution of new automobiles to the ultimate purchaser. The term *ultimate purchaser* means, for purposes of this part, the first person, other than a dealer purchasing in his or her capacity as a dealer, who in good faith purchases such new automobile for purposes other than resale, including a person who leases such vehicle for his or her personal use.

(b) *Estimated city mpg*. The gasoline consumption or mileage of new automobiles as determined in accordance with the city test procedure employed and published by the U.S. Environmental Protection Agency as described in 40 CFR 600.209–85 and expressed in miles-per-gallon, to the nearest whole mile-per-gallon, as measured, reported,

published, or accepted by the U.S. Environmental Protection Agency.

(c) *Estimated highway mpg*. The gasoline consumption or mileage of new automobiles as determined in accordance with the highway test procedure employed and published by the U.S. Environmental Protection Agency as described in 40 CFR 600.209–85 and expressed in miles-per-gallon, to the nearest whole mile-per-gallon, as measured, reported, published, or accepted by the U.S. Environmental Protection Agency.

(d) *Vehicle configuration*. The unique combination of automobile features, as defined in 40 CFR 600.002–85(24).

(e) *Estimated in-use fuel economy range*. The estimated range of city and highway fuel economy of the particular new automobile on which the label is affixed, as determined in accordance with procedures employed by the U.S. Environmental Protection Agency as described in 40 CFR 600.311 (for the appropriate model year), and expressed in miles-per-gallon, to the nearest whole mile-per-gallon, as measured, reported or accepted by the U.S. Environment Protection Agency.

(f) *Range of estimated fuel economy values for the class of new automobiles*. The estimated city and highway fuel economy values of the class of automobile (e.g., compact) as determined by the U.S. Environmental Protection Agency pursuant to 40 CFR 600.315 (for the appropriate model year) and expressed in miles-per-gallon, to the nearest whole mile-per-gallon.

[60 FR 56231, Nov. 8, 1995]

### §259.2 Advertising disclosures.

(a) No manufacturer or dealer shall make any express or implied representation in advertising concerning the fuel economy of any new automobile<sup>1</sup> unless such representation is accompanied by the following clear and conspicuous disclosures:

(1) If the advertisement makes:

<sup>1</sup>The Commission will regard as an express or implied fuel economy representation one which a reasonable consumer, upon considering the representation in the context of the entire advertisement, would understand as referring to the fuel economy performance of the vehicle or vehicles advertised.