TABLE OF CONTENTS

CHAPTER 1

Introduction

§ 1.01	Introduction to Advertising.	1-2
§ 1.02	Defining False Advertising: The Twin Pillars	1 7
	of Falsity and Substantiation	1-5
	[1] Falsity	1-5
	[a] Non-Actionable Statements	1-5
	[b] Literal and Implied	
	Falsehoods	1-6
	[c] Establishment Claims	1-8
	[2] Substantiation	1-8
	[a] Prior Substantiation	1-8
	[b] Reasonable Basis	1-9
	[c] Endorsements and Testimonials	1-9
	[d] Other Types of Claims	1-10.1
§ 1.03	The Role of Disclaimers in	
	Advertising Law	1-11
	[1] Effective and Ineffective Disclaimers	1-11
	[2] Required Disclosures	1-12
§ 1.04	The Role of Consumer Surveys in	
3	Advertising Law	1-14
	[1] The Elements of Reliable Survey	
	Design	1-15
	[2] Criticizing the Survey	1-17
§ 1.05	The Impact of Other Intellectual Property	1 17
3 1.00	Regimes on Advertising Law	1-19
	[1] Trademarks	1-19
	[2] Copyrights.	1-19
	[3] Rights of Publicity	1-20
	[3] Rights of Privocy	1-21
e 1.06	[4] Rights of Privacy	1-21
§ 1.06	Rules, Regulations, and Guidelines for Particular	1 22
	Special Kinds of Advertising	1-23
	[1] Sweepstakes and Contests	1-23

viii	THE LAW OF ADVERTISING	
	[2] Direct Marketing	1-24
	[3] Online Advertising	1-25
0 1 07	[4] Other Special Advertising Issues	1-26
§ 1.07	The Procedures Governing Advertising Claims	1-28
	[1] The FTC	1-28
	[2] Private Actions	1-29
	[3] Self-Regulation	1-30
	[4] Television Networks	1-30
§ 1.08	The Remedies for False Advertising	1-31
	[1] Preliminary Injunctive Relief	1-31
	[2] Money Damages	1-32
	[3] Costs and Attorneys' Fees	1-33
	CHAPTER 2	
	False, Unfair or Deceptive Advertising	
§ 2.01	Introduction	2-2
§ 2.02	Definition of False, Unfair or Deceptive	
	Advertising	2-3
	[1] False Statement of Fact v. Protected	
	Statement of Opinion	2-4
	[2] Advertising, Promotion and Commercial	2.0
	Speech	2-9
	[3] Likely to Mislead	2-19 2-19
	[a] The Credulous Consumer [b] The Reasonable Consumer	2-19
	[c] The Sophisticated Consumer	2-24.1
	[d] A "Not Insubstantial Number"	∠ - ∠ ¬,1
	of Consumers	2-25
	[e] Knowledge and Intent	2-28
	[4] Materiality	2-30.1
	[5] "Unfair"	2-36
§ 2.03	Evaluating Advertising Claims in the Context	
	of the Advertisement	2-40
§ 2.04	False Express Claims	2-44
§ 2.05	False Implied Claims	2-51
§ 2.06	Determining the Nature of the Claim	2-53
§ 2.07 § 2.08	False Comparative Claims	2-56 2-60
§ 2.08 § 2.09	False Comparative Claims False Demonstrations and	2-00
8 2.09	Dramatizations	2-64.1
§ 2.10	Omissions as False Claims.	2-66.1
3 =	[1] Lanham Act	2-66.1

	TABLE OF CONTENTS	ix
	[2] FTC	2-68
	[3] State Laws	2-69
§ 2.11	Humor and Parody	2-72
§ 2.12	Puffery	2-74
3 2.12	[1] General Claim.	2-77
	[2] Incapable of Measurement	2-81
	[3] Presented as Subjective Statement	2-81
	·	2-03
		2-86
	Consumers	2-80
	CHAPTER 3	
	Claim Substantiation	
§ 3.01	Introduction	3-3
§ 3.02	Overview of Substantiation Requirements	3-4
	[1] The Prior Substantiation Requirement	3-4
	[2] The "Reasonable Basis" Requirement	3-6
	[a] Establishment Claims	3-7
	[b] Non-Establishment Claims	3-9
	[c] Puffery	3-10
§ 3.03	Recurring Issues with Scientific Studies and	
O	Survey Evidence	3-11
	[1] Industry Standard Tests and Non-Standard	
	Proprietary Testing	3-12
	[2] Test Design and Protocol	3-14
	[3] Statistical Significance	3-20
	[4] Proper Sample Size	3-22
	[5] Survey Evidence	3-23
	[6] Relying on Third-Party Testing	3-25
	[a] Government-Mandated Testing	
	and Regulatory Approval	3-25
	[b] Good Housekeeping Testing	3-26
	[c] Consumer Reports Testing	3-28
8 3 04	Substantiating Endorsement and Testimonial	<i>2</i> 2 0
3 3.0 .	Claims	3-29
	[1] Endorsement Claims.	3-29
	[a] Expert Endorsement Claims	3-32.1
	[b] Organizational and Endorsement	5 52.1
	Claims	3-33
	[2] Claims That a Product or Service	5-55
	is "Preferred"	3-35
	[3] Claims That a Product or Service	5-55
	is "Recommended"	3-36
		3-30 3-39
	[4] Consumer Testimonial Claims	3-39

§ 3.05	Substantiating Claims for FDA-Regulated	
	Products (Other than Food and	
	Dietary Supplements)	3-43
	[1] Prescription Drugs	3-43
	[2] Over-the-Counter Drugs	3-44
	[3] Medical Devices	3-46
	[4] Cosmetic Products	3-48
§ 3.06	Substantiating Claims for Food and Dietary	
	Supplements	3-53
§ 3.07	Substantiating Quality and Ingredient Claims	3-55
	[1] "New" Claims	3-55
	[2] "Fresh" Claims	3-57
	[3] "Organic" Claims	3-60
	[4] "Natural" Claims	3-61
	[5] Evaporated Cane Juice Claims	3-66
	[6] "Pure" Claims	3-67
	[7] "Healthy" Claims	3-68
	[8] Environmental Claims	3-68
	[a] Ozone-Safe and Ozone-Friendly	3-71
	[b] Degradable or Compostable	3-71
	[c] Non-Toxic or Free-of	3-73
	[d] Recyclable/Refillable	3-74.1
	[e] Recycled Content	3-74.2
	[f] Energy/Resource Saving	3-74.3
	[g] Renewable Energy or	J-1 -1. J
	Renewable Materials	3-74.3
	[h] Certifications and Seals of Approval	3-74.3
	[i] Carbon Offsets	3-74.5
§ 3.08	Substantiating Product Line Claims	3-74.3
§ 3.08 § 3.09		3-73 3-77
§ 3.09	Substantiating Price Claims	3-77
	[1] "Free" Claims	3-77 3-79
	L 3	3-19
	[3] Guarding Against Bait and Switch	2 01
0 2 10	Advertising	3-81 3-82.2
§ 3.10	Substantiating Origin Claims	
	[1] "Made In USA" Claims	3-82.2
	[2] Claims Regarding Specific States	2 02 4
	and Countries	3-82.4
0 2 11	[3] Claims Regarding "Local" Food	3-82.5
§ 3.11	Substantiating Comparative Claims	3-82.7
	[1] Comparative Claims Involving	2.02
	Taste Tests	3-83
0.2.12	[2] Comparative Pricing Claims	3-85
§ 3.12	Substantiation Issues With Guarantees	• -
	and Warranties	3-89
8 3 13	Substantiation Checklist	3-91

TABLE OF CONTENTS

CHAPTER 4

Disclosures and Disclaimers

§ 4.01	Intro	oduction	4-3
§ 4.02	Guio	delines for Effective Disclaimers	4-5
	[1]	Proximity and Placement	4-7
	[2]	Prominence	4-10
	[3]	Duration and Repetition	4-13
	[4]	Appropriateness to the Medium	4-13
	[5]	Understandable Language	4-16
§ 4.03		fective Disclaimers	4-18
Ü	[1]	Disclaimers May Not Cure Literal	
		Falsehoods	4-18
	[2]	Disclaimers May Not Contradict the	
		Main Message	4-20
§ 4.04	Req	uired Disclosures	4-21
Ü	[1]	Federal Trade Commission Regulations	4-21
	[2]	Endorsements and Testimonials	4-21
	[3]	Specific Goods and Services	4-25
		[a] Household Appliances	4-25
		[b] Jewelry and Precious Metals	4-26
		[c] Clothing and Textiles	4-28
		[d] Food	4-30
		[e] Warranties	4-31
		[i] Presale Availability	
		Disclosure	4-32
		[ii] Satisfaction Guarantees	4-32
		[iii] Lifetime Guarantees	4-32
		[f] Franchises and Other Business	
		Opportunities	4-32
		[g] United States Origin Claims	4-33
		[h] Other Regulated Products, Services	
		and Claims	4-34
	[4]	Credit Terms and Leases: The Truth in	
		Lending Act and the Credit Card	
		Accountability Responsibility and	
		Disclosure Act of 2009	4-35
		[a] Consumer Credit	4-36
		[b] Consumer Leasing	4-36.1
		[c] Credit Card Act of 2009	4-36.1
	[5]	Federal Drug Administration	
		Regulations	4-36.2
		[a] Prescription Drugs	4-36.2
		[i] "Major Statement"	4-36.3

THE LAW OF ADVERTISING

	[ii] "Adequate Provision"	4-36.4
	[b] Over-the-Counter Drugs	4-36.5
	[6] Sweepstakes and Contests	4-36.6
§ 4.05	Additional Requirements Imposed by	. 20.0
3	Television Networks	4-37
	[1] "Expert Panels"	4-37
	[2] Dramatizations, Reenactments,	
	Simulations, Slices of Life	4-38
	[3] "Free" Offers	4-38
	[4] Mail, Telephone and Internet Orders	4-38
	[5] Films, Shows and Videos	4-39
	[6] Nutritional Supplements	4-39
	[7] Personal Products	4-39
	[8] Pet Food	4-39
	[9] Premiums and Offers	4-39
	[10] Product Demonstrations	4-39
	[11] Infomercials and Program-Length	
	Commercials	4-40
	[12] Weight-Loss Advertising	4-40
	[13] Distribution and Availability	4-41
	[14] Nutritional Information	4-41
§ 4.06	Disclosures in Children's Advertising	4-42
	[1] CARU Guidelines	4-42
	[a] Understandability	4-42
	[b] Assembly	4-43
	[c] Extras	4-43
	[d] Separate Purchase Requirement	4-43
	[e] Toll-Free Numbers	4-43
	[f] Web Site Sponsorship	4-43
	[g] Embedded Advertising	4-43
	[2] Television Network Requirements	4-43
§ 4.07	Checklist of Disclosure and Disclaimer	
	Issues	4-45
	CHAPTER 5	
	Survey Evidence	
§ 5.01	The Role of Survey Evidence	5-1
§ 5.02	The Importance of Reliable Survey Design	5-6
Ü	[1] The Universe	5-8
	[2] The Sample	5-12
	[3] Survey Procedures, Questions	
	and Controls	5-19

	TABLE OF CONTENTS	xiii
§ 5.03 § 5.04 § 5.05	[4] Data Reporting and Analysis. [5] Objectivity. Managing Discovery. Admitting Surveys as Evidence. Ways to Critique Surveys in Court.	5-30 5-34 5-39 5-42 5-47
	CHAPTER 6	
	Intellectual Property Rights	
§ 6.01 § 6.02	Introduction Trademarks [1] Generally. [2] Advertiser's Trademarks [3] Trademarks Owned by Others. [4] Infringement [5] Dilution [a] Scope [b] No Actual Loss Required [c] Defining Blurring. [d] Expanded Defenses [d] Expanded Defenses [a] Descriptive Fair Use [b] Comparative Advertising and Other Nominative Fair Uses [7] Parody [8] Special Trademark-Related Internet Issues [a] Metatags	6-2 6-3 6-3 6-7 6-8 6-9 6-14 6-14 6-15 6-15 6-16 6-22 6-26 6-26 6-26 6-28
§ 6.03	[b] Keyword Advertising. Copyrights [1] Use of Copyrighted Material [2] Copying Copyrighted Material [a] Infringement [b] Copying [c] Substantial Similarity. [d] Scènes à Faire and Merger of Idea and Expression [e] Using Copyright-Protected Materials in Advertising [i] Music [ii] Character [iii] Words, Phrases or Titles. [3] Copyrighted Material Online [4] The Fair Use Defense	6-36 6-31 6-32 6-32 6-33 6-34 6-37 6-38 6-39 6-41 6-41 6-43

§ 6.04	Patents	6-45
	[1] False Marking	6-45
	[2] Active Inducement of Patent	ć 10
	Infringement	6-45
	[3] Advertisements Alleging Patent	(1(
	Infringement	6-46
	[4] Patent Protection for Advertising	6-46
	Methods	0-40
	[5] Patent Protection for Advertising	6-47
§ 6.05	Equipment	6-49
8 0.03	[1] Use of Likeness, Name, Persona	6-53
	[2] Look-Alikes/Sound-Alikes	6-54
	[3] Copyright Preemption	6-55
	[4] Parody	6-57
§ 6.06	Right of Privacy	6-58
§ 0.00	[1] Federal Trade Commission Initiatives	6-58
	[a] The Children's Online Privacy	0-36
	Protection Act (COPPA)	6-62
	[b] Other Privacy-Related Consumer	0-02
	Protection Laws	6-69
	[2] State Laws	6-72
	[3] Self-Regulation	6-74
	[4] European Union Regulations	6-78
	[4] Luropean Chion Regulations	0-70
	CHAPTER 7	
	Sweepstakes and Contests	
§ 7.01	Introduction	7-2
§ 7.02	Lotteries	7-3
3	[1] Prize, Chance and Consideration	7-3
	[2] Lotteries, Sweepstakes and Contests	
	Distinguished	7-4
	[3] Regulation and Enforcement	7-4
	[a] The Role of Federal Law	7-4
	[b] The Role of State Law	7-6
§ 7.03	The Element of Consideration	7-10
O	[1] What is Consideration?	7-10
	[2] Alternate Method of Entry	7-12
	[3] Special Consideration Issues	7-13
	[a] Post Consideration	7-13
	[b] Customer-Only Promotions	7-14
	[c] Text Message Promotions	7-14

	TABLE OF CONTENTS	XV
§ 7.04	Skill Contests.	7-16
	[1] Pure Chance	7-16
	[2] Dominant Factor Test	7-16
	[3] Objective Evaluation	7-20
	[4] Skill Contests Requiring Consideration	7-21
§ 7.05	Advertising the Promotion	7-23
	[1] The Deceptive Mail Prevention and	7.00
	Enforcement Act	7-23
	[a] Sweepstakes Disclosures	7-24
	[b] Skill Contest Disclosures[c] Name Removal Notification	7-25
		7-26
	System	7-20
	[2] State Disclosure Regulations	7-27
	[a] Sweepstakes Disclosures	7-27
	[b] Skill Contest Disclosures	7-34
§ 7.06	State Procedural Requirements	7-34
8 7.00	[1] Posting Rules and Regulations at	7-30
	Retail Store	7-36
	[2] Registration and Bonding	7-36
	[3] Winner's Lists	7-38
	[4] Record Retention	7-39
§ 7.07	Awarding Prizes	7-40
§ 7.08	Internet Promotions	7-42
9	[1] Consideration	7-42
	[a] Internet Access	7-42
	[b] Other Types of Consideration	7-43
	[2] Privacy Considerations	7-43
	[a] Children's Online Privacy	
	Protection Act	7-44
	[b] Jurisdiction	7-48
§ 7.09	Official Rules Checklist	7-50
	CHAPTER 8	
	Direct Marketing	
§ 8.01	Introduction	8-2
§ 8.02	The Rights of the Consumer	8-3
	[1] Privacy	8-3
	[a] Time and Pattern Restrictions	8-4
	[b] Caller ID	8-7
	[c] Do-Not-Call Lists	8-7
	[i] Constitutionality	8-11

THE LAW OF ADVERTISING

		[11] Relationship Between Federal	
		and State Laws	8-13
		[d] Collecting and Sharing Personal	
		Data	8-13
	[2]	Cooling Off Period	8-15
		[a] Cooling Off From Home	
		Solicitations	8-15
		[b] Cooling Off From Telephone	
		Solicitations	8-19
	[3]	Thirty-Day Rule	8-19
	[4]	Negative Option Rule	8-22
	[5]	Unsolicited Merchandise	8-24
§ 8.03		vertising by Direct Mail	8-26
§ 8.04		es for the Telemarketer	8-31
	[1]	Legal Framework and Preemption	8-31
	[2]	Telemarketing Defined; Exemptions	8-33
	[3]	Registration, Licensing and Bonding	8-36
	[4]	Record Keeping	8-39
	[5]	Disclosures and Representations	8-39
	[6]	Automatic Dialing Systems and	0.44
		Prerecorded Messages	8-41
		[a] Automatic Dialing Systems	8-41
		[b] Prerecorded Messages	8-43
		[c] Text Messaging	8-47
	[7]	Miscellaneous Regulations	8-48
		[a] Payment Restrictions	8-48
		[b] Preacquired Account Information	8-48.1
		[c] Ban on Use of Remotely Created	
		Checks, Remotely Created	
		Payment Orders, Cash Reload	
		Mechanisms, and Cash-to-Cash	8-48.1
0.05	۸ ۵۰	Money Transfers	8-48.1 8-49
§ 8.05 § 8.06		vertising by Fax	8-53
8 8.00	[1]	orcement of Telemarketing Laws Enforcement of the Telephone Consumer	0-33
	[1]	-	8-53
	[2]	Protection Act (TCPA)	0-33
	[2]	Enforcement of the Telephone Sales Rule (TSR)	8-57
	[3]	Enforcement of State Telemarketing	0-37
		Laws	8-58
		шамэ	0-20

CHAPTER 9 **Online Advertising** \$ 9.01 Kinds of Online Advertising 9-2 9-2 [1] Banner Advertising..... 9-4 [2] [3] Search-Based Advertising 9-6 Keyword Search..... 9-6 [a] 9-9 [b] 9-11 [c]Metatags.... 9-12 [d][e] Contextual and Behavioral 9-12 Email Advertising and Spam..... [4] 9-14 9-15 [5] Location-Based Advertising..... [6] 9-16 [7] 9-16.2 Recommendation Widgets and Social [8] 9-16.5 § 9.02 Application of the Lanham Act and 9-17 Third-Party Pop-Up Advertising 9-18 [1] [2] Metatagging and Keyword Searching 9-20 9-20 9-22 9-26 [3] 9-28 [4] § 9.03 Regulation of Truth and Accuracy..... 9-28.2 9-28.2 [1] Federal Trade Commission 9-28.2 Dot Com Disclosures 9-28.2 [i] Enforcement 9-31 9-32 [iii] Initiatives...... [b] Other Federal Agencies..... 9-32 [2] INFORM Consumers Act 9-35 9-36 [3] § 9.04 9-38 Privacy...... 9-38 [1] Federal Trade Commission [a] 9-38 The Children's Online Privacy [b] 9-44 Protection Act (COPPA)..... Comprehensive Privacy Laws..... 9-48 9-48.2 [2] 9-48.7 § 9.05

TABLE OF CONTENTS

xvii

(Rel. 23)

xviii	THE LAW OF ADVERTISING	
	 The CAN-SPAM Act of 2003 Spam-Blocking Technology Lawsuits Under Common Law and 	9-48.7 9-52
	Statutory Theories	9-52
§ 9.06	Personal Jurisdiction	9-53
§ 9.07	Cross-Border Rights and Liabilities	9-56
	[1] Trademark Disputes	9-56
	[2] Privacy Harmonization	9-58 9-61
	CHAPTER 10	
	Special Advertising Issues	
§ 10.01	Introduction	10-3
§ 10.02	FDA-Regulated Products	10-4
	Authority	10-4
	[2] FDA Authority to Regulate Prescription	
	Drug Advertising	10-4
	[a] Prescription Drug Advertising	10.6
	Requirements	10-6
	[i] Generic Name Requirement [ii] The Formula or Ingredients	10-6.1
	[ii] The Formula or Ingredients Listing Requirement	10-7
	[iii] Brief True Summary	10-7
	Requirement	10-7
	[b] Off-Label and Direct-to-Customer	
	Ads	10-10
	[c] Enforcement	10-14
	[3] Over-the-Counter Drug Advertising	10-15
	[4] Medical Device Advertising	10-16
	[5] Food and Dietary Supplements	10-16.1
	[6] Cosmetics	10-26.3
0 10 02	[7] FDA Citizen Petitions	10-26.4
§ 10.03	Professional Advertising	10-27
	[1] Attorney Advertising	10-27 10-27
	[a] The Right to Advertise [b] State Regulation of Attorney	10-27
	Advertising	10-30
	[c] Attorney Self-Regulation:	10-30
	The ABA's Rules, Codes	
	and Provisions	10-31
	[i] Model Rule 7.1	10-32
	[ii] Model Rule 7.2	10-33
	[iii] Model Rule 7.3	10-33

		TABLE OF CONTENTS	XIX	
	[2]	Physician Advertising	10-34	
§ 10.04				
	[1]	Alcohol Advertising	10-36	
		[a] Federal Regulation of Alcohol		
		Advertising	10-36	
		[i] Mandatory Statements	10-37	
		[ii] Prohibited Statements	10-38	
		[iii] ATFE's "Tied-House"		
		Regulations	10-41	
		[b] State Regulation	10-41	
		[c] Industry Self-Regulation	10-42	
	[2]	Tobacco Advertisements	10-44	
		[a] Background: Federal Regulation		
		of Tobacco Advertising	10-44	
		[b] Constitutional Challenges to		
		Regulation	10-46	
		[c] Regulation by Agreement	10-48	
		[d] The Family Smoking Prevention		
		and Tobacco Control Act		
		of 2009	10-49	
	[3]	Firearms Advertisements	10-50	
		[a] Federal Regulation of Firearms		
		Advertising	10-50	
		[b] State Regulation of Firearms		
		Advertising	10-51	
§ 10.05		incial Services, Securities, and	10-52	
	Cryptocurrency			
	[1]	Financial Services	10-52	
		[a] Deposit Account Advertising	10-53	
		[b] Regulation of Credit Advertising	10-54	
		[c] Miscellaneous Requirements	10-55	
		[i] Deposit Insurance	10-55	
		[ii] Currency Illustrations	10-56	
		[iii] Agency Names	10-56	
		[iv] Non-Discrimination	10-56	
		[d] Financial Industry Self-Regulation	10-57	
	[2]	Securities	10-57	
		[a] Federal Regulation of Securities	10-57	
		[i] Restrictions on Timing of		
		Advertising	10-58	
		[ii] Mutual Funds	10-59	
		[b] State Regulation of Securities	10-60	
	[3]	Cryptocurrency	10-61	
		[a] Federal Regulation of		
		Cryptocurrency	10-61	

	[a] False Advertising and Deceptive	
	Trade Practices Related to	10.62
\$ 10.06	Cryptocurrency	10-62 10-62.1
§ 10.06	S	10-62.1
	[1] Introduction[2] Federal Regulation of Gambling	10-02.1
	Advertising	10-62.1
	[a] Broadcast Ban	10-62.2
	[b] Advertising of Online Casinos	10-64
	[3] State Regulation of Gambling	
	Advertising	10-66
§ 10.07		10-67
	[1] Reporting Requirements	10-67
	[2] Disclaimers	10-68
	[3] Spending Limitations	10-69
	[4] Requirements of Broadcasters	10-69
§ 10.08	Advertising to Children	10-71
	[1] Introduction	10-71
	[2] Regulations Governing Advertising	
	to Children	10-71
	[a] Federal Regulation	10-71
	[i] FTC	10-71
	[ii] FCC	10-72
	[b] Self-Regulation	10-73
	[3] Unique Issues Relating to Online	
	Advertising	10-76
	CHAPTER 11	
	Procedural Aspects of	
	False Advertising Challenges	
§ 11.01 § 11.02	Introduction	11-2
o .	Commission	11-3
	[1] Evaluation Criteria	11-8
	[a] Price and Frequency of Purchase	11-8
	[b] Deterrence of Widespread	
	Deceptive Conduct	11-8
	[c] Risk of Physical or Economic	
	Injury	11-8
	[2] Advisory Opinions and Staff Advice	11-9
	[3] Industry Guides and Statements of	
	Enforcement Policy	11-11
	[a] FTC Guides	11-12

	TABLE OF CONTENTS	XX
	[b] Statements of Enforcement Policy	11-16
	[4] Rule-Making	11-18
	[5] Administrative Proceedings	11-21
	[6] Federal Court Litigation	11-25
§ 11.03	Competitor Regulation: The Lanham Act	11-31
o	[1] Standing	11-32
	[2] Elements of a Lanham Act Claim	11-34.2
	[3] Expedited Discovery	11-38.2
	[4] Statute of Limitations	11-38.2
§ 11.04	State Law	11-38.4
Ü	[1] Competitor Actions	11-38.4
	[2] Consumer and Class Actions	11-39
§ 11.05	Self-Regulation Through The NAD, CARU,	
0	NARB, DSSRC and ERSP	11-48
	[1] Cases Appropriate for NAD/ERSP/CARU	
	Review	11-51
	[a] Advertising That is Not National	11-52
	[b] Technical Nature of Claims	11-52.1
	[c] Case Lacks Merit	11-52.1
	[d] Advertising Subject of Litigation	
	or Court or Agency Order	11-52.1
	[e] Advertisement Was Permanently	
	Withdrawn	11-52.2
	[f] Challenger Has Publicized the	
	Proceeding	11-53
	[2] Standing	11-53
	[3] Challenge Procedure	11-53
	[a] Traditional NAD Procedure	11-53
	[b] SWIFT Process	11-59
	[c] Complex Track	11-60.1
	[4] Appeals	11-60.2
	[5] Reopening Closed Cases	11-60.4
	[6] Referrals to Government Agencies	11-60.5
§ 11.06	Television Networks	11-60.7
	[1] Pre-Screening by Networks	11-60.7
	[2] Challenges to Advertisements	11-62
§ 11.07	International Trade Commission	11-64
	CHAPTER 12	
	Remedies	
§ 12.01	Introduction	12-2
	[1] Lanham Act Remedies	12-2 12-2

xxii	THE LAW OF ADVERTISING

§ 12.02		es	12-3 12-5
g 12.02	2	a Preliminary Injunction	12-0
			12-6
		ble Harm	12-6
		ood of Success on	12-7
	L J	Merits	12-12
			12-12
		ng the Hardships	
		Interest	12-14
		Bond	12-15
		unctive Relief	12-16
		tion on Further	
		emination	12-16
	[b] Fencing	g-In	12-17
	[c] Correct	ive Advertising/Consumer	
	Educ	ation	12-19
	[d] Product	Recall/Destruction	12-22
	[4] Defenses		12-23
		or Laches	12-24
		scence	12-27
		le Estoppel	12-28
		SS	12-28
		n Hands	12-28
§ 12.03			12-30
y 12.03	[1] Defendant's	Profits	12-31
		stained by Plaintiff	12-32.1
		· · · · · · · · · · · · · · · · · · ·	12-32.1
			12-35
e 12.04		nages	
§ 12.04	Auorneys rees		12-37
INDEX			T_1