



REGULATION UPDATE July 2009

TO: ALL REGISTERED COMPANIES AND INTERESTED PARTIES

Effective August 16, 2009, section 1999.5 of Title 16 of the California Code of Regulations will be amended as follows:

§1999.5. False and Misleading Advertising

It is the purpose of this regulation to protect the public from false, misleading, deceptive, or unfair representations or claims concerning structural pest control while enabling the public to receive truthful and legitimate information about those structural pest control products and services and the potential of these products and services to reduce impact to health or the environment.

(a) It is unlawful for any licensee, or any employee thereof, directly or indirectly to make, disseminate, represent, claim, state, or advertise, or cause to be made, disseminated, represented, claimed, stated or advertised by any manner or means whatever, any statement or representation concerning structural pest control, as defined in Business and Professions Code section 8505, which is unfair, deceptive, untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be unfair, deceptive, untrue or misleading.

(b) As used in this section, the terms "make," "disseminate," "represent," "claim," "state," or "advertise" and any of their variants include, but are not limited to any print communications (for example, telephone directories, newspapers, magazines or other publications or books, notices, circulars, pamphlets, letters, handbills, posters, bills, signs, placards, cards, labels, tags, vehicle or equipment signage, window displays, or store signs), electronic communication (for example, radio, television, audio or video tape, telephone, or the Internet), demonstration, direct person-to-person contact, or other means or methods now or hereafter employed to bring structural pest control services, methods, products, pesticides, or devices to the attention of the public: for the direct or indirect purpose of performing or offering to perform services for which a license is required by section 8500 and following of the Code.

(c) As used in this section "the exercise of reasonable care" includes a duty to investigate the basis of any statement or representation to assure that the statement or representation is not unfair, deceptive, untrue or misleading. The making of a statement or representation without knowledge of its truthfulness breaches the duty to investigate.

(d) Violation of this section occurs at the time an unfair, deceptive, untrue or misleading statement or representation is made. Once a violation occurs, subsequent disclosures, caveats, disclaimers, or waivers cannot eliminate it.

(e) The remedies or penalties provided by this section are cumulative to each other and to the remedies or penalties available under all other laws and regulations of this State.

(f) Examples of direct or indirect statements or representations which are unfair, deceptive, untrue or misleading include, but are not limited to, the following:

- (1) any advertising in violation of Business and Professions Code sections 17200, and 17500;
- (2) any statement or representation that misrepresents or fails to disclose an important or necessary fact about a pest control service, method, product, pesticide or device;
- (3) any unfair, deceptive, untrue or misleading statement or representation about the effects of a pest control service, method, product or device;

(4) any expressed or implied statement or representation that one or a combination of pest control services, methods, products, pesticides, or devices is an alternative or substitute for, is comparable to, or is better than any other pest control service, method, product, pesticide, device, or combination thereof, if what is being compared provides different treatment coverage of a structure, including but not limited to differences in the extent that accessible and inaccessible areas can ~~reasonable~~ reasonably be treated, unless said differences in treatment coverage are clearly and conspicuously stated. This subsection (f)(4) shall only apply to Branch 3 activities;

(5) any representation that a service, method, product, pesticide, or device, or combination thereof, ~~that is not designed~~ intended to treat all ~~potentially~~ infested wood in a structure, ~~both accessible and inaccessible~~ will be used to treat an entire structure for target pests if the service, method, product, pesticide, or device or combination thereof is not capable of treating all potentially infested wood in a structure including inaccessible areas. This subsection (f)(5) shall only apply to Branch 3 activities;

(6) any statement or representation that a pest control service, product, pesticide, or device or combination thereof offers a general environmental protection or benefit unless the statement or representation can be substantiated within the meaning of section 260.5 of title 16 of the Code of Federal Regulations (2008), hereby incorporated by reference, and is limited to the specific nature of the environmental or health benefit being asserted; ~~or that the pest control products, pesticides, or devices the licensee uses, the applications of such products, pesticides, or devices, or any of them, are "among the least toxic chemicals known," "relatively non-toxic," "pollution approved," "environmentally aware," "environmentally sensitive," "environmentally preferable," "environmentally benign," or "contains all natural ingredients";~~

(7) any unfair, deceptive, untrue or misleading statement concerning the composition of a pest control service, method, product, pesticide or device;

(8) any unfair, deceptive, untrue or misleading statement concerning the effectiveness of a pest control service, method, product, pesticide or device;

(9) any unfair, deceptive, untrue or misleading statement about the value of a pest control product for purposes other than as a pesticide or pest control device;

(10) any unfair, deceptive, untrue or misleading comparison of pest control services, methods, products, pesticides or devices;

(11) any statement or representation that a pesticide or device is certified, sponsored, recommended, endorsed, or approved by any agency of the Federal Government or the State of California, including but not limited to, "tested by the Department of the Interior," "EPA approved," "EPA registered," "approved by the Structural Pest Control Board," or "recommended by the Structural Pest Control Board," except that a statement or representation of this type is permissible if specifically authorized by the Federal or State agency to which it refers;

(12) a statement which is literally true but is used in such a way as to give an unfair, deceptive, untrue or misleading impression to the consumer;

(13) claims ~~as to the safety of~~ that a pesticide application, a pesticide or pesticide ingredients are safe, including statements such as "safe," "nonpoisonous," "non-injurious," "harmless" or "nontoxic to humans and ~~pest pets~~" with or without such a qualifying phrase as "when used as directed";

~~(14) claims that the pesticides and other substances the licensee applies, the application of such pesticides, or any other use of them are comparatively safe or free from risk or harm;~~

~~(15)~~ (14) claims regarding services and products for which the licensee does not have substantiation in the form of tests, analysis, research, studies, or other evidence that was conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted by others in the profession or science to yield accurate and reliable results; and

~~(16)~~ (15) any statement or representation concerning structural pest control that is conditioned or subject to any requirement, condition, limitation, disclaimer or waiver, that is not immediately followed by a clear and conspicuous statement of said requirement, condition, limitation, disclaimer or waiver.

NOTE: Authority cited: Section 8525, Business and Professions Code. Reference: Sections 8648, 17200 ~~et seq.~~ and 17500 ~~et seq.~~, Business and Professions Code; Section 260.5, title 16, Code of Federal Regulations (2008).