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Consumer Protection Review



On June 25, 2020, the Federal Trade Commission (FTC) announced a [\\$22 million settlement](#) with the marketers of a low-level light therapy device called Willow Curve to enjoin them from making unsubstantiated and deceptive claims about the device's ability to treat chronic, severe pain and associated inflammation.

The settlement comes amid ongoing attention from the FTC and state attorneys general regarding false and deceptive advertising relating to pain products (such advertising is largely reactive to the opioid crisis). It also represents another enforcement action involving "native advertising," in which paid advertisements are formatted to appear as independent content—a practice that the FTC finds deceptive without clear disclosure.

The FTC's [complaint](#) alleged that the Willow Curve device, which cost between \$599 and \$799, was deceptively labeled, marketed, and distributed. First, the FTC alleged that the defendants engaged in a widespread advertising campaign with ads that purported to be independent news stories written by impartial journalists but were actually commercial content. Second, the FTC alleged that the advertising deceptively claimed, among other things, that the device could "provide real lasting pain relief without the risks or pain of surgery and without the side effects of drugs" and that it was FDA-approved or clinically "proven." Finally, the FTC alleged that the marketers did not honor their advertised "risk-free" and "money-back" refund guarantee, often failing to issue refunds within seven to ten business days of return as they represented to customers. In addition to the \$22 million judgment (suspended after payment of \$200,000 by each defendant), the FTC's [stipulated order](#) enjoins the defendants from (1) making false or unsubstantiated efficacy claims about their pain products; (2) making false claims about the FDA's review of their products; and (3) deceptively formatting advertisements to make them appear to be independent statements and opinions of impartial publications. **Key Takeaways:**

- Health claims and testimonials must be supported by "competent and reliable scientific evidence." The FTC continues to closely monitor health-related claims, especially during the pandemic.
- Advertising must comply with the FTC's native advertising guidelines, and commercial content may not be disguised as independent news or journalistic content. For more guidance on the FTC's guidelines regarding native advertisements, see the FTC's [Native Advertising: A Guide for Businesses](#) and [Enforcement Policy Statement on Deceptively Formatted Advertisements](#).

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Consumer Protection Review

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