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Mistake, Pattern, or Deceptive Scheme? A Forensic Expert's Framework for Evaluating Deceptive Trade Practices Allegations

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Regulators are taking a closer look at how companies describe what they sell. In April 2026, following a March 2026 executive order on truthful “[Made in America](#)” advertising, the Federal Trade Commission announced a “Made in the USA” series of enforcement actions against companies that advertised their products as American-made when the products, or key components of those products, came from outside the United States. Recent enforcement actions have included a manufacturer that completed assembly in the United States but relied on imported chips, cameras, and monitors; a footwear company that sourced key components from the Dominican Republic and Brazil; and a U.S. flag seller that marketed products as American-made even though they were manufactured entirely in China. These cases highlighted recurring deceptive-practice issues, including false country-of-origin claims, unsubstantiated advertising and labeling, and undisclosed foreign content.

Some cases appear straightforward, while others require careful analysis to determine whether the conduct reflects poor practice, mistake or deception. A few years ago, a U.S. company retained me to investigate alleged deceptive trade practices by a related party operating in Asia. The engagement included several overseas trips, including visits to Indonesia, India, and Dubai. On one occasion, I covered five cities

in nine days, conducting interviews, walking facilities to confirm that operations and assets existed as the records claimed, meeting and counting employees, and reviewing paper documents that required local translation and cultural context to interpret. Practices that looked problematic from a U.S. perspective sometimes reflected local market norms rather than deceptive conduct.

After analyzing the transactions and records reviewed during those trips, my team and I documented suspicious situations, but we did not find unconscionable acts or a true bait-and-switch scheme under the applicable U.S. standards. An expert relying only on a desk review might have reached a different conclusion.

It can be difficult to distinguish problematic conduct from actionable conduct. An expert who focuses on objective evidence is more valuable to counsel and more credible under scrutiny than an expert who looks only to confirm the client's allegations. For counsel evaluating these claims, the question is not whether something went wrong. It is whether the evidence shows an isolated incident or mistake, a recurring problem, or an actionable scheme. Consumer-protection enforcement and private litigation are bringing renewed scrutiny to these issues, from "junk fees" and disclosures to cross-border supply chains.

A disciplined approach is essential in this type of review. My approach follows five key steps, each designed to help separate isolated mistakes from recurring patterns or actionable schemes.

Step 1: Understand the legal framework

While the law is always the purview of lawyers, the consultant tasked with performing this type of review must understand the legal framework and standards that govern the analysis. For example, the Texas [Deceptive Trade Practices Act](#) (DTPA) prohibits false, misleading, and deceptive practices, unconscionable actions, breaches of warranty, and insurance code violations. It incorporates federal law, including the FTC Act. Other states have similar statutes, each with slight variations.

Step 2: Understand the business before you open the records

To do this work well, the consultant must spend time understanding the complaint and the underlying allegations. Put yourself in the shoes of consumers and think through how the allegations would affect them when they buy the product. This means understanding the business model, the sales and delivery channels, and industry norms that help distinguish ordinary business issues from potentially deceptive conduct. Most

DTPA claims arise not from fraud but from a gap between what was promised or advertised and what was delivered. An industry baseline can help separate a deceptive practice from an ordinary business issue. That understanding also helps identify which documents are relevant to the case.

Step 3: Review transactions, identify anomalies and classify the findings

Most investigations involve reviewing transactional data. Whether the review covers the entire population or a subset, the goal is to identify where conduct deviated from what was promised, advertised, disclosed, or required and to classify each instance. In my experience, most deviations, though not all, fall into a few main categories:

- Mistakes: errors that are neither systematic nor intentional; the question to consider is when repeated “mistakes” start to look like negligent controls or concealment.
- One-off issues: isolated incidents that reflect no pattern; the discipline is resisting both a false pattern and the dismissal of what is really the tip of a recurring problem. In some cases, a statistician can help determine whether the frequency of issues is meaningful.
- Bait-and-switch: goods or services offered at a price or condition meant to induce a different purchase, where intent and pattern are central; it includes counterfeit and gray-market goods. Examples can range from a dentist using diluted or fake silver for fillings to products assembled with unapproved components or packaged with stolen or counterfeit brand labels. Companies often lose quality control when multiple suppliers enter the picture, and the company may also be exposed to harm alongside consumers.
- Breach of warranty: an express or implied promise that the product failed to meet, causing economic across an entire business; here the expert's role is to quantify the economic damage related to product failure.
- Unconscionable acts: taking unfair advantage of a consumer, from emergency price gouging to terms placed where no reasonable buyer would find them. In my most recent case, the allegation involved selling off assets at what appeared to be inflated prices.

Step 4: Review the classifications for bias

Categorizing is not the end. Bias in expert work is real and rarely obvious to the investigator. Ideally, someone outside the day-to-day engagement should perform a quality review, but the expert can also self-check with a disciplined approach. One way to check for bias is to step back and confirm that the same standard was applied across the whole population, not only to the instances that fit the theory. When doing that self-test, the consultant should pay particular attention to three common biases:

1. Confirmation bias: finding the first few transactions that support the initial position or support the working theory. If that occurs, stop and consider doing a population-level analysis.
2. Misinformation bias: building on a client's framing instead of what the source documents say. This is often called "sponsored analysis," not expertise.
3. The halo effect: assuming a respected company could not have engaged in the alleged conduct. The risk is treating reputation as evidence. Consistency across every instance is the goal, but consistency is not the same as accuracy. When anomalies arise, the expert's job is to understand their nature.

Step 5: Disclose what you find

To perform an independent review, the expert must fully disclose the results of the work. In some cases, the expert's analysis supports the company's position. In other cases, the work surfaces a pattern that is difficult to reconcile with the company's position: emails suggesting management knew or evidence that the delivered products differed from what was promoted. Experts need to be prepared to clearly communicate difficult findings.

The Bottom Line

Whether you serve as a consulting expert protected by privilege or a testifying expert subject to increased disclosure, the standard is the same. Follow the evidence, apply a consistent methodology, and present conclusions that can withstand scrutiny.

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