

## *Wall Street Journal* Speaks with Chris Cole on Federal Trade Commission's Health Products Guidance

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Christopher Cole, partner and chair of Katten's Advertising, Marketing and Promotions practice group, shared his thoughts with *The Wall Street Journal* on the Federal Trade Commission's (FTC) new guidance for marketers and sellers of health-related products.

The FTC's "Health Products Compliance Guidance," released in late December 2022, is an update to its 1998 guidance, "Dietary Supplements: An Advertising Guide for Industry." Among several significant changes is the new title, which reflects the FTC's intent for the guidance to have a broader reach over all health-related claims – not just for supplements. Chris noted that the new guidance is a formalization of the FTC's earlier efforts to expand the scope of its prior guidance.

"They consider anything that has some claimed benefit for human health to be a health product," Chris said. "Over the years, there's been some mission creep, the FTC has sought to apply some of the same standards to other types of products [beyond supplements]. And I think this just sort of formalizes the fact that it's going to do that."

The updated guidance expands on the level of substantiation for health-related claims, which will need to be in the form of human clinical testing that is randomized and controlled. *The Wall Street Journal* noted that some feedback has indicated that the change could be the "most significant—and controversial—piece of the updated guidance, given the additional work that brands may have to do to make claims."

"It seems [like] overkill for a lot of the more routine types of claims...and I don't know that it's really necessarily that helpful in every case," Chris told *The Wall Street Journal*, explaining that human clinical trials are very expensive and difficult to do. "The FTC has tried to impose a really draconian view here."

The FTC guidance further touches on the issue of "qualifying information" that explains or limits health-related claims. In particular, the FTC makes clear that it is insufficient to incorporate vague

qualifying terms, such as saying that "the product 'may' have the claimed benefit or 'helps' achieve the claimed benefit." Noting that many advertisers believe that such language protects them from rules governing drug claims, Chris said the FTC's new guidance indicates "that's not necessarily the case."

"The FTC I think makes that clear, [it is] not going to give you a free pass just because you put the word 'helps' in front of it. That should send some shivers down the spine of a lot of marketers," he said.

["What Marketers Need to Know About the FTC's Updated Guidelines on Health Claims," \*The Wall Street Journal\*, January 6, 2023](#)

*\*Subscription may be required for article access.*

[See also Chris Cole's December 27, 2022 post, "FTC Issues New Health Products Compliance Guidance."](#)

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