DECEPTIVE ADVERTISING

- **Deceptive Advertising:** Advertising that misleads consumers, either by unjustified claims regarding a product’s composition, qualities, sponsorship, or performance or by the omission of a material fact concerning the product’s composition, qualities, sponsorship, or performance.

- **False Statements of Fact:** Advertising that appears to be based on facts which are, in fact, scientifically untrue, is deceptive.

- **Bait-and-Switch Advertising:** Advertising one product (the “bait”) at a very attractive price, then informing the customer that the advertised product is either unavailable or of poor quality, convincing the customer to purchase a different, more expensive product.

- Vague generalities and/or obvious exaggerations -- collectively called *puffery* -- are not deceptive.

- The FTC may investigate and issue *cease-and-desist* orders requiring that the deceptive advertising be stopped. It might also require a company to issue *counteradvertising* requiring the company to inform the public about any earlier misinformation.
TELEMARKETING AND ELECTRONIC ADVERTISING

- The Telephone Consumer Protection Act was enacted in 1991. The act prohibits telephone solicitation using an automatic telephone dialing system or a prerecorded voice.

- The TCPA also prohibits advertising by fax machine without first obtaining the recipient’s permission.

- The FTC Telemarketing Sales Rule of 1995 requires telemarketers to inform recipients that the call is a sales call and to identify the seller’s name and the product being sold.
LABELING AND PACKAGING

- Federal and state laws require labels to be accurate, using words that are understood by the ordinary consumer.

- Some industries are required to specify the raw materials used in the product such as the percentage of cotton, nylon, or other fibers used in a garment.

- Smokeless tobacco and cigarette packages and advertising must contain one of several warnings about health hazards.

- The Fair Packaging and Labeling Act requires that products have labels that identify the product, the net quantity, number of servings, and the names of the manufacturer, packager or distributor.
DECEPTIVE SALES PRACTICES

■ **Regulation Z**: Federal Reserve regulation that governs credit terms of sales contracts. The set of rules was promulgated by the Federal Reserve to implement the provisions of the Truth-in-Lending Act.

■ **“Door-to-Door Sales”**: Laws that permit consumers a period of time after making a purchase from a door-to-door salesperson in which to cancel the sale and obtain a refund. In addition to various state “cooling-off” laws, the FTC also regulates door-to-door sales.

■ **Telephone and Mail-Order Sales**: Federal laws provide specific protection to consumers who order goods via the phone or through the mail. The merchant is required to ship orders within the time promised in their catalogues or advertisements, to notify the consumer when orders can not be shipped on time, and to issue a refund within a specific period of time when an order is cancelled.

■ The Postal Reorganization Act of 1970 provides that unsolicited merchandise sent by the U.S. mail can be used, discarded, or disposed of in any way the recipient chooses.
CONSUMER CREDIT PROTECTION

■ **Truth in Lending Act ("TILA"):** Federal law requiring, *inter alia*, that all terms of a credit instrument be clearly and conspicuously disclosed, and permitting the consumer to rescind, or cancel, any credit contract if the creditor fails to comply with the TILA’s requirements.

■ **Equal Credit Opportunity Act:** Prohibits the denial of credit solely on the basis of race, religion, national origin, color, gender, age, or marital status.

■ TILA also limits a consumer’s liability to $50 per credit card for unauthorized purchases made on a stolen card provided timely notice requirements are met.

■ **Fair Credit Reporting Act ("FCRA"):** Permits consumer credit reporting agencies to issue credit reports only under certain circumstances, requires creditors to inform the consumer if credit has been denied because of information on the consumer’s credit report, and provides the consumer with mechanisms by which to request a copy of his or her credit report and to challenge information contained therein.
DEBT COLLECTIONS

- **Fair Debt Collection Practices Act:** Limits the means which collection agencies may use to collect from consumers. The act prohibits the following:
  - Contacting the debtor at the debtor’s job if the employer objects.
  - Contacting the debtor during inconvenient or unusual times.
  - Contacting the debtor at all if the debtor has an attorney.
  - Contacting third parties other than the debtor’s spouse, parents, financial advisor unless court permitted.
  - Using abusive language or threatening violence or false and misleading information.
  - Contacting the debtor after the debtor has refused to pay the debt other than to inform the debtor of action to be taken by a collection agency.

- Collection agencies are to send written notice of the debt within five days of the initial contact. The notice must contain specific information.
COMMON LAW ENVIRONMENTAL PROTECTION

- **Nuisance:** The common law doctrine under which persons may be held liable for using their property in a manner that unreasonably interferes with other’s rights to use or enjoy their own property. Courts often distinguish between a **private nuisance** where the courts require standing to sue and a **public nuisance**, which is harm to the general public.

- **Negligence and Strict Liability:** A business may be sued under a negligence or a strict liability theory. The basis of the negligence suit is failure to use reasonable care to prevent a foreseeable injury. Strict liability arises where a business is involved in an ultrahazardous activity.
AIR, WATER, AND NOISE POLLUTION

**Air Quality Control:** The Clean Air Act, as amended, empowers the federal government to control pollution emissions from:

1. **mobile sources**, such as cars and motorcycles,
2. **stationary sources**, such as factories and power plants, and
3. **hazardous air pollutants**, such as asbestos, benzene, beryllium, cadmium, mercury, and vinyl chloride.

**Water Quality Control**

- The **Federal Water Pollution Control Act** (a.k.a. the Clean Water Act) empowers the federal government to limit the discharge of pollutants into waters used for navigation, recreation, and/or swimming.

- The **Safe Drinking Water Act** empowers the federal government to set maximum levels for pollutants in public water systems.

**Noise Pollution Control:** The Noise Control Act empowers the federal government to establish noise-emission standards and prohibits the distribution of devices manufactured in violation of these standards.
TOXIC & HAZARDOUS SUBSTANCES

- **Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"):** Requires that all pesticides and herbicides be (1) registered prior to sale, (2) certified and used for approved applications only, and (3) used only in limited quantities on food crops. FIFRA also imposes strict labeling requirements.

- **Toxic Substances Control Act:** Requires manufacturers, processors, and others planning to use chemicals to first determine their effects on human health and the environment and empowers the EPA to (i) require special labeling, (ii) limit use and/or production, or (iii) prohibit use altogether.

- **Resource Conservation and Recovery Act ("RCRA"):** Authorizes the EPA to determine which forms of solid waste may be hazardous to human health and/or the environment and to monitor and control hazardous waste disposal.

- **CERCLA/Superfund:** Regulates the clean-up of hazardous waste disposal sites and provides that the EPA may recover the cost of cleaning up such sites from (1) waste generators, (2) waste transporters, and/or (3) owners or operators of the site -- collectively called **potentially responsible parties.**