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State Deceptive Trade Practices and False Advertisement
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This paper is a preliminary effort to identify issues for discussion and further analysis. It presents the views of the author and does not represent Georgetown University or our collaborators. To send comments, please contact Sandy H. Han at shh27@law.georgetown.edu.



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State Deceptive Trade Practices and False Advertisement

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I. Question Presented

Do state deceptive trade and advertising laws adequately protect consumers of genetic tests through direct to consumer (DTC) marketing?

In recent years a growing number of companies have begun to offer genetic tests directly to consumers instead of relying on physician recommendations and referrals. As a result, companies offering genetic tests have increased direct-to-consumer (DTC) advertising and marketing campaigns to the public. While the Federal Trade Commission (FTC) has noted its authority to regulate the advertising of genetic tests, it has yet to act within this jurisdiction despite the burgeoning practice of attracting customers through DTC advertising campaigns.

A survey of relevant state resources indicates an absence of state legislation, statutes, court cases, or consumer information that directly addresses the concerns of marketing genetic tests to the public. Any consumer complaint against a company alleging false advertising of genetic tests must be brought under the existing state false advertising laws. While these laws are broad enough to encompass genetic testing as a product, there are significant difficulties in applying these general state laws due to the unique nature of genetic tests. Specifically, DTC advertising of genetic tests raises concerns about consumer privacy and consumer understanding of test results, especially if consumers read results without the guidance of qualified genetic counselors.

This memorandum summarizes the above-mentioned state survey examining the extent of state regulation to determine whether states have begun to fill the gaps left by the lack of federal action. Section II of the paper outlines the methodology followed in the survey project. Section III summarizes the findings of the survey including the status of current state laws and potential model provisions for future legislation. Lastly, section IV explains why current state false advertising laws cannot adequately protect consumers when applied to genetic tests due to the unique nature of such tests.

II. Methodology

This project surveyed relevant legislation, statutes, cases, and consumer protection information for all fifty states to determine if any states specifically regulate advertising of genetic tests.

Legislation Survey

The first step of the project was to determine if any states have legislation that is specific to the advertising of genetic tests. The state legislation survey included a review of pending and passed legislation compiled in three legislation databases: the National Conference of State



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Legislature Genetic Database,¹ the National Human Genome Research Institute Policy and Legislation Database,² and the National Cancer Institute State Cancer Legislative Database Program.³ These three databases were searched for any state legislation addressing false advertising of genetic tests.

Statutory Survey

The next step of the project was to examine general false advertising laws of states to determine whether they can be applied to the marketing of genetic tests. All fifty states have enacted laws regulating false advertising or deceptive marketing,⁴ and often include these statutes under the state's deceptive or unfair trade practices act. These statutes were examined to determine if genetic tests could fall under the scope of the false advertising laws. All provisions that defined unlawful practices and that could be pertinent to genetic tests were noted. The survey also gathered information on available remedies to the state and consumer, and noted applicable statutes of limitations.

Cases Survey

The project included a review for any cases applying the relevant state advertising laws to the marketing of genetic tests. These searches were conducted using either a Westlaw or Lexis case search.

State Attorney General Website Scan

State consumer protection divisions generally are in a State Attorney General's office. Therefore the project included a search of each State Attorney General's website to find information available to consumers regarding the marketing of genetic tests.

III. Findings

States have not begun to specifically regulate the marketing of genetic tests. Instead, state false advertising laws have broad definitions of products and services that could potentially encompass genetic testing. However, general false advertising laws have not been used to regulate the marketing of genetic tests. This section discusses the specific findings for each survey and examines state false advertising laws as they might apply to the marketing of genetic tests.

¹ National Conference of State Legislatures, "Genetics Legislation Database", *available at* <http://www.ncsl.org/programs/health/genetics/geneticsDB.cfm>.

² National Human Genome Research Institute, National Institutes of Health, "Policy and Legislation Database", *available at* <http://www.genome.gov/PolicyEthics/LegDatabase/pubsearch.cfm>.

³ National Cancer Institute, "State Cancer Legislative Database Program," *available at* http://www.seld-nci.net/DB_Search/Admin/search_admin.cfm.

⁴ Deceptive Trade Practices laws. *Available at* <http://law.jrank.org/pages/11799/Deceptive-Trade-Practices.html>.



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A. Survey Findings

Legislation Survey

No state has pending legislation regarding the marketing of DTC genetic tests. Similarly, no states have passed legislation or have statutes that specifically address false advertisement or deceptive marketing of genetic tests.

Statutory Survey

States' general false advertising laws could apply to genetic tests given the broad definitions of products and services in the statutes. Elements of the state false advertising laws are further discussed below.

Cases Survey

There are no court cases in which general false advertising provisions were used in the context of advertising genetic tests.

State Attorney General Website Scan

Finally, State Attorney General websites do not have information under consumer protection divisions about false advertising of genetic tests nor do they provide guidance such as informing consumers to carefully research companies offering DTC genetic tests.

B. Current State Provisions

This project surveyed current state law to determine the levels of regulation addressing false advertisement of DTC genetic tests. Further analysis is needed to determine whether provisions of general state false advertising laws adequately protect against false advertising in DTC marketing of genetic tests. Initial research, however, indicates that new model provisions may be needed to protect consumers.

1. Current General State False Advertising Laws

Twenty states have adopted the Uniform Deceptive Trade Practices Act (UDTPA).⁵ Under this Act, it is a deceptive trade practice to “represent that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have.”⁶ Although some marketing campaigns for genetic tests may represent a benefit the test does not have, the Myriad case, discussed below, illustrates that sometimes a company will exaggerate benefits that the test does have. It is unclear whether such a company would be liable for deceptive trade practice under the UDTPA.

Another concern surrounding DTC advertising of genetic tests is that risks associated with genetic testing will not be disclosed to consumers. Failure to state a “material fact” is

⁵ Deceptive Trade Practices laws. Available at <http://law.jrank.org/pages/11799/Deceptive-Trade-Practices.html>.

⁶ Uniform Deceptive Trade Practices Act, § 2(5). Available at http://www.law.upenn.edu/bll/archives/ulc/fnact99/1920_69/rudtpa66.htm.



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considered an illegal practice in only fourteen states.⁷ If a company fails to disclose potential risks or disadvantages of taking genetic tests, it is unclear whether this will rise to the level of unlawful marketing.

Twenty-eight states include broad provisions against misrepresentation of goods or misleading practices.⁸ Marketing of genetic tests would most likely fall under these broad provisions. However the absence of specific language regulating genetic tests and addressing the unique nature of genetic testing may make actions more difficult.

2. Individual State Provisions of Interest

Currently, four states have statutory provisions explicitly addressing the concerns of genetic tests.⁹ Further research is needed to determine the potential effects of these provisions.

Scientific and Clinical Assertions

In California, it is unlawful for a company to “make any false or misleading advertising claim, including claims that (1) purport to be based on factual, objective, or clinical evidence, (2) compare the product's effectiveness or safety to that of other brands or products, or (3) purport to be based on any fact.”¹⁰ Similarly, Nevada’s statute includes a special rule that it is unlawful for a company to make “an assertion of scientific, clinical or quantifiable fact in an advertisement which would cause a reasonable person to believe that the assertion is true, unless, at the time the assertion is made, the person making it has possession of factually objective scientific, clinical or quantifiable evidence which substantiates the assertion.”¹¹ There are no cases demonstrating the use of either of these provisions in the context of genetic testing, however these provisions could more effectively protect consumers against claims of the benefits of genetic testing not validated by scientific data.

Privacy

Both Nebraska and Pennsylvania have a provision that regulates misleading statements in privacy policies. This provision, common to both states, makes it illegal to “knowingly make a false or misleading statement in a privacy policy, published on the Internet or otherwise distributed or published, regarding the use of personal information submitted by members of the

⁷ Alaska Stat. § 45.50.471(12); Ariz. Rev. Stat. Ann. § 44-1522(A); Colo. Rev. Stat. Ann. § 6-1-105(1)(u); Del. Code Ann. tit. 6, § 2513(a); 815 Ill. Comp. Stat. Ann § 505/2; Iowa Code Ann. § 714.16(2)(a); Kan. Stat. Ann. § 50-626(b)(3); Md. Code Ann. Com. Law § 13-301(3); Mich. Comp. Laws § 445.356 (3); Mo. Ann. Stat. § 407.020(a); Nev. Rev. Stat. Ann. § 598.0923(2); N.J. Stat. Ann. § 56:8-2; N.Y. Gen. Bus. Law § 350-a(1); S.D. Codified Laws § 37-24-6(1); W. Va. Code Ann. § 46A-6-102(7)(M).

⁸ See State False Advertising Laws and Direct-to-Consumer Marketing of Genetic Tests.

⁹ West's Ann.Cal.Bus. & Prof.Code § 17508(a); Nev. Rev. Stat. Ann. § 598.0925; Neb. Rev. Stat. § 87-302(a)(14); Pa. Stat. Ann. tit. 18 § 4107 (a)(10).

¹⁰ West's Ann.Cal.Bus. & Prof.Code § 17508(a)

¹¹ Nev. Rev. Stat. Ann. § 598.0925



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public.”¹² The Nebraska legislature first passed this bill in 2003. An amendment to the bill added the term “knowingly” to the language,¹³ thus requiring consumers to prove “intent” on the part of the companies and effectively making it more difficult to bring a claim under this misleading statement in a privacy policy provision. Pennsylvania passed a similar provision in 2004.¹⁴ These laws have not been applied in the context of genetic testing so further analysis is needed to examine how these laws would affect cases involving the marketing of genetic tests.

Currently, consumers are only protected within the broad false advertising legal framework because there is no specific genetic testing legislation. The definitions of products or services are broad enough in each state’s laws to cover genetic tests. However, this framework does not adequately protect consumers because the states’ deceptive trade practice statutes were not created to effectively address the unique and complicated nature of genetic testing.

IV. Application of False Advertising Laws to DTC Marketing of Genetic Tests

The current state false advertising laws are too broad given the unique nature of genetic tests. False advertising laws were written with common consumer products in mind, but genetic tests vary greatly from typical products. This section discusses how genetic testing is different from other products and uses the Connecticut Attorney General’s attempt to regulate an advertising campaign for genetic testing for breast and ovarian cancer as a case study.

a. Characteristics of Genetic Tests

Genetic testing is an evolving product. Therefore, it is difficult to apply standard false advertising laws to DTC marketing of genetic tests. Genetic testing is different from most standard products for five main reasons: 1) genetic testing relies heavily on scientific validity in a field that is rapidly advancing; 2) consumers are likely to view genetic testing as a panacea for medical concerns; 3) genetic testing raises concerns of consumer privacy more than other products; 4) the harms associated with false advertising of genetic tests are very different from the harms of false advertising of other products; and 5) consumer protection may be more limited by the statute of limitations due to the potentially delayed time in realizing false results of a test.

Scientific Validity

It is more difficult to determine whether the marketing of genetic tests is deceptive because genetic testing relies on a rapidly advancing and complicated field of science. The scientific validity of a genetic test depends on both the analytical validity - the ability of the test to show the right answer, as well as the clinical validity - the correct linkage between a gene variant and a disease or condition.¹⁵ This area is not well-regulated so the validity of many genetic tests is

¹² Neb. Rev. Stat. § 87-302(a)(14); 18 Pa.C.S.A. § 4107 (a)(10)

¹³ Neb. Comm. Stat., 2003 Reg. Sess. L.B. 118

¹⁴ Penn. S. Jour., 2004 Reg. Sess. No. 17

¹⁵ “Testimony on Technological Developments in Genetic Testing by Mary K. Pendergast,” Before the House Committee on Science, Subcommittee on Technology, September 17, 1996. Available at <http://www.hhs.gov/asl/testify/t960917c.html>.



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questionable.¹⁶ The question of scientific validity raises the following four main concerns for false advertising.

First, scientific validity is by no means a bright line determination. If a company determines that their genetic test is scientifically valid, yet other scientists disagree, it is unclear whether this would be considered deceptive advertising. Second, although a genetic test may be scientifically valid for a specific population, it is often difficult to determine if the test is valid or appropriate for the entire population.¹⁷ For example, genetic breast cancer testing for women with a family history of breast or ovarian cancer has been very successful at determining predispositions. However, this same test is not as indicative for a person without a family history of breast or ovarian cancer. Concerns of false advertising are raised when DTC marketing of genetic tests, that are valid for a specific population, is available to the broad public.

Third, it is unclear how states will make determinations of willful violations in the face of scientific uncertainty. In many states, courts can impose heightened civil penalties if a willful violation is found. If a company advertises the benefits of a genetic test without prior scientific substantiation of the claim, courts may likely find this to be willful. It is uncertain, however, whether a company that chooses to market a genetic test in the face of scientific uncertainty will be found to have made a willful determination.

Fourth, the products of genetic tests depend upon scientific validity in order to provide benefit to consumers. This can be problematic for consumers especially when the companies marketing genetic tests are not required to reveal any scientific uncertainty during advertising campaigns. In some cases, a test might be scientifically valid, but the benefits exaggerated. It is difficult in this situation for regulators to bring false advertising claims.¹⁸

The complicated determination of scientific validity makes genetic testing a unique product. It is unclear how the bright line rules against false advertising and misleading the public apply to the gray area of scientific uncertainty in genetic testing advertising.

Consumer Perception and Genetic Exceptionalism

Genetic tests are also unique products because consumer knowledge of genetic testing is limited compared to consumer knowledge of other products. Due to genetic exceptionalism, consumers are likely to think that genetic tests are the panacea to medical concerns and inquiries. Genetic exceptionalism is the belief that genetic information is different from other medical

¹⁶ American Society of Human Genetics (ASHG) Statement on Direct-to-Consumer Genetic Testing in the United States, *The American Journal of Human Genetics*, Vol. 81 (September 2007) p. 636. Available at http://www.ashg.org/pdf/dtc_statement.pdf.

¹⁷ “Testimony on Technological Developments in Genetic Testing by Mary K. Pendergast,” Before the House Committee on Science, Subcommittee on Technology, September 17, 1996. Available at <http://www.hhs.gov/asl/testify/t960917c.html>.

¹⁸ American Society of Human Genetics (ASHG) Statement on Direct-to-Consumer Genetic Testing in the United States, *The American Journal of Human Genetics*, Vol. 81 (September 2007) p. 636. Available at http://www.ashg.org/pdf/dtc_statement.pdf.



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information. The concern is that individuals will believe that genetic information is the final word and that genetic tests can indicate future health with certainty. In reality, most genetic tests provide only probabilities and risks of developing a condition or disease rather than definitive answers.¹⁹ Consumers hearing advertisements for genetic tests may be more susceptible to claims of benefits of the test unlike advertisements for other products of which consumers may have more knowledge. Consumers with little knowledge of genetics may believe that the results of the tests are infallible. Many states allow DTC genetic testing without requiring consumers to review test results with genetic counselors.²⁰ Even if consumers are skeptical of genetic tests, the average consumer understands very little about the risks and benefits of genetic testing, let alone the scientific uncertainty that each test entails.

Accordingly, consumer education is an important part of making genetic testing a viable product. General state false advertising laws do not take into account the need for customer education about genetic testing. Due to the lack of consumer knowledge about the benefits and risks of genetic testing, it is important that these factors are well-defined in advertising so that consumers can make informed decisions. A recent breast cancer study indicates that women were less likely to get a genetic test after being exposed to DTC advertising that highlighted risks and benefits compared to women exposed to DTC advertising campaigns that highlighted only benefits.²¹

In the past, the federal government has imposed marketing requirements in other fields in order to adequately educate consumers, not only of the benefits of the product, but of the risks as well. For example, the Food and Drug Administration (FDA) has regulated the advertising of prescription drugs since 1962 and requires companies to clearly list risks as well as benefits.²² Currently neither the federal government nor any states explicitly require companies that market genetic tests to disclose testing risks as well as benefits.

Privacy Concerns

In addition to the need for consumer education regarding genetic tests and the risks of false results or emotional distress, there is also a concern about protecting consumers from privacy infringement. Unlike most products marketed to consumers, genetic testing raises unique concerns regarding the protection of consumer privacy. For the majority of products, consumer privacy issues are raised when credit card or other financial information is given to companies.

¹⁹ American College of Medical Genetics, "ACMG Statement on Direct-to-Consumer Genetic Testing, April 7, 2008. Available at http://www.acmg.net/StaticContent/StaticPages/DTC_Statement.pdf.

²⁰ American Society of Human Genetics (ASHG) Statement on Direct-to-Consumer Genetic Testing in the United States, *The American Journal of Human Genetics*, Vol. 81 (September 2007) p. 635. Available at http://www.ashg.org/pdf/dtc_statement.pdf.

²¹ S.W.Gray et.al., "Risk Information Exposure and Direct-to-Consumer Genetic Testing for BRCA Mutations among Women with a Personal or Family History of Breast or Ovarian Cancer," *Cancer Epidemiology Biomarkers & Prevention* 18, 1303, April 1, 2009. Overview available at <http://cebp.aacrjournals.org/cgi/content/abstract/18/4/1303>.

²² C. Rados, Truth in Advertising: Rx Drug Ads Come of Age, U.S. Food and Drug Administration, (July-August 2004). Available at http://www.fda.gov/fdac/features/2004/404_ads.html.



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However, when purchasing genetic tests, consumers give the company additional information about themselves and their health through their DNA. Additionally, one person's DNA can provide insight into the health of their relatives. Thus, privacy is a greater concern in genetic testing than it is in other consumer products. Only California has laws requiring companies that collect private data to disclose their privacy procedures.²³

This area is additionally complicated because some companies use promises of privacy as a marketing tool.²⁴ If the companies promise privacy, but do not adequately disclose how sensitive genetic information will be protected, consumers can make the decision to participate in genetic testing while being misled about the risks.²⁵

Harms and Risks

One of the biggest differences between genetic testing and other products is the type of harm to which the consumer is exposed. In traditional tort law, courts seek to give a monetary remedy in order to make a harmed individual whole. However, this framework of monetary remedies does comport with the emotional harm that can result from false advertising of genetic tests.

For most consumer products there is an issue of direct safety for poorly manufactured goods or an issue of monetary loss if the good is defective. Although, inaccurate genetic testing can lead to monetary loss, most often the harm of false advertising is emotional. A test result that indicates that an individual does not have a predisposition to a disease can lure a consumer into a false sense of security that he or she is not at risk for this disease.²⁶ In actuality, the consumer generally has the same risk for the disease as the population at large if a genetic predisposition is not found.²⁷ On the other hand, if the genetic test indicates that an individual does have an increased risk of a disease, this can greatly impact his or her emotional and mental health.²⁸ The risk of emotional and psychological harm increases if this information is received without proper medical support or the interpretive help of a genetic counselor.²⁹

Current false advertising and deceptive trade practice laws provide causes of action for those harmed by misleading advertisements. However, further analysis is required to determine if

²³ West's Ann.Cal.Bus. & Prof. Code § 22575.

²⁴ American Society of Human Genetics (ASHG) Statement on Direct-to-Consumer Genetic Testing in the United States, *The American Journal of Human Genetics*, Vol. 81 (September 2007) p. 636. Available at http://www.ashg.org/pdf/dtc_statement.pdf.

²⁵ *Id.*

²⁶ *Id.*

²⁷ Federal Trade Commission, "Facts for Consumers: At-Home Genetic Tests: A Healthy Dose of Skepticism May Be the Best Prescription," July 2006. Available at <http://www.ftc.gov/bcp/edu/pubs/consumer/health/hea02.shtm>

²⁸ National Cancer Institute, "Understanding Cancer Series: Gene Testing," September 1, 2006. Available at <http://www.cancer.gov/cancertopics/understandingcancer/genetesting>.

²⁹ American Society of Human Genetics (ASHG) Statement on Direct-to-Consumer Genetic Testing in the United States, *The American Journal of Human Genetics*, Vol. 81 (September 2007) p. 635. Available at http://www.ashg.org/pdf/dtc_statement.pdf.



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harm defined under each state statute applies only in economic or personal injury terms or if harm can encapsulate emotional distress resulting from the false advertisement of genetic tests.

Statute of Limitations

Finally, many states have one to five year statute of limitations periods for false advertising laws. Although these time periods may be appropriate for products that are sold in a defective state or that break and injure an individual, the time limits are problematic in the field of genetic testing. A consumer may not determine a false test result within the statute of limitations period, if ever. It could potentially take decades to determine the accuracy of a DTC genetic test.³⁰ If a person has a positive test result, he or she will receive a percentage for which they are at an increased risk for a particular disease. If a consumer discovers that he or she is at an 80% increased risk for a disease, but never develops the disease, it would be difficult, if not impossible, to determine whether this was due to the 20% chance of not developing the disease or the result of inaccurate testing. This may limit or preclude consumers, injured by misleading DTC advertising, from bringing an action because they discover the deceptive actions outside of the statute of limitations.

b. Case Study – Connecticut

In 2007 Myriad Genetics began an advertising campaign in Connecticut for genetic tests that tested the BRCA1 and BRCA2 genes for hereditary predispositions to breast and ovarian cancer. Myriad's first DTC advertising campaign began in Atlanta and Denver in 2002 and lasted for five months.³¹ Studies of the marketing effects indicate that the campaign increased the number of women interested in genetic testing while decreasing the percentage of high-risk women referred for testing from physicians.³²

In late 2007, Myriad launched another advertising campaign in media outlets in the northeastern cities of Boston, Hartford, Providence and New York City.³³ In response to Myriad's launch of the DTC advertising campaign, Richard Blumenthal, the Connecticut

³⁰ "Testimony on Technological Developments in Genetic Testing by Mary K. Pendergast," Before the House Committee on Science, Subcommittee on Technology, September 17, 1996. Available at <http://www.hhs.gov/asl/testify/t960917c.html>.

³¹ Myriad Genetics, "Myriad Genetics Launches Direct to Consumer Advertising Campaign For Breast Cancer Test," September 12, 2002. Available at http://www.corporate-ir.net/ireye/ir_site.zhtml?ticker=mygn&script=413&layout=9&item_id=333030.

³² Mouchawar, et.al. "Impact of Direct-to-Consumer Advertising for BRCA Analysis on Genetic Counseling Referrals at a Managed Care Organization," *Journal of Genetic Counseling 2003, Annual Education Conference Abstracts*.

³³ Myriad Genetics, "Myriad Genetics Launches Awareness Advertising Campaign to Educate Women About Hereditary Risks of Breast and Ovarian Cancers," September 10, 2007. Available at <http://www.myriad.com/news/release/1049527>.



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Attorney General, began an investigation into potentially false or misleading claims in the campaign.³⁴

In an interview with the Yale Cancer Center, Attorney General Blumenthal noted the many concerns he had with Myriad's advertising campaign.³⁵ First, he noted the potential for Myriad to exaggerate the benefits of the breast cancer test, especially given that only 10% of breast cancer has hereditary causes.³⁶ This lack of understanding or knowledge could cause people to spend thousands of dollars for a test that might not be relevant to them. Second, Blumenthal worried that the advertisements would mislead consumers if scientists, clinicians, or health care providers did not properly interpret test results.³⁷ Third, he was concerned overall about how risks and benefits were conveyed. The advertisement informed consumers that they could reduce the risk of cancer by taking the test, but did not indicate potential risks or down sides that the test posed. Blumenthal opined that this could have created a false sense of security for those with negative tests and potential overreaction and anxiety for those with positive tests.³⁸ Finally, the television commercial was portrayed as a public service announcement rather than a paid advertisement, which had the potential to mislead consumers.³⁹

Due to these concerns, Blumenthal issued a subpoena to gather information about the advertising campaign to determine if the campaign was misleading to the public.⁴⁰ Connecticut, like the other states, does not specifically regulate the false advertising of genetic tests. Blumenthal is attempting to use existing state regulations to monitor Myriad.

To date, no further action has been taken by the Attorney General's office, although the case is still pending. The concerns raised by Myriad's advertisement campaign illustrate how DTC marketing campaigns for genetic tests can potentially violate false advertising laws.

VI. Conclusion

This project surveyed state laws to determine if states regulate marketing of DTC genetic tests, and whether states' false advertising and deceptive trade practice laws adequately protect consumers from potentially deceptive marketing of genetic tests. While states do not regulate the advertising of genetic tests, DTC marketing of genetic tests could fall under these general state laws. It may be difficult, however, to bring successful claims for false advertising due to the unique and evolving nature of genetic testing.

³⁴ Marilyn Chase, "Ad Campaign Fuels Debate On Breast-Cancer Gene Test: Critics Say Calling Attention to a Rare Risk Factor May Create Unnecessary Fear," September 11, 2007. *Available at* <http://online.wsj.com/article/SB118946587203223125.html>.

³⁵ Interview by Edward Chu and Kenneth Miller with Attorney General Richard Blumenthal and Ellen Matloff, *Yale Cancer Center Answers: Cancer Genetic Testing*, (WNPR Connecticut Public Radio broadcast Sept. 16, 2007).

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*



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In the future, false advertising laws with specific language addressing the unique nature of genetic tests will help to make the regulation of DTC marketing more effective. Specifically, provisions should address the scientific validity of genetic testing, consumer education, privacy, damages, and statute of limitations.