Curtis Walcker - Compliant Copywriting

Curtis: My name is Curtis Walcker. I'm going to present you today on the compliance aspects of copywriting for dietary supplements. To give you a little background on myself, I've got an education. My master's degree is in nutrition. I've got a couple of undergraduate degrees in the science field as well. That does help me navigate some of the claims and understand some of the science as I'm going through reviews of building substantiation files.

My experience is more than 20 years now in the dietary supplement industry, short of mowing lawns and a few things in my younger years, it's really the only thing that I've ever done. My professional positions have pretty much exclusively been in regulatory affairs, quality control and product development.

Here are some of the brands that I've worked for in my full-time positions, my last three have been vice-president level positions in those same three areas that I mentioned. Going back to vitamin research products, VRP that's where I really got my first taste of what copywriting was and direct sales letters and things like that. They had a couple of brands called Health Resources and True Health. A lot of people know those guys. All the way back to GNC. While I went to college, I worked as a store manager and kind of got a grasp of product categories and ingredients and things like that.

In 2013 during my time at VRP, I got an inkling that there are a lot of brands that weren't ready for a position I was lucky enough to hold. Not everyone was needing a full-time compliance person. So I opened a consulting company, dietary supplement experts, we're in Eagle, Idaho focusing all on all the same things that I knew. Product development, quality control, regulatory affairs. And seven years later, my inkling was right, we've served over 800 clients now.

Going into the presentation here, things I want to touch on, this is definitely a high level overview of things. But I'm trying to touch on the most important things for copywriters. So FDA compliance, we're going to talk about structure function claims versus disease claims, FTC compliance. I'm going to present you a risk scale that I use in my own practice.

We're going to talk about wordsmithing. That's a super critical for copywriting and getting start copy that's kind of noncompliant into compliance. I'm going to go over a few other claims and risks that are out there when you're writing and offer some tips or copywriters, and also brands. I understand that in this group, there's not only copywriters, but also brand owners. I will leave you with a cheat sheet handout that is probably the most requested thing that I get from copywriters. It's what do we say instead of this? It's kind of a rehash of what this presentation is, but it goes into kind of say this, not that.

First, let's get a few definitions out of the way to really understand structure function claims disease claims, where we put them, what they are. The two places that we'd be ending up putting claims, and this would sort of apply to your copywriting is label and labeling. Even though they sound like the same thing, they're really not. The label is a display of written printed or graphic material that's on the immediate container. So if you've got a dietary supplement, this is the actual sticker that goes around the bottle or whatever it's going to be on the actual package.

Labeling on the other hand is everything that accompanies that. It's written printed graphic material that's on that container plus anything that accompanies it. When the laws and regulations were put out, it really we're talking about brochures bottle tags, catalogs, things like that existed at the time. But in modern times we're seeing FDA, FTC, everybody extend this regulation to websites, videos, social media posts testimonials, presentations like this one if they can get access to it and it had something to do with us selling supplements.

It's not just say me saying it for my own brand, it's my employees, it's ambassadors, affiliates, endorsers it's the doctors we hire to talk about products. People that we compensate and conversations in which we have control. If we're pulling an Amazon review, bringing it over into copy or somewhere and we have control of taking that down or presenting it a certain way that can also become part of labeling and we're responsible to make sure it's compliant.

So what are structure function claims? They describe the role of a nutrient or dietary ingredient intended to affect the structure function in humans. Structure function claims are the claims that FDA allows us to make. They also characterize documented mechanisms by which ingredients and products act to maintain such structure function. These claims describe the effect of dietary supplements on general wellbeing.

Structure claims for dietary supplements cannot involve the diagnosis, curing, mitigation, treatment, or prevention of any disease. There's a couple of exceptions where it involves classical nutrition, deficiency diseases like scurvy that rarely ever becomes a loophole. We can capitalize on some of these serious deficiencies don't really exist in modern times. So I wouldn't worry too much about that allowance.

That's the structure function claim. That's what we can say. We can basically say these things help maintain healthy structure function of the body. Talk about how they do it. Talk about general wellbeing, the things not to say are the disease claims. It's important to know that FDA doesn't say disease is arthritis. It's not cancer. Well, it is. But it's not exclusively that. Their definition damage to an organ parts structure or system of the body such that it does not function properly or a state of health leading to such dysfunctioning.

So they've really covered their bases here. It really starts blurring the line of what was structure function, maintaining health, and then what's disease on the states of health that lead to dysfunction. That's kind of everything out of function all the way up to the full-blown disease.

Where it does get gray, it's important to be able to recognize when you're writing or reviewing copy, what is structured function versus disease statements that you see the disclaimer on dietary supplements all the time, these statements have not been evaluated by the FDA. This product is not intended to diagnose, mitigate, cure. That's not a safeguard to allow you just to say whatever you want, that's there, you're required to put that on there, or put it on your copy whenever you've made structure function, the permissible claims for dietary supplements. But once you get into those kinds of claims that do those things, or imply those things, you start getting into disease claims and it's a big trouble area.

To help you recognize disease clients, I am going to present to you 10 criteria for recognizing those. These aren't criteria that I've made up by any means. These are criteria that the FDA provided us back in January of 2002. They put out the final rule on what structure function claims were permissible. It's a very lengthy read. The shorter read is this, compliance guide they put out for industry. So we really can understand in plain language what they mean by that really lengthy document.

I'm doing a high level overview of it, and if you want to really get expert on it you could just go to the FDA website, look up this guidance document and read it thoroughly and understand it. We'll jump into the 10. Recognizing--. FDA gives us some examples in that document, they say relieves crushing chest pain, improves joint mobility and reduces inflammation. Again, it doesn't have to be the exact names of a disease angina or arthritis. Those things definitely imply just based on what we're saying there. So definitely disease claims.

Second criteria has effect on the characteristic signs or symptoms of a specific disease or class of diseases. So we can't in lieu of saying helps an enlarged prostate. We can't go down with scientific--, frequent or urgent need to urinate, especially at night, difficulty urinating and complete bladder emptying. You ask a doctor what that is, and that's probably enlarge prostate. Those are the classic characteristic signs and

symptoms. So if you're going to say all of that, you might as well just take the risk and say the full blown disease, not allowed.

Third one, third criteria has an effect on an abnormal condition associated with a natural state or process. Kind of hard to think through what these would be, but aging and menopause are a couple of examples. If the abnormal condition is an uncommon or it can cause significant or permanent harm. A couple of FDA's examples on that Alzheimer's disease or senile, dementia in the elderly. Yes, they're part of a natural state but they tick the marks for being diseased claims. What we can say would be mild memory loss associated with aging, not as powerful or punchy, but that's about the max you want to talk about in that category.

The next one, this one has a couple of sub categories. It has an effect on a disease or diseases through one or more of the following factors. These are really interesting ones because copywriters tend to work with these ones a lot. First one is the name of the product. You can't be totally compliant in what you say about a dietary supplement and then go and make a cute name that implies or explicitly states the treatment of disease. So these excerpts I've pulled here from actual FDA warning letters. That's when FDA goes out, finds you, cites you for what you've done wrong, makes you fix it, or gives you a chance to remedy it.

There's not a great way to keep up on your education on these claims on what FDA is looking at. Outside of probably just going to the FDA site and subscribing to warning letters, every Tuesday they post them. You can see who got in trouble for what. You can kind of learn by curiously through these brands and clean up your own things, don't make the same mistakes that other people make.

I read these warning letters every Tuesday. I definitely suggest that be part of your practice, if you want to be writing a little more compliantly. But that's where I pulled these from just examples from real warning letters, real companies got in trouble for these product names or clients, names are claims. This one, you name COVID pack. Obviously, that's one that's popular today. Everyone wants to sell something for COVID and immune. COVID packs taking it way too far.

Another one, all natural cough syrup. FDA said causes the products to be drugs. They call things drugs when they've gone ahead and implied or explicitly said they can treat disease or prevent disease. Here's another one that's interesting, joint repair, implies the product is for use in the mitigation, cure or treatment of a damaged state. So joint repair, it doesn't seem to us maybe like an arthritis claim or something like that, but it's talking about the state leading to such a dysfunction. So even joint repair is a problem. It would need to be something more like joint maintenance to be permissible.

The next factor, this one you don't see that much. Statement about a formulation of the product, including a claim the product contains an ingredient that has been regulated by the FDA as a drug or well known by consumers for treating disease. I couldn't find one very easily. This is the best one I could come up with because aspirin is a drug regulated by the FDA, and sometimes it's used for treating disease.

So in this one, they said, Willow bark, also called nature's aspirin, acts as a natural anti-inflammatory inflammation. FDA says it's a disease. So you put all that together. They're saying this is an impermissible claim. So don't go comparing ingredients or products to drugs that are out there.

This is maybe one of the biggest ones here to take note of, actually the next one's equally big, but citations of a publication of reference if the citation refers to a disease. If in the context of the labeling as a whole, the citation applies treatment or prevention of disease. I see this all the time, copywriters and brands want to have that proof element in the writing, in the videos, whatever it is, sometimes advertising networks require you to site your studies to back up the claims that you're using in your copy.

It's kind of dangerous, you want to have it, some people are requiring it but FDA is also looking at it. Even though you're thinking you're doing the good thing by pulling these studies together and supporting what you're saying. Even if you've got 100 studies showing that your product reduces blood pressure, we're still never allowed to say that about dietary supplements. You've got to go down the drug routes, go ahead and do that. I pull this from a warning letter it's a really good one.

These people just in their copy they had cited this study here about cancer, and it also just gone and put a link to some sort of a PDF. FDA said that the reference, and they went out and looked at these things, which they do. They dive pretty deep once they see something out of sorts. The reference citation in the second study is keywords such as coronary artery disease, heart disease, cholesterol lowering and improvement, all of this to express your label guard product is intended to treat or prevent coronary artery disease.

So even if nothing was said around this, I'm sure something was set around this, but even if nothing was set around this, just presenting some of these scientific references which seems benign can certainly be used as evidence that you intend your product to be used for the treatment or prevention of disease. You have to be really careful.

Some of the work around copywriters use is they will delete out the, say title of the study. That's usually where that disease language is. But if you look at the second bullet on this one, they didn't say anything like that. FDA went in and found it, found the key words and got the gist of what was being published there and use it as evidence against this company. So you absolutely need that substantiation for the claims you make. But I would say hold that to kind of behind the curtain as much as possible because people may be looking at it and you might be accountable for it.

This is the next factor, use of the term disease or diseased. Pretty obvious here. FDA gives us two examples what they mean here. When you're talking about a product or ingredients, product X promotes good health and prevents the onset of disease. That is not okay. But if you flipped it to just in the copies, talking about a good diet, promoting good health and preventing the onset of disease that would be okay. I don't think this really gains us any ground in our copy. It's not a great loophole. You're not going to be talking about healthy diet. You're going to be more focused on product but be aware of this one.

This is the one that I wanted to get to for copywriters, because it's the one. I mean, I see these three images here and I almost feel like I'm looking at a direct mail piece or something, a landing page with these is kind of the main imagery for an arthritis product, or a blood product, or a heart product.

Just like names or claims, or claims of claims, images, vignettes, pictures, symbols, they're all claims as well. When people look at this, I mean, you'd have no reason in a product that helps maintain healthy blood sugar to be showing someone, checking their, sticking their finger and checking their blood glucose levels. That certainly implies something around diabetes. Somebody grabbing their hand in and of itself might not be a problem, but when you put that red highlight on there, you've kind of got crippled fingers. Clearly a disease state, that's probably an arthritis type product that would be offered with an image like that.

The third one's a little trickier. It's just the heart with EKG tracing going across it. But FDA calls this one out specifically saying that this could imply to some people that it treats a heart condition. So even that's a little risky. If I see that in copy, I'll usually say, just remove the tracing, keep the heart on there. The other two images obviously have to be swapped out for something. But be careful in the images that are chosen either by you as the writer or chosen by whoever's partnered in, on putting images around your copy, because it has to be consistent with the compliant copy.

Next criteria, a claim that a product or ingredient belongs to a class of products that is intended to

diagnose, mitigate, treat, care, prevent disease. We can't be talking about our dietary supplements as natural antibiotics, natural antidepressants, natural antimicrobials. Right now everyone wants to say natural elderberry, antiviral, or whatever it's going to be. You just can't do it. People recognize these as classes of drugs intended to treat disease. Even if it's a supplement, even if you've got proof that it works against viruses in some way, you can't call it an antiviral, it definitely implies a drug type benefit.

Number six, substitute for a product that is a therapy for diseases. This is kind of similar, and you see this in copy a lot. You see this, just see this a lot everywhere. Yeah, take this product, you can reduce the amount of medication you take. Take this blood sugar product and especially in testimonials. So I was able to cut my insulin in half by taking your product. You can't say things like this.

Very, very similar to that, argumentive a particular therapy or drug action. You couldn't say product X enhances the effects of your anti-cancer drug, thinking, well, they've got cancer, they're taking a drug to treat it, and we're just providing a supplement behind that to help support those effects. You can't say that.

Criteria eight has role in the body's response to a disease or a vector of disease. This one is definitely a popular one right now. Supports the body's ability to resist infection. Obviously, resist infections going to be meeting resist disease. But we can say, not quite as sexy, but supports the immune system. We could also say things like boost the immune system, boost immunity. But we can't cross that line into preventing disease or reducing infection or anything like that.

This is an interesting one. Treats, prevents or mitigates adverse events associated with a therapy for a disease. You don't see this a whole lot, but the one you tend to see it with is for probiotics. There's a lot of probiotic offers out there. Part of the pitch is, hey, you've taken an antibiotic, it's wiped out all of your floor, replenish it, go back and replenish it with our product. That's exactly the example the FDA gets. Product X maintains the intestinal floor on people on antibiotics.

And very explicitly they say that this implies that the product will prevent pathogenic, bacterial overgrowth associated with antibiotic use. So you haven't really called out a disease, but when you know how things work on what that drug does and what you're trying to talk about, they recognize you're trying to prevent a disease with that claim.

If those nine weren't enough otherwise suggests an effect on a disease or diseases. I just thought it's worth bringing in the FDA's own words here. This provision of the regulation is intended to allow for implied disease claims that may not fit into the other nine criteria. This provision recognizes that a claim may be a disease claim based on its wording or on the context in which the claim appears on the products label or labeling even if not covered by the other nine criteria.

So it wasn't in those nine, they've used this one to cover. They've got a lot of leeway to call things disease claims. Really when you look at the warning letters and the FDA actions, they're really going after the explicit, they aren't going after a lot of implied. So there is some safety in that. But yeah, I would always say before you go into copy, probably revisit those definitions of structure function, try to stay around that, try to recall some of these nine criteria to stay away from because this 10th one, it could come and bite you.

I added this slide just to reiterate implied and explicit, because so much of copywriting is easily, a brand might tell you, we don't want any disease claims. Don't talk about arthritis, don't talk about diabetes. Instead you're going to go talk about improves fasting blood glucose, and HB A1C, joint comfortability range of motion. When you talk about these things, FDA FTC, all the regulatory people are pretty smart. They know when you say these things, you mean to say the real diseases. So be very careful that you're always qualifying with maintaining a level of health versus making corrections or preventing those serious

levels of dysfunction.

That's FDA for the most part. I want to touch briefly on FTC because FDA they'll send a warning letter, you've got 15 days to fix something like that, make corrections or tell them what you're going to do rather than in 15 days. Aside from some brand reputation damage, not a lot of harm comes from it. FTC really comes after you and really hits the pocket book. So certainly important to think about FTC and their regulations.

What do they do? They act in the interest of all consumers to prevent deceptive and unfair acts and practices in advertising. I've got no problem with that. I don't think any of us would have a problem with that. Representations, omissions or practices are deceptive. If they are likely to mislead consumers, affect consumers behaviors, or decisions about the product and acts or practices are unfair. If the harm they cause, or is likely to cause a substantial, not outweighed by the benefits, not reasonably avoidable.

If you look at FTC and how they've been acting on the dietary supplement, or how even forcing things, they've targeted COVID products and claims, they've targeted recently brain health very heavily. But as you can imagine something like Alzheimer's disease is a very serious condition. Definitely needs medical treatment.

It's just such a serious disease that you wouldn't want someone to use a dietary supplement with all of these promises about turning back the clock on your brain, restoring memory, people waking up and knowing who their loved ones are. Taking this 39, $99 supplement instead of going and seeing their doctor. And I think that's really what this gets you. Let's not be telling people, over promising people on supplements that we can treat their diseases and make them forego real medical treatments just to make a sale. FTC will get you if it's serious enough.

The way we do this, we make sure all of our advertising copy is truthful. It's not misleading. It's adequately substantiated. Adequately substantiated has quite a bit of definition around it. A lot of the FTC settlements have required brands to going forward, use randomized controlled trials. That's the gold standard. You should have ingredients, doses, claims that all align. When you make claims, you should have all that science in place.

The expectation is to have everything substantiated the time you make the claim. So take note for the copywriter around the brands here. You can't just go right, and just make things up and figure it out later. You're really supposed to be substantiated when you put those claims out there. This is going to apply to basically all of your advertising video sales letters, landing pages, direct mailers, what you say on the label. But also the reviews, the testimonials, social media posts, videos, things that are with you and your control.

If you're putting up reviews, they've got to be essentially substantiated for whatever the effect is claiming for the average consumer. Social media posts, one of the big ones, especially with FDA is people have had consumers on their site, on their social media make a review. I loved your product, it treated some disease, and the company goes in and gives it a like. Then they've been in trouble because they're essentially endorsing that to as part of their product offering. So be really careful to make sure everything is truthful, not misleading and substantiated.

Next I want to present to you the risk scale that I use quite frequently, especially in the act of copy review. A lot of people use this, lawyers, I think some of you might already recognize it. I think you'll encounter it in your practice in the future, but this is the best way I can describe it using an analogy. So driving on the road, driving on the highway, there's laws and regulations around that, just like there is when we go sell our supplements.

Let's say we're on a highway posted speed limit of 75 miles per hour. And we're going 75 miles per hour. So everything is right. We are being safe, we're going to get to our destination. We're not going too slow. We're not going too fast. We're probably not going to hurt people in this process. Not going to get pulled over. It's really just we're following all the rules and everything is perfect. In reality, that's not how we all operate. Just like we don't operate perfectly in our businesses and our lives and things like that.

So let's say it's the same posted speed limits. And this might be where I personally would be on the freeway, maybe a little over 80, let's say, we're going 81. We're getting there a little bit faster. We're still probably not putting many people around us at risk, putting ourselves at risk. The regulators, the police officers probably aren't going to take note of us going this speed. So just everything, the risk is still really low. It's not perfect, but everything is low, everything is safe.

And we're moving just a little bit faster. Everything is pretty comfortable, but there's a group of us that might reach 90 plus. This is really where we start to putting other people on the highway at risk, putting ourselves at risk, we're sticking out like a sore thumb to police officers, probably going to get pulled over, probably going to get that ticket as the danger zone. I'm going to use that analogy to come over and show you the risk scale that I use that is very similar to what a lot of people use.

Basically I start sweating above a risk level of seven. I use a risk scale of one to 10. One is we're probably still compliant. We're not really going to sell anything. 10 is we're going 100 miles an hour down the freeway and not using turn signal, not using brakes and putting people at risk and just doing everything egregious. Seven seems to be the place at least mentally I like to kind of keep things in check.

What does the scale mean exactly? This is just my own interpretation. This is nothing official, but just to kind of give you an idea of where my head is at when I'm thinking of this risk scale. Again, the one is a pretty much your claims are a product name, a compliant product name, like brain support. You really haven't said anything.

Five, you've got structure function claims, they're supported, they're very limited. These are kind of like what you see on a bottle in a target Costco, Walmart retail scenario, where that's only going to get on boarded if there's nothing egregious, everything looks very clean. You've said very little about the product.

Six, structure function claims supported claims. Okay, seven, this is where kind of my upper limit structure function claims, we might be moderately implying disease, but what we're doing and we're supported in those claims. Eight starts to get a little risky. We're implying these disease claims. We're still a little bit supported in there. Get to nine, now we're strongly telling people we're treating preventing disease. We're being deceptive. We're using claims that aren't supported.

Then 10 is just the whole gamut of everything that you shouldn't be doing. Explicit disease claims are being deceptive. We're targeting vulnerable populations like the elderly, like children, people that are desperate for treatments for their loved ones. And then we're just making things up. We aren't even supported in our claims. We're just saying all of that and just doing every single thing wrong.

I've left four, three, two blank because I don't think I've ever used those numbers. Usually things are between a five and a five and a nine, really. I don't know what I would say at four, three, two, one. It's just super, super compliant and dry and probably not a great offering.

So what does this look like in terms of claims, just to show you these kinds of categories, how I'd lump it in there, just as example, a level one, you're just a name, you're Ginko biloba. Five, you are a retail supports brain health. Seven is you're right at the line. You're reducing mild memory loss associated with aging. Eight, you're slowing the progression of major memory loss in older adults. That's a little bit too much.

Nine, you're reversing memory loss in older adults. That's just irresponsible. Then 10, you're reversing

Alzheimer's disease, which would just be totally a greed, just unsupportable, just wrong on pretty much every level. But yet you see this in copy all the time, reverse your Alzheimer's disease, kind of sad.

So why a risk scale? I would say I use the scale because it's a language that I can use with brands with copywriters to evaluate strategize claims. If we've got a lawyer involved, if we've got a CEO or a CMO involved a copywriter, we can talk about this. We can say, okay, I want you to write to a level eight, keep it creative. We're going to have a regulatory guy bring it into a seven. Okay, that's fine. We're going to be at retail with this. We need to stay at a five. You can't do anything beyond just really basic supportive claims.

So it helps assigned risk targets at the outset, but also helps us keep sight of overall risk with respect to overall risk tolerance. A brand might say, hey, we're always going to be at a seven or whatever your lawyer compliance person, or just internally you've said is the upper limit.

We're going to be a seven and you hire a writer and they write something, let's say two and eight. Then the goal is to go back and say, okay, this is an eight, this area is an eight, this area is a nine. We need to pull this back to a seven. It makes it easy to say, well, why did you cut this claim? We thought this claim was very important to this offer. Well, it's because it was a nine and here's what it has to look like to be a seven. So it's just a good language. I think if you haven't come across this language in your writing yet, you probably will down the road with was probably a lawyer or somebody like that.

Definitely not my prescriptions, but this is just kind of where people lie, a front facing platforms like your website, like your label, places at FDA and other armchair enforcers can go out and take an easy look at, should probably be in that five to seven range. It should be really, really clean less detectable platforms like an unindexed to landing pages out there on the web.

Maybe direct mailers, things that you send out to your email lists that you know is not seated with FTC, hopefully you've got a group of people that you're marketing to that probably aren't going to turn you in. You might take more risks there in the seven to nine range, a lot of brands do. I'm not recommending that. But if you're going to reach into those riskier areas and start talking about disease, my suggestion would be, make sure if you are talking about disease and being a little more risky, you should be still substantiated to that. Don't go making up claims about products that aren't going to hold up.

So how do we move from nines to sevens wordsmithing? We've got to revise down disease claims in the structure function claims, versus memory loss in older adults. We need to get that down to a seven, something that FDA is going to be more comfortable with. I added in here the comment. It's part science and it's part art. If you look at the two claims above, what started out as a nice sexy claim at nine, I might, if I'm reviewing your copy, reduce it to that seven right there, which maybe it sells, maybe it doesn't.

I'm pretty good working with copywriters over the years, that when I reduce a claim into a structure function claim, I still keep it pretty marketable. But in most cases you writers are going to be much more artistic about this and make it to sell product a whole lot better. So part science, I can do it a little more dryly, you guys can do it a much better, and we can achieve the same goal in doing that.

In that cheat sheet that I talked about, say this, don't say this, say this. This is an example of it, this is pulled directly from that. I've got kind of the biggest categories in that cheat sheet. So I just want to work through just this little section on blood pressure, treats diabetes, and kind of what it looks like to do the wordsmithing. A lot of times when I get copy, we're going to have claims, treats high blood pressure, lowers blood pressure and improves blood pressure, promotes better blood pressure.

All of those are to say the product reduces blood pressure. So the kind of things that I'm going to wordsmith that into, supports healthy blood pressure and helps maintain blood pressure already within

the normal range. I'm sure you've seen that. I mean, that's probably the worst thing in the world, and I might take something like that, like a disease claim and put it into that for you. But that's where I'm going to rely on you copywriting artists to make that a little less dry.

That's really what the FDA wants us to say, but we can say that better and still make the same point. I think it helps maintain healthy blood pressure and very similarly in every category, but for blood sugar, diabetes, HBA 1C, preventing kidney damage, I'm going to dry that down to a seven. Supports healthy blood sugar metabolism, maintains healthy blood sugar already in the normal range, helps maintain healthy blood sugar.

You get the point but again, copywriters ask for this kind of thing all the time. Tell us the disease claims and what we should stay instead. So I've got this cheat sheet where you've probably got 50 or more, and kind of the biggest categories in there to help you out.

We went over FDA went FTC. This is really brief here, but I don't want to mislead you into thinking those are the only two that are, that we need to take into account when we're doing writing and compliance. There's a lot of people also looking, USDA, state attorney general, they're very dangerous. They're much like the FTC, national advertising division, plaintiff's attorneys. So many frivolous little plaintiff's attorney, lots suits out there. They target dietary supplements day in and day out.

Consumers prop 65 and --, advertising networks, merchant processors, these are newer ones, I think, especially brand owners know that when you want to go out and process payments for your product, you've got merchant processors that might want to do some underwriting. Go look at the pages that you're going to have consumers land on. So those have to be essentially pretty compliant. Amazon is looking at compliance, retail distributors, everyone is looking anymore. So it's not just FDA and FTC, but if you can comply with all that FDA FTC thing items that we just talked about you're doing very well.

Other types of claims that present risks that are outside of just disease, organic, made with organic. I see these all the time. Copywriters think, well, you have organic X in there. So I'm going to make an organic claim on it. Behind the scenes, USDA requires certification for products that make these claims. There's a lot of regulation around it. So you need to be careful with those.

Made in USA. The brand might say, yeah, we manufacture this in California. But what you might not be recognizing and what produces a lot of lawsuits is that made in USA claims also require that the components, essentially all components be of US origin. So that's a risky claim. Natural has always been risky, free from claims. FDA has got a couple of other types of claims that present risks. Nutrient content claims like high in this, low in that, high potency health claims, et cetera. But focus on FDA FTC, but be aware, there's some other things that a compliance person might call you out on.

You can go into a couple of tips for copywriters. I just tried to make this useful as possible and offer up what I could. So we're going to go five on copywriters, five on brands for copywriters. Familiarize yourself with recognizing disease claims and structure function claims, refer back to that definition, refer up to those criteria's. If need be, do it before every time you go writing, just so it's always fresh in mind.

Try to take angles that are truthful and not misleading. It seems like the headlines, the lead-ins, the different angles are always what copywriters are chasing trying to be a little more aggressive or creative. Just be careful you're not doing something that's misleading.

Make sure claims are substantiated. If you're doing the writing and you just have to do it cold, put some science together before you just start writing whatever you want to write. Or if you can lean on that brand, if the brand hires you to write a package on product X, ask them, hey, where's your substantiation. I need a basis for the claims I can make. Or I'm not going to be able to write this very well. But someone

somewhere has got to pull together some science to support this. And the brand has to hold that in their pocket for the day someone comes and asks for it.

Importantly, establish a risk tolerance for the piece and try to write within it. If they don't have a risk scale language, maybe present something like that to them, one to 10 always works well I think. Figure out where do they want to be? Do they want to be a seven? They want to be a nine? How crazy are they going to let you get with it? How tight are they going to make you be with it? Establish that at the outset, make things a whole lot easier when you get a compliance review on it, or something comes into question.

Lastly could say lead, don't follow. So many of the copywriters that I encountered that have been in the game for a long time, they tend to just kind of reproduce the same thing over and over and over. New copywriters, I don't know if they aspire to that and they try to produce that same kind of stuff. I would say, come up with new stuff, come up with substantiated stuff, let science be part of the package.

Don't look at other brands and say, oh, well, brand X is saying it. So I might as well say it. Oh, we've got to compete with the brand Y so we have to use this angle. Make sure you're substantiate and make sure everything is compliant and then know me then. Take those kind of angles and do those kinds of things.

For brands, kind of similar set of tips here, but establish risk tolerances and hire writers that can write within them. Some writers know only one way. And that's just totally non-compliant because they want the product to sell a gangbusters. They want to sell some miracles. If that's your kind of writer, you may not want that kind of writer if that's not within your risk tolerance. But again, use that risk scale, maybe set up your own internal risk scale with your group and say, we want to be a seven, we want to be a six, we need to be a five, whatever it is. Make that clear with the writers you hire, you're paying them a lot of money. Make sure they're going to do what your brand needs.

Number two, don't pay for recycled copy. Especially the older players in the copywriting space. I don't see this with the new guys, but I see it with a lot of the old guys. They just keep selling the same copy over and over and over. I think four times this year, I've seen the same story on a brain product about Steve that used to be an accountant that couldn't run a calculator anymore, and couldn't file tax returns on time. I've seen it for 10 years, I've seen the same copy come up and up and up.

I don't know where these things originated, but you pay a lot of money for this stuff. Make sure you're not getting recycled copy. That's probably got somebody else in trouble somewhere down the line. Make sure claims are substantiated. It's either going to be required of your copywriters, say, hey, whatever you guys write, I need you to make sure you you're going to be able to give me substantiation for that. I think that's fair.

Or even better, produce your own substantiation, set up your own science, establish your own set of claims and say here copywriter, this is the science you have to stick with them. These are the claims you have to stick within go write a creative package within these guardrails. That's really, really critical these days.

Kind of for that reason for you, regulatory compliance is unique advantage. I don't think your unique advantage has to be non-compliance or that we cure cancer. Those things just trip you up down the road. Can cost you millions, you might lose everything you gained on a particular offer. If you went too crazy on it, it might wreck your brand. Focus on compliance upfront, and I don't think you're ever going to go wrong by having science and compliance upfront and then hiring a really good copywriter that can turn that into magic and make it itself very well without breaking all the rules.

Lastly, and very importantly, be aware that you are responsible for your advertising, not your writer's, not your competitors. An FTC comes and asks you, you're not going to be able to say, oh, well I had Joe Smith

write this for me, and now I want him to be wrapped up into this settlement. I don't really see that playing out. I don't think I've ever seen that happen, but it may have happened, but you're going to be the one on hook.

So you can't just let a writer say whatever they want and think that somehow you're not going to be responsible. By the same token, you can't say, oh, well, this brand is 100 million dollar brand and they said it, so why are you getting me for it? Or this brand sells in big retail. They said it, why can't I say it. Your competitors aren't going to be your defense when things hit the fan.

What's it like to work with a compliance consultant? Maybe you've done it, maybe you haven't. Kind of the same thing. We work with a compliance consultant or an attorney that focuses on these things, but really these are the kinds of the ways I work with brands and copywriters in any or all of these ways. I can start with you. If it's a new concept, you want to have a blood pressure product. You tell me, hey, I want to be in this category, I want to say these 5, 10 claims. I want to have some hot ingredients.

That's an area where I help. I formulate a product I put in those ingredients, the right doses, the right forms. Then I can present you the claims that those ingredients and doses kind of enable. Usually that that's me creating a claim substantiation file. While I'm formulating, I grab all the science, stick them in files, match them up with the claims, give you a nice document that you can share with a copywriter that connects all the claims to the doses, the ingredients and references, where they can go find those studies in our files. This is a really nice package to present to a regulatory body or to a copywriter.

Very often I attend a creative brief calls. We set up guardrails, usually the brand runs it and copywriter listens and I kind of interject say, hey, here's the 15 claims we want you to stick to, can't say this. I'm always happy to jump on those calls and try to head off any problems we're going to have down the road. Once things are written and a lot of times this is where I kind of come in, I review and suggest edits to copy drafts. I get PDFs, I get word documents. And I do that wordsmithing for you. I take down a level nine to level seven, or you tell me where it needs to be, and I try to correct it to that level.

In that process, usually I take that sexiness out of the copywriter's copy. A lot of times it entails me getting on the phone with copywriter and negotiating a lot of those points and saying, well, Curtis, you've really killed this claim and I still need this claim. So what can we say? And we usually can come up with something that's still hits. Here is where I wanted it to be, but worked for the copywriter as well.

Then I do things like retainers, do ongoing support. If you need to send an email, you can reach out and I can just check that copy and do any of those types of things. That's what it kind of looks like to work with me or people like me.

My company, all of those services, plus things like GMPs. For the brand people out there, there's a lot of other things that you need to be aware of, even if you're never touching a product you're never warehousing, you're never manufacturing, you're just sending to a three PL or something. You still got GMP responsibilities lots of documentation, adverse events. I can always do a quick audit for you and tell you where you're short on things, where it might be able to help. That's where myself and my team love to work.

I'll leave it at that. Thank you. There's my name spelled a little weird, Walcker, it's how it's pronounced. There is my email. If any of you want to reach out, ask questions, just connect with me. I'd love to, and I try to respond to everything really quickly. There is my website. I've got a blog that I publish. So it's kind of along the lines of these types of topics. If you want just more information and want email periodically. That'll do it for me. Thank you.

Mikhail: Thanks, Curtis. I wanted to thank you so much for all the time and effort that you've put in putting

this together for us. As a copywriter myself, I want to say one of the things that really surprised me was that example of the citation of studies, how that can kind of get you in trouble, because as a copywriter, its kind of drilled into your head, you need to show your proof and support it. You wouldn't expect that including a reference or citation to a study. Could be one of the things that can cause you to be non-compliant. So that was one that really stood out to me.

Curtis: Yeah. It's a bit of a double-edged sword there.

Mikhail: I guess, as you mentioned there with the brands, just this was like a crash course in compliance, but it is just a guide. At the end of the day, it's important to have someone who is an expert in this realm to review the copy and make sure it's compliant before you send it out or anything like that. That responsibility really falls on the client and in this case, I mean the copywriters themselves, they can write and then just make sure that the client has it reviewed by someone like yourself.

Curtis: Absolutely. Worthwhile endeavor, especially on big offers.

Mikhail: All right. Well, thanks again, Curtis. I'll be sure to include a link to your website below this. Thanks again for taking the time and all this will really good. We'll keep us in check.

Curtis: Yeah. Thank you. Absolute pleasure.

[Audio Ends]