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¹ Opinion 39 is available at http://www.judiciary.state.nj.us/notices/ethics/CAA_Opinion%2039.pdf#search=%22new%20jersey%20committee%20on%20attorney%20advertising%20opinion%2039%22.

² Federal Trade Commission Act, 15 U.S.C. § 45.

³ See *California Dental Ass'n v. FTC*, 526 U.S. 756 (1999); *FTC v. Superior Court Trial Lawyers Ass'n*, 493 U.S. 411 (1990); *In re South Carolina State Board of Dentistry*, FTC Docket No. 9311 (2003); *In re Massachusetts Board of Registration in Optometry*, 110 F.T.C. 549 (1988).

⁴ See, e.g., Letter from the FTC and the Department of Justice to the Kansas Bar Ass'n (Feb. 4, 2005), available at <http://www.ftc.gov/be/v050002.pdf>; Letter from the FTC and the Department of Justice to the Task Force to Define the Practice of Law in Massachusetts, Massachusetts Bar Association (Dec. 16, 2004), available at <http://www.ftc.gov/os/2004/12/041216massuplltr.pdf>; Letter from the FTC and the Department of Justice to Task Force on the Model Definition of the Practice of Law, American Bar Association (Dec. 20, 2002), available at <http://www.ftc.gov/opa/2002/12/lettertoaba.htm>; letter from the FTC to the Supreme Court of Alabama (Sept. 30, 2002), at <http://www.ftc.gov/be/v020023.pdf>; Brief *Amicus Curiae* of the United States of America and the FTC in *Lorrie McMahon v. Advanced Title Services Company of West Virginia*, No. 31706 (filed May 25, 2004 ai000 0.0000i

available at <http://www.usdoj.gov/atr/cases/f203700/203790.htm>; Brief *Amicus Curiae* of the United States of America and the FTC in On Review of ULP Advisory Opinion 2003-2 (filed July 28, 2003), available at <http://www.usdoj.gov/atr/cases/f201100/201197.htm>. The FTC also has studied the effects of restrictions on competition in the professions. See Bureaus of Consumer Protection and Economics, Federal Trade Commission, A COMPARATIVE ANALYSIS OF COSMETIC LENS FITTING BY OPHTHALMOLOGISTS, OPTOMETRISTS, AND OPTICIANS (1983); THE EFFECTS OF RESTRICTIONS ON ADVERTISING AND COMMERCIAL PRACTICE IN THE PROFESSIONS: THE CASE OF OPTOMETRY, FTC Bureau of Economics Report (1980); see also C. Cox & S. Foster, THE COSTS AND BENEFITS OF OCCUPATIONAL REGULATION, FTC Bureau of Economics Staff Report (October 1990).

⁵ See, e.g., Letter from FTC Staff to the Florida Bar (Mar. 23, 2007), available at <http://www.ftc.gov/be/V070002.pdf>; Letter from FTC Staff to Louisiana State Bar Association (Mar. 16, 2007), available at <http://www.ftc.gov/be/V070001.pdf>; Letter from FTC Staff to Office of Court Administration of the New York Unified Court System (Sept. 14, 2006), available at <http://www.ftc.gov/os/2006/09/V060020-image.pdf>; Letter from FTC Staff to Committee on Attorney Advertising, the Supreme Court of New Jersey (Mar. 1, 2006), available at <http://www.ftc.gov/be/V060009.pdf>; see also, e.g., Letter from FTC Staff to Robert G. Esdale, Clerk of the Alabama Bar (Mar. 29, 2006), available at <http://www.ftc.gov/be/V060008.pdf>; Letter from FTC Staff to the Florida Bar (Mar. 23, 2007), available at <http://www.ftc.gov/be/V070002.pdf>; Letter from FTC Staff to Louisiana State Bar Association (Mar. 16, 2007), available at <http://www.ftc.gov/be/V070001.pdf>; Letter from FTC Staff to Office of Court Administration of the New York Unified Court System (Sept. 14, 2006), available at <http://www.ftc.gov/os/2006/09/V060020-image.pdf>; Letter from FTC Staff to Committee on Attorney Advertising, the Supreme Court of New Jersey (Mar. 1, 2006), available at <http://www.ftc.gov/be/V060009.pdf>; see also, e.g., Letter from FTC Staff to Robert G. Esdale, Clerk of the Alabama Bar (Mar. 29, 2006), available at <http://www.ftc.gov/be/V060008.pdf>.

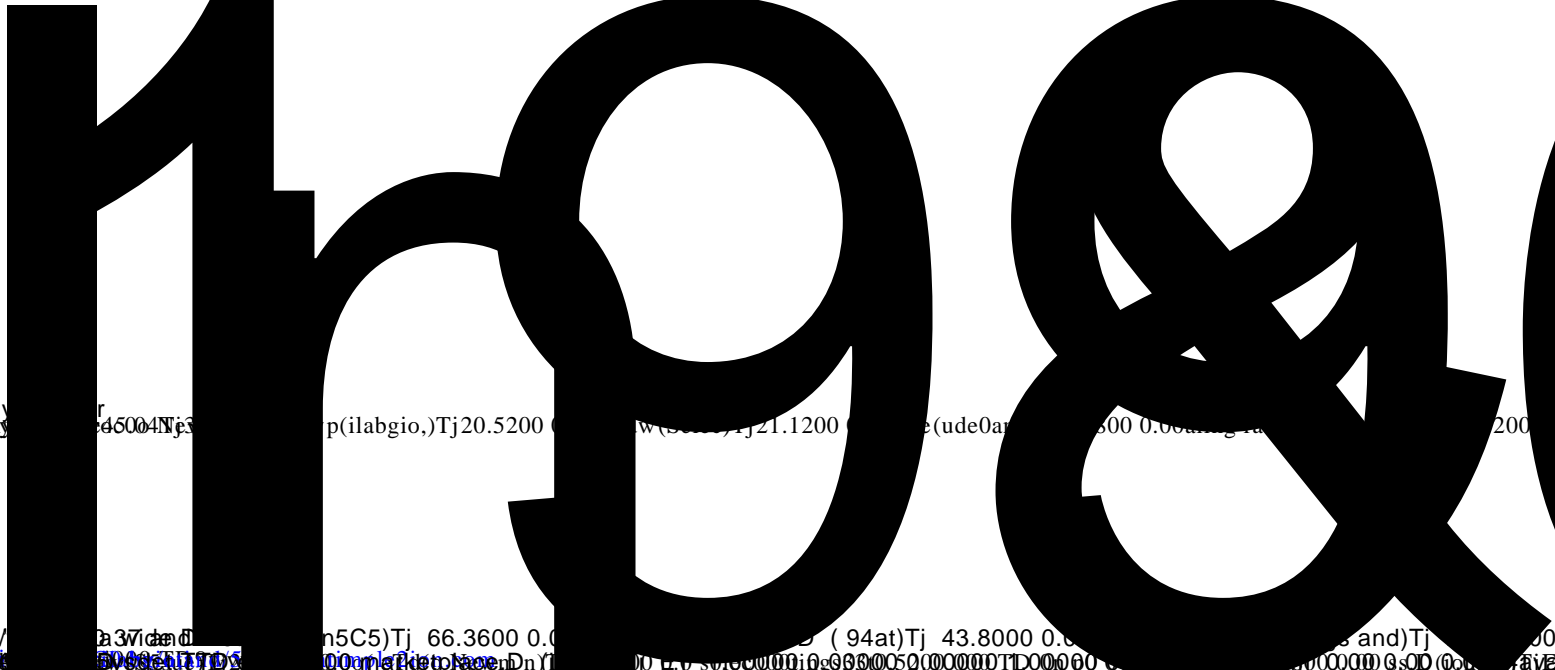
ion.”

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In addition to Super Lawyers and Best Lawyers in America, other competing ratings and certification programs available to New Jersey attorneys include Chambers USA (see <http://www.chambersandpartners.com/usa/search.aspx>), LawDragon (see <http://www.lawdragon.com>); Martindale-Hubbell (see <http://www.martindale.com>); the New Jersey Board of Attorney Certification (see <http://www.njbac.org/>); LawyerRatingz (see <http://www.lawerratingz.com/index2.jsp>), and many more.

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For example, Super Lawyers chooses candidates by conducting state and region-wide surveys of



RPC 7.1(a)(2). In formulating Opinion 39, the Committee applied RPC 7.1(a)(2) & (3), and concluded that the titles “Super Lawyer,” “Best Ltf0 Tf0pt0v 00 0.00 rgBT72.0ust Ltf0 Tf0pt0v 00 0c1200 0.0p

⁸ The Committee reasoned that advertising under such names is “inherently comparative in nature,” and is “likely to create an unjustified expectation about results,” rendering it “false and misleading” under RPC 7.1(a)(2) & (3). *Id.*

⁹ *See* Letter from Federal Trade Commission to the New Jersey Supreme Court’s Committee on Attorney Advertising (November 9, 1987), *available at* 1987 WL 874590.

¹⁰ *Id.*

and misleading.¹¹ If the Court is nevertheless concerned that the types of advertisements considered in Opinion 39 are potentially misleading, the FTC recommends that the Court adopt a less restrictive remedy such as requiring disclosures.

ARGUMENT

Competition is the hallmark of America’s free market economy. The United States Supreme Court has observed, “ultimately competition will produce not only lower prices, but also better goods and services. ‘The heart of our national economy long has been faith in the value of competition.’” *National Society of Professional Engineers v. United States*, 435 U.S. 679, 695 (1978). Consumers benefit from competition, including competition among members of the learned professions. *See Goldfarb v. Virginia State Bar*, 421 U.S. 773, 787 (1975). These benefits accrue in both price and non-price dimensions: “[A]ll elements of a bargain – quality, service, safety, and durability – and not just the immediate cost, are favorably affected by the free opportunity to select among alternative offers.” *Prof’l Eng’rs*, 435 U.S. at 695.

As this Court has recognized, consumers of legal services benefit from information about the legal system that can help them choose a lawyer, and “attorney advertising is one of the best ways to foster price competition.” *Felmeister & Isaacs*, 104 N.J. at 523-24 (1986). This holding harmonizes well with competition principles and First Amendment commercial speech doctrine, both of which encourage the free flow of truthful and non-misleading information to consumers. *See, e.g., Virginia Bd. of Pharmacy v. Virginia Citizens Consumer Council*, 425 U.S. 748, 765

¹¹ Indeed, New Jersey, Alabama, and Oregon are the only states with outright prohibitions against all comparative claims in attorney advertising. *See* Table 1, Appendix A.

¹⁴ G. Stigler, *The Economics of Information*, 64 J. Pol. Econ. 213, 220 (1961).

¹⁵ Several economists have developed models that predict firms that will be able to charge higher prices when consumers face high costs of obtaining marketplace information. *See, e.g.*, Dale O. Stahl, *Oligopolistic Pricing with Sequential Consumer Search*, 79 AM. ECON. REV. 700 (1989); Kenneth Burdett & Kenneth L. Judd, *Equilibrium Price Dispersion*, 51 ECONOMETRICA 955 (1983); John Carlson & R. Preston McAfee, *Discrete Equilibrium Price Dispersion*, 91 J. POL. ECON. 480 (1983); Steven C. Salop & Joseph E. Stiglitz, *Bargains and Ripoffs: A Model of Monopolistically Competitive Price Dispersion*, 44 REV. ECON. STUDIES 293 (1977). Using these models as a theoretical framework, several au

non-deceptive comparative advertising “is a source of important information to consumers[,] assists them in making rational purchase decisions[,] encourages product improvement and innovation, and can lead to lower prices in the marketplace.” 16 C.F.R. § 14.15(c). When the state prohibits the free flow of commercial information, the incentive to compete will be weakened, and consumer welfare will be reduced.¹⁶

Empirical research has found that restrictions on adve

¹⁶ See H. Beales, *et al.*, *The Efficient Regulation of Consumer Information*, 24 J.L. & Econ. 492 (1981); *see also* R. Pitofsky, *Beyond Nader: Consumer Protection and the Regulation of Advertising*, 90 Harv. L. Rev. 661, 670 (1977).

¹⁷ See Timothy J. Muris, *California Dental Association v. Federal Trade Commission: The Revenge of Footnote 17*, 8 Sup. Ct. Econ. Rev. 265, 293-304 (2000) (discussing the empirical literature on the effect of advertising restrictions in the professions and citing, among others: James H Love and Jack H. Stephen, *Advertising, Price and Quality in Self-regulating Professions: A Survey*, 3 Intl. J. Econ. Bus. 227 (1996); J. Howard Beales & Timothy J. Muris, *State and Federal Regulation of National Advertising* 8-9 (1993); R.S. Bond, J.J. Kwoka, J.J. Phelan, and I.T. Witten, *Effects of Restrictions on Advertising and Commercial Practice in the Professions: The Case of Optometry* (1980); J.F. Cady, *Restricted Advertising and Competition: The Case of Retail Drugs* (Washington, D.C.: American Enterprise Institute, 1976); J.F. Cady, *An Estimate of the Price Effects on Restrictions on Drug Price Advertising*, 14 Econ Inq 490, 504 (1976); James H. Love, *et al*, *Spatial Aspects of Competition in the Market for Legal Services*, 26 Reg Stud 137 (1992); Frank H. Stephen, *Advertising, Consumer Search Costs, and Prices in a Professional Service Market*, 26 Applied Econ 1177 (1994)); *In the Matter of Polygram Holdings, Inc.*; FTC Docket No. 9298, at 38 n.52 (F.T.C. 2003), *aff'd* 416 F.3d. 29 (D.C. Cir 2005)(same). *See also* Timothy J. Muris & Fred S. McChesney, *Advertising and the Price and Quality of Legal Services: The Case for Legal Clinics*, 1 American Bar Found. Res. J. 179, 184 (1979) (discussing that attorney advertising results in the phenomena of increased consumer requests for legal services coupled with lower prices and higher quality of services, particularly in specialized areas of the law); *see* Frank H. Stephen & James H. Love, *Regulation of the Legal Professions*, 5860 Encyclopedia of L. & Econ. 987, 997 (1999), *available at* <http://encyclo.findlaw.com/5860book.pdf> (empirical studies demonstrate that restrictions on attorney advertising have the effect of raising fees).

¹⁸ William W. Jacobs, Brenda W. Doubrava, Robert P. Weaver, Douglas O. Stewart & Eric L. Prah, IMPROVING CUSTOMER ACCESS TO LEGAL SERVICES: THE CASE FOR REMOVING RESTRICTIONS ON TRUTHFUL ADVERTISING, FTC Staff Report, 126-27 (1984).

¹⁹ Department of Constitutional Affairs, United Kingdom, Quality in the Legal Service Industry: A Scoping Study, Aug. 2005, p. 38, *aval3v 0200 Tc-0.1800 Tw(19)TjET1.0 A*

element in attorney fees.²⁴ The DCA study also found that consumers benefitted most from advertisements that contained information about an attorney's quality (such as quality mark achievement), especially when such information was coupled with pricing terms.²⁵

By limiting the ability of attorneys to use these services, RPC 7.1(a)(2) & (3) and Opinion 39 reduce the amount of information available to New Jersey consumers seeking legal representation. This restriction on otherwise truthful and non-misleading advertising is likely to reduce competition among attorneys to the detriment of New Jersey consumers.

II. First Amendment Commercial Speech Doctrine Requires that Restrictions be Narrowly Tailored to Further a Substantial Government Interest.

The competition principles discussed above also complement the First Amendment commercial speech doctrine. In *Central Hudson*, 447 U.S. at 566, the U.S. Supreme Court held that a regulation prohibiting commercial speech must be supported by a substantial government interest, advance that government interest, and be carefully tailored to serve that interest. *Id.*

Following *Central Hudson*, the Court struck down state prohibitions on truthful attorney advertising, holding, "Commercial speech that is not false or deceptive and does not concern unlawful activities . . . may be restricted only in the service of a substantial governmental interest, and only through means that directly advance that interest." *Zauderer v. Office of Disciplinary Counsel Of the Supreme Court of Ohio*, 471 U.S. 628, 638 (1985). The Court held that restrictions on attorney advertising based on "unsupported assertions" that the advertising in

²⁴ *Id.* at 25.

²⁵ *Id.* at 28.

question is likely to mislead consumers should be struck down. *Id.* Similarly, in *Peel*, the U.S. Supreme Court rejected a state’s argument that advertising a certificate in “Civil Trial Advocacy” from the National Board of Trial Advocacy was misleading because the state’s case had a “complete absence of any evidence of deception.” *Peel*, 496 U.S. at 106 (1990); *see also Bates*, 433 U.S. at 372-74 (unsupported assertions of uniqueness of legal services are insufficient to render attorney advertising inherently misleading); *Mason v. Florida Bar*, 208 F.3d 952, 956 (11th Cir. 2000) (“A state cannot satisfy its burden to demonstrate that the harms it recites are real and that its restrictions will alleviate the identified harm by rote invocation of the words ‘potentially misleading.’”).

To the extent potentially misleading statements could confuse consumers, a state may consider requiring a disclosure explaining the rating systems and organizations. *Peel*, 496 U.S. at 100, citing *In re R.M.J.*, 455 U.S. 191, 201-03 (1982). Here, RPC 7.2(a)(2) & (3) fail to meet the standards set forth in *Central Hudson* and its progeny: While there is an interest in prohibiting deceptive claims, the prophylactic ban at issue here is more restrictive than requiring a disclosure to inform consumers about the nature of the claim. Thus, even if the Committee could demonstrate that the advertising at issue in Opinion 39 is likely to mislead consumers, which it has not, there are substantially less restrictive alternatives than the prohibitions imposed under the Opinion and the Rule.

A. The Committee Does Not Provide any Evidence That Consumers Are Likely to Be Deceived by the Prohibited Advertising.

Truthful and verifiable statements that certain attorneys have been designated by their

²⁶ The FTC staff has identified many organizations in addition to those discussed in Opinion 39 that designate, distinguish, or award New Jersey attorneys with pr

burdensome that the State is entitled to forgo that task in favor of the more convenient but far more restrictive alternative of a blanket ban on the use of illustrations.

Id. Like the state in *Zauderer*, the Committee here – both in formulating the Rule and in its application in Opinion 39 – did not demonstrate that there are “particular evils” associated with comparative forms of advertising that cannot be combated by any means short of a blanket ban.²⁷ Rather, the Committee simply concluded that comparative claims are inherently misleading and thus should be prohibited.

Of course, there are instances where such forms of advertising *could be* misleading. For example, if such a designation were available to any attorney who paid a fee, without regard to that attorney’s qualifications, it likely would be misleading. *See Peel*, 496 U.S. at 102 (a statement touting a certification issued by an organization “that had made no inquiry into the petitioner’s fitness” or “issued certificates indiscriminately for a price” could be misleading). But RPC 7.1(a)(2) & (3), both in their terms and as applied through Opinion 39 prohibit all such designations without any factual analysis, regardless of how carefully the comparisons are crafted.

B. The Advertising at Issue Here Contains Verifiable Facts That Are Unlikely to Mislead Consumers.

Claims that an attorney has been designated a “Super Lawyer,” “Best Lawyer,” or other similar title are objectively verifiable statements of fact, and consumers can verify the bases for

²⁷ The burden the government faces when fashioning a prophylactic rule that restricts commercial speech differs from the government’s burden when challenging misleading commercial speech on a case-by-case basis. In *Zauderer*, for example, the Court noted that the FTC has policed the use of visually deceptive advertising on a case-by-case basis. 471 U.S. at 649. Although it acknowledged the difficulty of that task, the Court found that, in the face of the possibility of individual case enforcement, the state’s blanket ban approach could not stand. *Id.*

such designations. *See Peel*, 496 U.S. at 101. (“A lawyer’s certification by [National Board of Trial Advocacy] is a verifiable fact, as are the predicate requirements for that certification”); *see also Az. Ethics Op. 05-03* at 2 (Jul. 2005) (“[T]he factual statement that a lawyer is listed in *The Best Lawyers in America* is an implied comparison with a subjective basis that can be verified.”). Indeed, as Respondent noted in its brief, Best Lawyers’ and Super Lawyers’ selection methodologies were “readily and publicly accessible both in printed publications (i.e., in ‘Super Lawyers’ magazines and in ‘The Best Lawyers in America’ annual publication) and on websites maintained by both publishers.” Resp. Br. at 4. *See also Az. Ethics Op. 05-03* at 2 (Jul. 2005) (“a consumer who wishes to investigate the underlying basis for a lawyer’s listing in *The Best Lawyers in America* can simply read the introduction to the publication.”)

As the Supreme Court observed in *Peel* with respect to advertising of credentials, whether an attorney has been selected a Super Lawyer or a Best Lawyer “is not an unverifiable opinion of the ultimate quality of a lawyer’s work or a promise of success, but is simply a fact, albeit one with multiple predicates, from which a consumer may or may not draw an inference of the likely quality of an attorney’s work.” *Peel*, 496 U.S. at 101. Although the Committee may not find such designations (by Super Lawyers, Best Lawyers, Martindale, and others) as meaningful indicators of quality for consumers, consumers should be free to make that decision themselves. Indeed, regarding the same programs at issue here, the Supreme Court of Arizona found that consumers can easily review the publications’ means for selecting attorneys for their respective designations and determine “how much value, if any, to afford the advertised listings.” *Az. Ethics Op. 05-03* at 2. Even though consumers may not be familiar with the Best Lawyers or Super Lawyers publications, “[u]nfamiliarity is not synonymous with misinformation.” *Mason*,

208 F.3d at 957. Consumers are not necessarily misled when they fail to inform themselves of the precise standards under which certification is granted. *See Peel*, 496 U.S. at 102-03.

Because “the strength of a certification is measured by the quality of the organization for which it stands,” *Peel*, 496 U.S. at 102, the various rating programs each have an interest in assuring that their respective designations signal some quality to consumers.²⁸ If consumers do not believe their selection criteria are meaningful, there will be little value in being deemed “AV Rated,” a “Super Lawyer,” a “Best Lawyer” or similar distinction, thereby threatening the programs’ existence.

C. There Are Substantially Less Restrictive Programs, thereby threatening the

²⁸ Competition among ratings programs for importance as a reliable source of information, moreover, is likely to elevate both the manner in which attorneys are evaluated and the caliber of the information reported. A professional designation that provides consumers with no information will have little marketplace value.

Concerns about deceptive advertising are better addressed through requiring more information in the form of disclosures rather than through restrictions on the flow of truthful information to consumers. *See Peel*, 496 U.S. at 108 (“disclosure of truthful, relevant information is more likely to make a positive contribution to decision making than is concealment of such information.”) In *Peel*, the Court noted that to the extent that statements of private certification or specialization “could confuse consumers, a state might consider screening certifying organizations or requiring a disclaimer about the certifying organizations or the standards of a specialty.” *Id.* at 110.

Almost all states permit truthful, non-deceptive comparative attorney advertising, and many have adopted narrow disclosure requirements to address concerns that consumers may be misled. Every state prohibits false and misleading advertising but, with the exception of New Jersey, Alabama and Oregon, every state either expressly allows comparative advertising that may be substantiated o

²⁹ *See* Appendix A, Table 1.

America, or similar publications and include additional statements, claims, or characterizations based upon the lawyer's inclusion in such publication, provided such statements, claims or characterizations do not violate Rule 7.1."); *Tenn. Advisory Ethics Opinion* 2006-A-841 (Sept. 21, 2006) (advertising that attorneys have been selected as "Super Lawyer" or "Best Lawyer" is permitted "as long as the lawyers do not go further and refer to themselves subjectively as 'super' or 'the best' on the basis of such designations contained within these publications.").

Further, Virginia and Tennessee prohibit communicating to the public credentials that are bestowed indiscriminately or to any attorney willing to pay a fee. *See Va. LEO 1750* at 7-8 (attorneys may not communicate credentials that are not "based upon objective criteria or a legitimate peer review process but [are] available to any lawyer who is willing to pay a fee"); *see*

In June, 2006, the New York Unified Court System promulgated draft rules that, like the New Jersey rules, prohibited comparative claims. The FTC Staff submitted comments to New York in September, 2006, and recommended eliminating or modifying, among other things, rules prohibiting comparative advertising.³⁰ On January 4, 2007, the New York Unified Court system promulgated revised rules incorporating nearly all of the FTC Staff's recommendations.³¹ The revised New York rules specifically permit comparative claims that may be factually supported, though they require a disclosure that prior results do not guarantee a similar outcome.

The Committee's concern that certain comparative claims could mislead consumers about the results lawyers can achieve can be better addressed by a narrower rule than by a prophylactic rule banning all comparative titles. For example, the Court could require that attorneys may advertise only those professional credentials that are not bestowed indiscriminately without any inquiry into the attorney's fitness or those available for a fee.³² Further, the Court could require attorneys advertising their credentials to disclose the year and specialty for which they have been listed and prohibit misleading claims based upon receiving the credential. There is no indication that the burden of distinguishing bona fide from bogus professional designations would be significant, but the benefits consumers derive from the free flow of commercial information should more than "justify imposing on would-be regulators the costs of distinguishing the

³⁰ FTC Staff comments may be accessed at <http://www.ftc.gov/os/2006/09/V060020-image.pdf>.

³¹ The revised Rules of the Unified Court System of New York (with red-lined changes comparing the initial draft) are available at http://www.nycourts.gov/rules/attorney_ads_amendments.shtml.

³² RPC 7.1(a)(3) prohibits all advertisements that are comparative in nature as being inherently "false or misleading." Thus, a finding that advertising a professional designation conveys an implicit comparison may necessitate a finding that such an advertisement is prohibited even if truthful. To the extent that Opinion 39's restrictions are mandated by RPC 7.1(a)(3), we recommend revising the Rule so as not to bar all comparative advertising.

truthful from the false, the helpful from the misleading, and the harmless from the harmful.”

Zauderer, 471 U.S. at 646.

CONCLUSION

Because the New Jersey policy in RPC 7.1 prohibits the free-flow of truthful and non-deceptive information from consumers, the FTC recommends that the Court revise the rule to allow truthful, non-misleading comparative advertising. Thus, the FTC suggests that the Court revise RPC 7.1 as descri^{ga7.6T.00 0u}

APPENDIX A

TABLE 1

<i>STATE</i>	<i>RULE</i>	<i>COMMENT</i>
Alabama	Alabama Rules of Professional Conduct, Rule 7.1(c).	Besides New Jersey and Oregon, Alabama is the only state with an outright prohibition on comparative claims in attorney advertising, though exception is granted with respect to Court and Bar approved certification programs.
Alaska	Alaska Rules of Professional Conduct, Rule 7.1(c).	The Rule allows for comparative advertisements that can be substantiated.
Arizona	Arizona Rules of Professional Conduct, ER 7.1, Comments [2] and [3].	The comments expressly allow for comparative claims even if they can not be substantiated, so long as there is no “substantial likelihood to mislead.”
Arkansas	Arkansas Disciplinary Rules of Professional Conduct. Rule 7.1(C).	The Rule allows for comparative advertisements that can be substantiated.
California	State Bar of California Rules of Professional Conduct, §1-400(D).	California rules prohibit misleading advertising, but do not include comparative claims when defining such advertisements.
Colorado	Colorado Disciplinary Rules of Professional Conduct, Rule 7.1.	Colorado rules prohibit misleading advertising, but do not define comparative claims as misleading.
Connecticut	Connecticut Rules of Professional Conduct, Rule 7.1(3).	The Rule allows for comparative advertisements that can be substantiated.
Delaware	Delaware Lawyers’ Rules of Professional Conduct, Rule 7.1 and Comment.	Comment allows for comparative claims, and explains that an unsubstantiated claim “may” be misleading if presented in such a way to lead a reasonable person to conclude it could be substantiated.

<i>STATE</i>	<i>RULE</i>	<i>COMMENT</i>
District of Columbia	District of Columbia Rules of Professional Conduct, Rule 7.1, Comment [1].	While the rules are silent on comparative advertising, the Comments explain that comparative advertisements that can not be substantiated are misleading.
Florida	Florida Rules of Professional Conduct § 4-7.2(b)(1)(D), and Comment [3].	The Rule allows for comparative advertisements that can be substantiated.
Georgia	Georgia Rules of Professional Conduct, Rule 7.1(a)(3).	The Rule allows for comparative advertisements that can be substantiated.
Hawaii	Hawaii Rules of Professional Conduct, Rule 7.1(c).	The Rule allows for comparative advertisements that can be substantiated.
Idaho	Idaho Rules of Professional Conduct, Rule 7.1(c).	The Rule allows for comparative advertisements that can be substantiated.
Illinois	Illinois Rules of Professional Conduct, Rule 7.1(c).	The Rule allows for comparative advertisements that can be substantiated.
Indiana	Indiana Rules of Court: Rules of Professional Conduct, Rule 7.2	Indiana rules do not include comparative claims as inherently misleading advertising. The Indiana Supreme Court is presently reviewing proposed changes to their rules, and have proposed allowing for comparative advertisement that can be substantiated. (Proposed Indiana rules are available at http://www.in.gov/judiciary/rules/proposed/2007/pcr-isba(jan).pdf).
Iowa	Iowa Rules of Professional Conduct; § 32:7.1	Iowa rules only prohibit unverifiable factual claims in advertising. <small>Professional Conduct, Rule 7.1(c) verifiable</small>

<i>STATE</i>	<i>RULE</i>	<i>COMMENT</i>
Kentucky	Kentucky Supreme Court Rules; § SCR 3.130(7.15)(c); <i>See also</i> Kentucky Rules of Professional Conduct, Rule 7.15(c)	Kentucky rules allow for comparative advertisements that can be substantiated.
Louisiana	Louisiana Rules of Professional Conduct, Rule 7.1(a)(v)	Presently, Louisiana rules allow for comparative advertisements that can be substantiated. The Rules of Professional Conduct Committee of the Louisiana State Bar has proposed new attorney advertising rules, which (as presently drafted) would also allow for substantiated comparative advertising.
Maine	Maine Code of Professional Responsibility, § 3.9.	Maine Code of Professional Responsibility is silent on the use of comparative claims in advertising, though all misleading advertisements are prohibited.
Maryland	Maryland Lawyers' Rules of Professional Conduct, § 7.1(c).	The Rule allows for comparative advertisements that can be substantiated.
Massachusetts	Massachusetts Rules of Professional Conduct, Rule 7.1.	Massachusetts rule is silent relative to comparative claims in advertising.
Michigan	Michigan Rules of Professional Conduct, Rule 7.1(c).	The Rule allows for comparative advertisements that can be substantiated.
Minnesota	Minnesota Rules of Professional Conduct, Rule 7.1(c).	The Rule allows for comparative advertisements that can be substantiated.
Mississippi	Mississippi Rules of Professional Conduct, Rule 7.1(d).	The Rule allows for comparative advertisements that can be substantiated.
Missouri	Missouri Rules of Professional Conduct, § 7.1(d).	The Rule allows for comparative advertisements that can be substantiated.

<i>STATE</i>	<i>RULE</i>	<i>COMMENT</i>
Montana	Montana Rules of Professional Conduct, Rule 7.1.	Montana rules are silent as to comparative advertising, but prohibit false or misleading claims.
Nebraska	Nebraska Supreme Court Code of Professional Responsibility, DR 2-101(A)(3).	The Rule allows for comparative advertisements that can be substantiated.
Nevada	Supreme Court of Nevada Supreme Court Rules, Rule 195(3)	The Rule allows for comparative advertisements that can be substantiated.
New Hampshire	New Hampshire Rules of Professional Conduct, Rule 7.1(c).	The Rule allows for comparative advertisements that can be substantiated.
New Jersey	New Jersey Disciplinary Rules of Professional Conduct, RPC 7.1(a)(3)	Besides Alabama and Oregon, is the only state with an outright prohibition on comparative claims in all attorney advertising.
New Mexico	New Mexico Rules of Professional Conduct, § 16-701.	Rules forbid misleading advertising, but do not include comparative advertising in the definition of misleading advertising.
New York	New York Unified Court System Rules Governing Lawyer Advertising (Effective February 1, 2007), § 1200.6(d) & (e).	Recently enacted rules expressly allow for attorney advertising to contain comparative claims so long as advertising complies with other rules and contains disclaimers that prior results do not guarantee similar outcomes.
North Carolina	North Carolina Rules of Professional Conduct, Rule 7.1(3)	The Rule allows for comparative advertisements that can be substantiated.
North Dakota	North Dakota Rules of Professional Conduct, Rule 7.1(c).	The Rule allows for comparative advertisements that can be substantiated.

<i>STATE</i>	<i>RULE</i>	<i>COMMENT</i>
Ohio	Ohio Rules of Professional Conduct, Rule 7.1(c) and Comment [3].	Effective February 1, 2007, Ohio converted to a system that is adopted similar to the ABA Model Rules, and accordingly does not define comparative advertising as misleading, but states that unsubstantiated comparison “may” be misleading.
Oklahoma	Oklahoma Rules of Professional Conduct, Rule 7.1(a)(4).	The Rule allows for comparative advertisements that can be substantiated.
Oregon	Oregon Rules of Professional Conduct, Rule 7.1(a)(3)	Besides Alabama and New Jersey, Oregon is the only state that expressly prohibits all comparative advertising. We observe that while the State Ethics Committee has been silent as to the use of Best Lawyers and Super Lawyers, according to each entity’s web site, several members of the Board of Governors are listed as Best Lawyers in America and two are listed among Super Lawyers.
Pennsylvania	Pennsylvania Disciplinary Rules of Professional Conduct, Rule 7. & Comment [3].	The Rule does not define comparative advertising as misleading, and the Comment states that unsubstantiated comparison “may” be misleading.
Rhode Island	Rhode Island Disciplinary Rules of Professional Conduct, Rule 7.1(c).	The Rule allows for comparative advertisements that can be substantiated.
South Carolina	South Carolina Rules of Professional Responsibility, Rule 7.1(c).	The Rule allows for comparative advertisements that can be substantiated.
South Dakota	South Dakota Rules of Professional Responsibility, Rule 7.1(c)(5).	The Rule allows for comparative advertisements that can be substantiated.

<i>STATE</i>	<i>RULE</i>	<i>COMMENT</i>
Tennessee	Tennessee Rules of Professional Conduct, Rule 7.1(C).	The Rule allows for comparative advertisements that can be substantiated.
Texas	Texas Disciplinary Rules of Professional Conduct, Rule 7.02(a)(4)	The Rule allows for comparative advertisements that can be substantiated by reference to verifiable, objective data.
Utah	Utah Rules of Professional Conduct, Rule 7.1, Comment [3].	The Rule does not define comparative advertising as misleading, and the Comment states that unsubstantiated comparison “may” be misleading.
Vermont	Vermont Rules of Professional Conduct, Rule 7.1(c).	The Rule allows for comparative advertisements that can be substantiated.
Virginia	Virginia State Bar Rules of Professional Conduct, Rule 7.1(a)(3).	The Rule allows for comparative advertisements that can be substantiated.
Washington	Washington Rules of Professional Conduct, Rule 7.1	The Rule allows for comparative advertisements that can be substantiated.
West Virginia	West Virginia Rules of Professional Conduct, Rule 7.1(c).	The Rule allows for comparative advertisements that can be substantiated.
Wisconsin	Wisconsin Supreme Court Rules, SCR Chapter 20, 20:7.1(a)(3).	The Rule allows for comparative advertisements that can be substantiated.
Wyoming	Wyoming Supreme Court Rules of Professional Conduct for Attorneys at Law, Rule 7.1(c) & Comment [3].	The Rule allows for comparative advertisements that can be substantiated.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Brief