

Rothfelder on Puffery Versus Fraud in OOH Contracts

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Last week, Billboard Insider reported on the required grounds to cancel an outdoor advertising contract, as demonstrated in the Arizona case of [Outfront Media vs Hart & Assoc.](#) Specifically, “notice of termination of a contract must be clear, positive and unequivocal,” according to the Court. As such, the comment from the advertiser, a lawyer supposedly dissatisfied with the calls generated from his ad, that he “was inclined to” cancel failed to meet the termination requirement.

Another argument the lawyer/advertiser urged as a defense to his non-payment was that Outfront fraudulently misrepresented that its billboard would increase his business referrals, thereby inducing him into signing the contract. However, the Court rejected this claim as well, explaining that even if true, “any statement regarding the future benefits of the advertising campaign was ‘puffery.’” The Court went on to state, by contrast, that “in order that a representation constitute actionable fraud, it must relate to either a past or future fact. It cannot be predicated on unfulfilled promises, expressions of intention or statements concerning future events.”

Thus, the couple of take-aways from the case are to use a clear termination clause in the advertising contract, and to temper promises of performance under the contract. I suppose another piece of advice is to be careful when contracting with lawyers.

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