

FEDERAL TRADE COMMISSION



Safety Issues in Advertising

ICPHSO 2004
Orlando, Florida – March 4

Mary K. Engle, Esq.
Associate Director
Division of Advertising Practices



OVERVIEW

- **FTC jurisdiction**
- **Basics of advertising law**
- **Health and safety related enforcement actions**

FTC JURISDICTION

- **FTC Act prohibits deceptive or unfair acts or practices in commerce.**
- **Broad authority over most products and services**
- **Coordination with many agencies: *e.g.*, EPA, CDC, FDA, USDA, CPSC**

FTC JURISDICTION

- **Law enforcement agency**
- **Broad liability – advertiser, ad agency, retailer, endorser...**
- **Wide variety of remedies – cease and desist, warnings, corrective ads, refunds, disgorgement ...**
- **Federal courts – \$\$ million relief**

FTC ADVERTISING LAW

■ Deception under Section 5:

An act or practice is deceptive if it misleads consumers acting reasonably under the circumstances and is material to the purchase/use decision.

FTC ADVERTISING LAW

- **Express and implied claims**
- **Material omissions**
- **Reasonable consumer**
- **Substantiation**

health/safety = “competent and reliable scientific evidence”

FTC ADVERTISING LAW

■ Unfairness under Section 5

An act or practice is unfair if it causes or is likely to cause substantial consumer injury that is not reasonably avoidable by consumers and not outweighed by countervailing benefits to consumers or competition.

UNFAIRNESS CASE

Flatten your Stomach in Just Minutes a Day!

Amazing Gut Buster™ turns ordinary sit-ups into tummy tightening power stretches.

Yes, this gutsy little machine speeds you from fat to fit. Gut Buster is specifically designed to firm and flatten your back that flat stomach you had in high school—even gone forever.

The extraordinary exerciser turns ordinary sit-ups into tummy tightening power stretches. Gut Buster is so tough on tummies you quickly get a flat stomach and even suits. Guys can trade their muscles for muscle—fast!

AS SEEN ON TV



SO COMPACT IT
Durable, no-nonsense compact stomach exerciser you'll ever see wherever you go. Pop it in your car. Use it while you watch TV, or have a few minutes to spare.

Forget about gyms, expensive energy on exercises you can't do. Gut Buster is the answer to your stomach problem. Gut Buster is the answer to your stomach problem.

NO RISK
Don't settle for a machine that won't work under your feet. Gut Buster is the answer to your stomach problem. Gut Buster is the answer to your stomach problem.

Order form: Name _____
Address _____
City _____ State _____ Zip _____

Gut Buster • 2000 National Blvd., Dept. ED-574 • Canton, Ohio 44703



- Failure to disclose breakage risk unfair
- Claims of stomach flattening false
- Notice to consumers

Fitness Quest, Inc. (Gut Buster)

DISCLOSURES

WHY IS HAAGEN-DAZS
FROZEN YOGURT
BETTER THAN YOUR
FIRST TRUE LOVE?



*frozen yogurt
and sorbet
combinations

HAAGEN-DAZS IS STILL
98% FAT FREE.

Imagine pineapple Sorbet tantalizingly wrapped around a chunk of frozen yogurt bar. And now imagine that this bar has 100 calories. Or imagine a pint of vanilla frozen yogurt swirled with heavenly raspberry sorbet. And that these and all the rest of our irresistible frozen yogurt and sorbet combinations are 98% fat free. But they're still totally Haagen-Dazs. What could be better?

HAAGEN-DAZS. IT'S BETTER THAN ANYTHING.



■ The three
Ps:*

- Prominence
- Presentation
- Placement

*Fine print footnotes are not adequate disclosures.

Endorsements

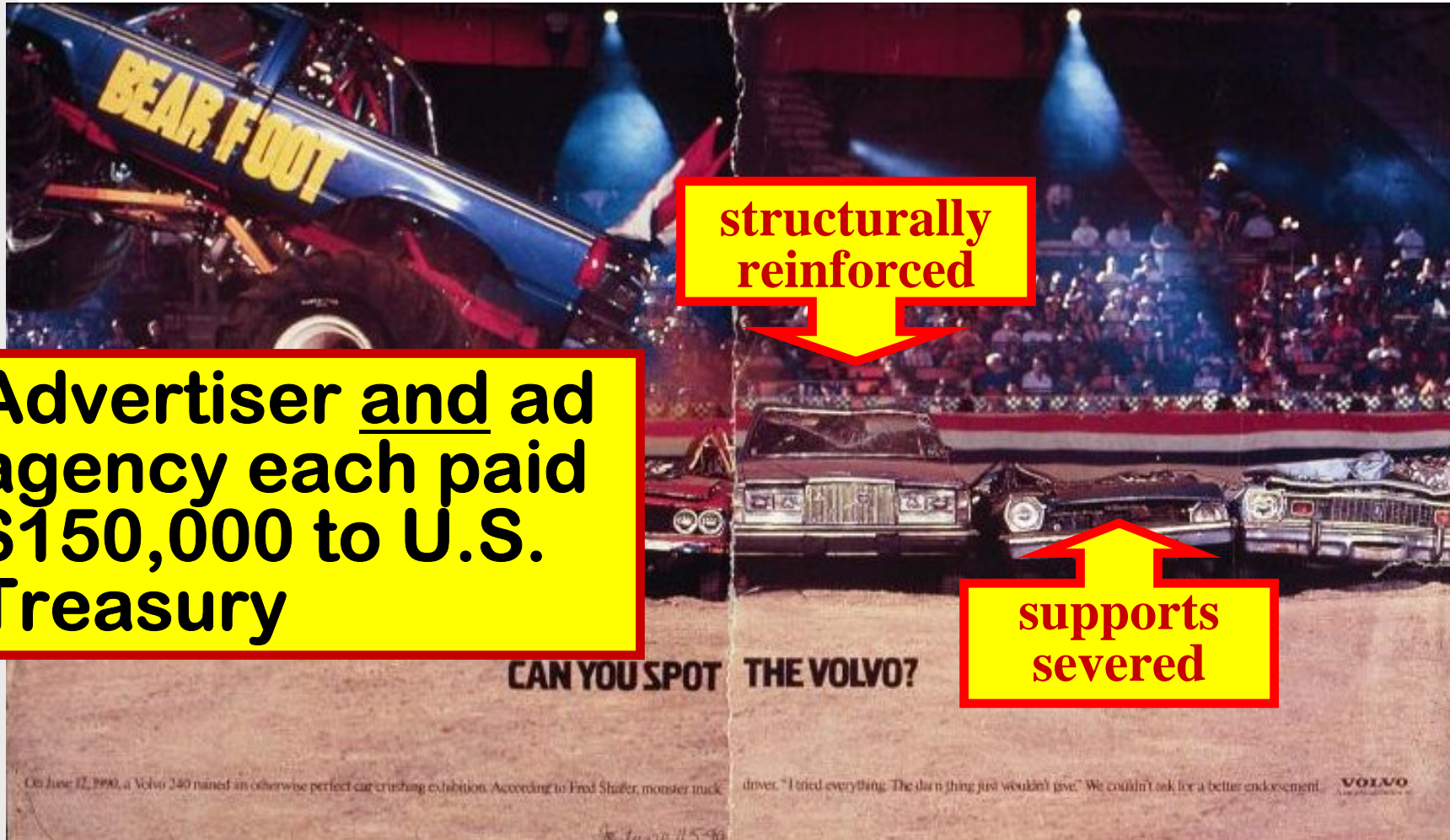


- Sufficient expertise in the relevant field
- Actual testing or evaluation of product

**Exclusive endorsement
by the National Fire
Safety Council**

Black & Decker

Product Demonstrations



Advertiser and ad agency each paid \$150,000 to U.S. Treasury

structurally reinforced

supports severed

**Volvo North America Corp.
Scali, McCabe, Sloves, Inc.**

OPERATION CURE.ALL

- Internet health fraud: AIDS, cancer, etc.
- FDA, Canada, Mexico, and other partners
- Warning e-mails
- Targeted enforcement



Public Health Scares

FTC Consumer Alert

Federal Trade Commission ■ Bureau of Consumer Protection ■ Office of Consumer and Business Education

Biothreats — Are Claims To Treat Really Just A Trick?

In the aftermath of the anthrax scare last fall, some marketers are trying to cash in on consumers' heightened fears and vulnerabilities, plying products that claim to detect, prevent, protect against or treat biological and chemical agents.

The Federal Trade Commission (FTC) and other law enforcement authorities have examined hundreds of sites marketing gun racks, protective suits, biohazard test kits, colloidal silver, oregano oil and similar products that claim to be safe and effective against biological or chemical contamination. But according to the FTC, consumers should greet these claims with a healthy dose of skepticism.

Officials at the nation's consumer protection agency say many of these products simply can't do what they claim. For example, kits marketed to detect the presence of anthrax in your surroundings

FTC Consumer Alert

Federal Trade Commission ■ Bureau of Consumer Protection ■ Office of Consumer and Business Education

Rx for Products that Claim to Prevent SARS? A Healthy Dose of Skepticism

Produced in consultation with the Centers for Disease Control and Prevention and the Food and Drug Administration

The daily news coverage about the spread of SARS (Severe Acute Respiratory Syndrome) has raised public anxiety, and spawned many Web sites and email promotions for products that claim to prevent, treat or cure the disease. The Federal Trade Commission (FTC), the nation's consumer protection agency, cautions consumers to be wary of all promotions related to SARS.

Because much is still unknown about the specific virus thought to cause SARS, the FTC says consumers should be skeptical of claims that products like pills, air filtration devices, and chlorine agents can kill or elimi-

- Anthrax, dirty bombs, SARS
- E-mail warnings and targeted enforcement
- Consumer alerts with help of FDA, CDC, EPA

Dietary Supplements

DIETARY SUPPLEMENTS:

- More than 100 cases over last decade
- Direct safety/interaction risks:
 - Ephedra
 - St. John's wort
 - Comfrey
 - Androstenedione
- Unfounded health benefits

AN AI

Obesity/Weight Loss



Federal Trade Commission

WEIGHT-LOSS ADVERTISING:
An Analysis of Current Trends

A FEDERAL TRADE COMMISSION
STAFF REPORT

September 2002



LOSE UP TO **2 POUNDS DAILY...**
WITHOUT DIET OR EXERCISE
"I LOST 44 POUNDS
IN 30 DAYS"
"HERE'S THE STORY OF MY LAST DIET"



NEW
QUICK SLIM
EXTRA STRENGTH
WITH MOLECULARLY-ACTIVE
APPLE CIDER VINEGAR

BEFORE



"I have always been unhappy with my figure. I've been yo-yo dieting since I was just 18 years old, now I'm 33 and a mother of two. For 15 years, my weight has fluctuated between 120 and 160 pounds. I was desperate to lose weight. I discovered a new miracle product to lose weight quickly, easily and

For 15 years, Janet G. yo-yo dieted without success. Fed up and desperate, she discovered a new miracle product to lose weight quickly, easily and

- Active enforcement against deceptive weight loss claims
- Media screening
- FDA obesity task force

FORMULA.
THANKS AGAIN!
-Sofia M. October 2001

weight loss. Same results as:
• Jogging 10 miles per week.
• An hour of aerobics per day.
• 15 hours of swimming or cycling per week.

Name: _____
Address: _____
City: _____
State: _____ Zip Code: _____
Phone #: (____) _____ Email: _____

Allure Magazine MAY 2002

FTC Health and Safety Cases

- **Misrepresentations of safety – claims of safety are false or overstated**
- **False sense of security – claims of positive safety benefit that product does not deliver**
- **Unfounded health benefits – unsubstantiated claims of prevention/treatment/cure**

FTC Health & Safety Cases

WARNING: This product uses electrical muscle stimulation. Do not use this device if you have a cardiac pacemaker, implanted defibrillator or other implanted metallic or electronic device. This device could cause lethal rhythm disturbances to the heart in susceptible individuals....

MERGIZER



AbFlex USA

United Fitness of America

Hudson Berkeley Corp.

Hudson Berkeley:
\$83 million and
repatriate assets

FTC Health & Safety Cases

It's Not Just Antifreeze. It's Safety Freeze...

1. What makes SIERRA Antifreeze

SIERRA Antifreeze

SAFER PROTECTION

1 GAL (3.78L)

SAFETY FREEZE

Essentially Non-Toxic To People & Pets

Helps Protect Wildlife In The Environment

Outstanding Engine Protection

1 GAL (3.78L)

SAFETY FREEZE

1 GAL (3.78L)

SAFETY FREEZE

SAFETY FREEZE

SAFETY FREEZE

Safety-Freeze

Environmentally Non Toxic To People and Pets



7. Does SIERRA Antifreeze protect a vehicle's engine as well as EG-based antifreezes?

SIERRA Antifreeze-Coolant provides outstanding engine protection as well as EG-based antifreezes.

8. What about protection against corrosion?

SIERRA Antifreeze-Coolant provides outstanding corrosion protection as well as EG-based antifreezes.

12. How do you install SIERRA?

You install SIERRA Antifreeze just as you would any other antifreeze. Drain the coolant from your engine's cooling system. Flush it thoroughly and water-wash with SIERRA Antifreeze.

Drain all the old coolant completely.

Use the mixing guide on the inside of the SIERRA jug. SIERRA Antifreeze comes in two types of a SIERRA Flushing and Fill Kit.

The best results are achieved when SIERRA Antifreeze is used and diluted with water. SIERRA Antifreeze is not intended to be used as a coolant.

SAFER PROTECTION SAFETY FREEZE

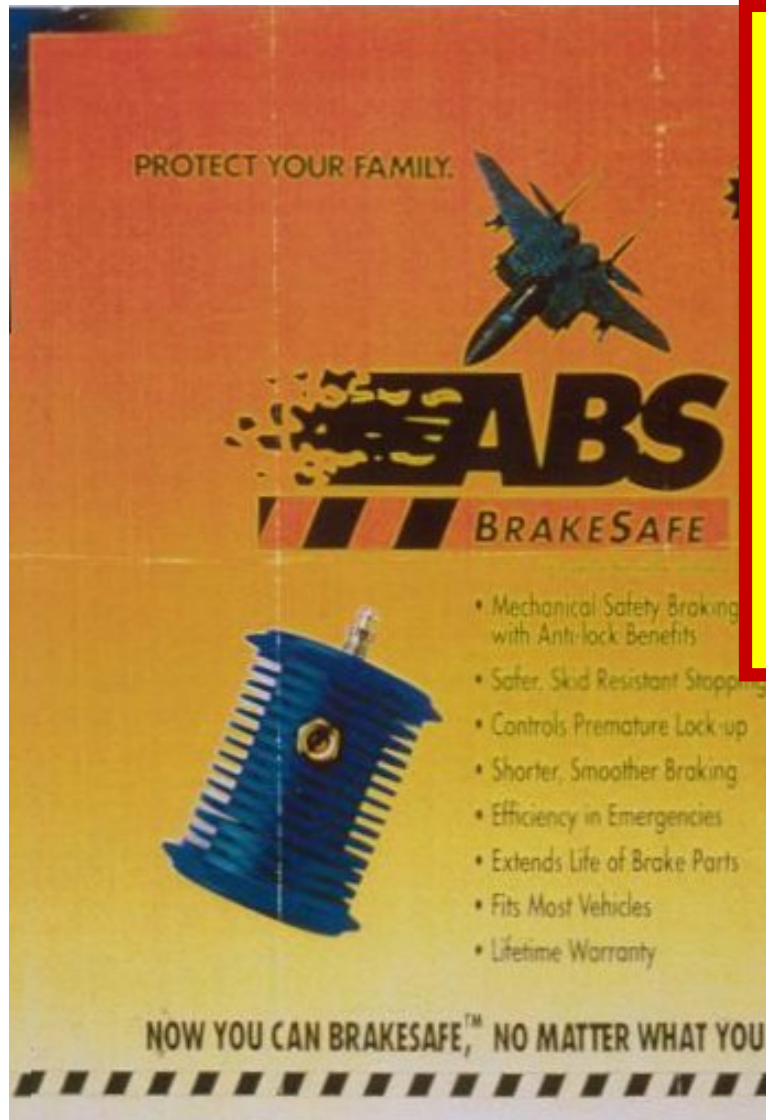
SAFER PROTECTION SAFETY FREEZE

SAFER PROTECTION SAFETY FREEZE

SAFER PROTECTION SAFETY FREEZE

SAFER PROTECTION SAFETY FREEZE

FTC Health & Safety Cases



PROTECT YOUR FAMILY.

ABS

BRAKESAFE

- Mechanical Safety Braking with Anti-lock Benefits
- Safer, Skid Resistant Stopping
- Controls Premature Lock-up
- Shorter, Smoother Braking
- Efficiency in Emergencies
- Extends Life of Brake Parts
- Fits Most Vehicles
- Lifetime Warranty

NOW YOU CAN BRAKESAFE,™ NO MATTER WHAT YOU

Product did not:

- function like factory-installed antilock brakes
- meet NHTSA standards for ABS
- qualify owners for car insurance discount

FTC Order: Banned 'ABS' in product name; required notice to consumers.

FTC Health & Safety Cases

Wave Shield 3000

- Fits all phones
- Attaches in seconds
- Soft/comfort cushion
- Will not affect reception



**“Tested. Proven.
Blocks up to 97%
of
Electromagnetic
radiation from
your inner ear ...”**

- **Claims were false**
- **Failed to disclose that most radiation comes from antenna, not earpiece.**
- **Four FTC actions, two with redress**
- **Consumer alert**

FTC Health & Safety Cases

PurTest® Water Testing Kits

Exhibit A

PurTest® Anthrax Test Kit

TEST AIR, WATER,
AND SURFACES FOR
THE PRESENCE OF
DEADLY ANTHRAX

PurTest

ANTHRAX TEST

Our do-it-yourself test, allows you to screen air, water, and surfaces for the presence of anthrax.

- One of many bioterrorism scams
- Claimed to be found effective in 'FDA-registered lab'
- Actually produced false negatives and false positives
- Kit pulled before sale to any consumers

FTC Health & Safety Cases

“Does this mean you can cancel your date for surgery, radiation or chemotherapy? YES!

- **Part of Operation Cure.All**
- **Herbal package and electronic zapper to cure cancer**
- **Safety risk that patients forgo effective therapies**

though, because you may need them later when you are healthy!”

Western Herb & Dietary Products

WWW.FTC.GOV

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 **FEDERAL TRADE COMMISSION**
FOR THE CONSUMER

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The Federal Trade Commission

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Hot Topics

-  **NATIONAL DO NOT CALL REGISTRY**
[MORE INFO](#)
-  **SPAM EMAIL**
-  **CONSUMER INFORMATION SECURITY**

FTC Headlines


NATIONAL DO NOT CALL REGISTRY
CLICK HERE TO REGISTER

For Release: August 27, 2003

National Do Not Call Registry to Be Available to Telemarketers Beginning September 2, 2003

Labor Day Should Remain a Holiday!

The Federal Trade Commission today announced that telemarketing organizations will have access to the National Do Not Call Registry on **September 2, 2003**, one day later than the opening date originally announced. [More ...](#)

Of Interest

- View the FTC's **PRIVACY POLICY**
- PRIVACY INITIATIVES
- JOBS AT THE FTC
- EARLY TERMINATIONS
- CONFERENCES & WORKSHOPS
- HEARINGS
- REPORTS
- RN DATABASE
- RELATED SITES
- FTC Merger Best Practices
- FTC/DOJ Hearings on the Implications of Competition and Patent Law and Policy

For Your Information

Local intranet