Advertising Substantiation Principles
Framework for Reviewing Advertising

- What claims does the advertisement convey to reasonable consumers?

- Does the material submitted by the advertiser substantiate those claims?
Substantiation

What principles should govern the substantiation of claims made in advertising?

Examining the quality of the substantiation

Evaluating scientific studies
Identifying General Principles
Substantiation

- Substantiate Before Disseminating
- Responsible for All Reasonable Interpretations
- Substantiate All Express and Implied Claims
- Using Extrinsic Evidence
- Level of Substantiation Needed
- “Reasonable Basis” for Making Claims
- “Competent and Reliable” Scientific Evidence
Before disseminating an advertisement, the advertiser must substantiate all claims – express and implied – that the ad conveys to reasonable consumers.

ADVERTISERS ARE LIABLE FOR ALL REASONABLE INTERPRETATIONS

“To be considered reasonable, the interpretation does not have to be the only one. When a seller’s representation conveys more than one meaning to reasonable consumers, one of which is false, the seller is liable for the misleading interpretation.”

Substantiation

EXPRESS AND IMPLIED CLAIMS NEED TO BE SUBSTANTIATED

- The advertisement may imply more substantiation than it expressly claims

- The advertisement may imply to consumers that it has a certain type of support
USING EXTRINSIC EVIDENCE

Expert testimony, consumer surveys and other extrinsic evidence can be useful in determining:

- what the ad is actually communicating to consumers, and

- the level of substantiation that consumers expect to support a particular product claim.
Substantiation

HOW MUCH SUBSTANTIATION IS NEEDED?

The advertiser must possess at least the level of substantiation expressly or impliedly claimed in the advertisement:

“Tests Prove …”
“Doctors Recommend …”
“Studies Show …”
Substantiation

“REASONABLE BASIS” STANDARD

When an ad does not make an express or implied references to a certain level of support and, in the absence of other evidence indicating what consumer expectations would be, it is assumed that consumers expect that the advertiser had a “reasonable basis” for making the claims.
Substantiation

“REASONABLE BASIS” FACTORS:

- Type of claim
- Benefits if the claim is true
- Consequences if the claim is false
- The ease and cost of developing substantiation for the claim
- Type of product
- The level of substantiation experts in the field would agree is reasonable
Expert testimony and other extrinsic evidence also can be useful in determining the ADEQUACY of the evidence an advertiser possesses.
WHAT’S REQUIRED DEPENDS ON NATURE OF THE CLAIM

• Our laptop comes in 4 eye-popping colors.

• Our laptop weighs ten ounces less than the ConDaq ZX.

• Our laptop downloads web pages 57% faster.
If you don’t believe that something lite can taste delicious, then try new Klondike Lite. It’s 93% fat-free.
Of all the things we pack into our 34 Lean Cuisine entrées … there are some things we skimp on: Calories. Fat. Sodium. With less than 300 calories, controlled fat and always less than 1 gram of sodium* per entrée, we make good sense taste great.

*All Lean Cuisine entrées have been reformulated to contain less than 1 gram (1000 mg) of sodium.

Stouffer Foods Corp., 118 F.T.C. 746 (1994)
A 1994 Contemporary Pediatrics Recommendation Study found that 88% of pediatricians who recommend baby food recommend Gerber.
Kraft Singles are made from five ounces of milk per slice, so I don’t have to. Because Kraft Singles give my kids great nutrition, like calcium and protein. Sure, I could buy imitation slices. But some use hardly any milk. Kraft Singles. More milk makes ‘em good.
Is your tap water as clean as it seems? It could contain impurities. The Norelco Clean Water Machine can remove up to 90% of chlorine, organic wastes, and trihalomethanes.
HEALTH AND SAFETY CLAIMS

Require a high level of substantiation

“Competent and Reliable Scientific Evidence”
Competent and Reliable Scientific Evidence

“tests, analyses, research, studies, or other evidence based upon the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results”
Substantiation

COMPETENT AND RELIABLE SCIENTIFIC EVIDENCE

WHAT IT ISN’T:
- Anecdotal evidence from customers
- Newspaper or magazine articles
- Sales materials from the manufacturer
- Low return rate or money-back guarantee

WHAT IT IS:
- Tests, studies, other scientific research
- Based on expertise of professionals in field
- Objectively conducted by qualified people
- Using procedures accepted as accurate
Reduces the duration and severity of the common cold
“If you take these on a preventative basis, you may never get a cold.”

“Studies prove Cold-Eeze is effective on airborne allergies.”

“Give your child one before he goes to school. That way, it can possibly prevent that child from getting a cold.”
“HELPs ELIMINATE CELLULITE” . . . “a safe, natural, clinically studied herbal supplement” . . . “Accept only the clinically researched formula. Cellasene.”
ANTI-TOX has been proven by the world-famous Islandia Medical Institute to reduce the risk of cancer.

The residents of Islandia eat a diet rich in the active ingredient in ANTI-TOX and their cancer rate is 25% less than in the U.S.

Protect your health with ANTI-TOX.
ISLANDIA MEDICAL INSTITUTE STUDY

- 20 parrots injected with 10 units of herb vs. 20 injected with tap water
- Parrots who got herb had fewer tumors.
Concerns:
• Is parrot biology like human biology?
• Does herb act same when injected vs. ingested?
• Is amount similar to what’s in product?
• Is 20 parrots large enough sample size?
• What’s tap water like in Islandia?
ISLANDIA POPULATION STUDY

- Residents of eat twice as much of herb in Anti-Tox than Americans.

- Islandia men’s hospital admission rate for cancer is 25% less than U.S. men.
Concerns:
• Are there differences in diet and lifestyle between Islandia and U.S.?
• Are hospital admissions good comparison?
• What’s the cancer rate for women?