

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

SUBSTANTIATION

Before disseminating an advertisement, the advertiser must substantiate all claims – express and implied – that the ad conveys to reasonable consumers.

Substantiation Policy Statement,
appended to Thompson Medical Co., 104 F.T.C. 648 (1984)

Substantiation

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.”



Deception Policy Statement, 103 F.T.C. 174 (1984)

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

Substantiation

USING EXTRINSIC EVIDENCE


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.

Substantiation

Introducing Klondike® Lite.
Proof That Less Can



KLONDIKE
Lite
Sugar Free
93% Fat Free Frozen Dessert

If you don't believe that something lite can taste delicious, then try new Klondike Lite. It's 93% fat-free. Low in cholesterol. And made with 100% NutraSweet®, so it's sugar-free. Become a believer. Just rip out the coupon and find out why it took Klondike to make Lite delicious.

Mr. Grocery: Klondike will redeem this coupon for 30¢ plus 1¢ per bar on one box of Klondike Lite Bars. Must be used on purchase of sufficient Klondike Lite Bars to make good on this coupon. Coupon request. Cash value .01¢. Not for cash redemption. Not valid outside U.S.A. Cash value .01¢. For redemption mail to: KLONDIKE, P.O. Box 105988, El Paso, Texas 79917-0588. Redeemable with each Klondike Bar purchased.

©1989 Amstar

105988

MFR COUPON EXP 7/1/90

Save

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.**

Substantiation

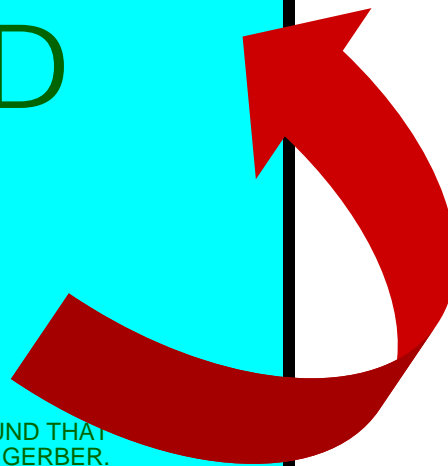
40%

PEDIATRICIANS
RECOMMEND

Gerber®

*A 1994 Contemporary Pediatrics Recommendation Study found that 88% of pediatricians who recommend baby food recommend Gerber.

*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.



How could I

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. Could I shortchange my little shortstop? No way. Kraft Singles. More milk makes 'em good.

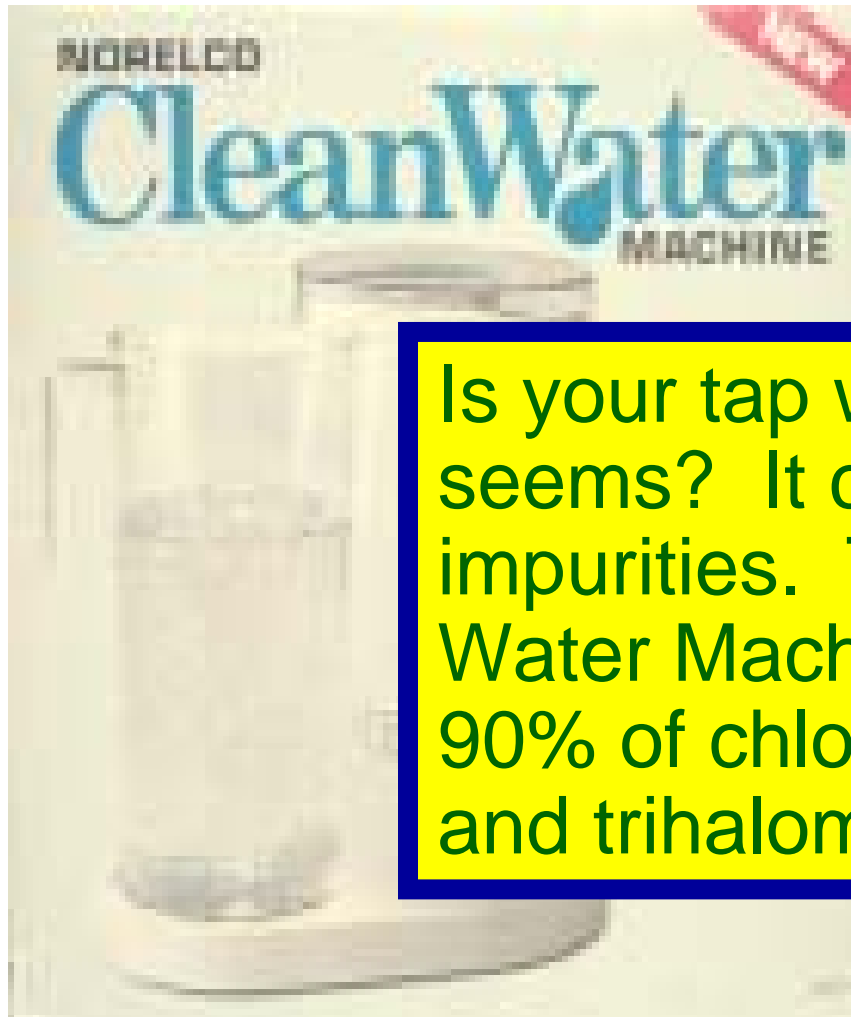
Milk amounts based on cheese content. Detailed comparison to imitation cheese slices. For more information on Kraft Singles, call 1-800-321-6750 ext. 0164. © 1993 Kraft, Inc.

Imitation slices
Kraft Singles



Kraft, 114 F.T.C. 40 (1991), aff'd, 970 F.2d 311 (7th Cir. 1992), cert. denied, 507 U.S. 909 (1993)

Substantiation



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.

Substantiation

HEALTH AND SAFETY CLAIMS

Require a high level of substantiation

“Competent and Reliable Scientific Evidence”

Substantiation

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



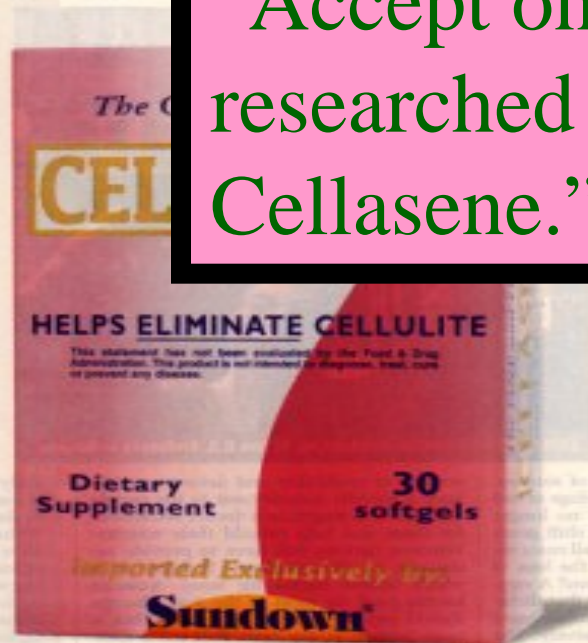
**Reduces the duration
and severity of the
common cold**

- “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.”



*This is
you've
read*

“HELPS ELIMINATE
CELLULITE” . . . “a safe,
natural, clinically studied
herbal supplement” . . .
“Accept only the clinically
researched formula.
Cellasene.”



Look terrific, feel terrific. You've seen it on **Dateline**, **The Today Show** and **CNBC**, and heard about it almost everywhere else. Cellasene™ — a safe, natural, clinically studied herbal supplement — helps your legs look healthier, smoother, firmer. **Accept only the clinically researched formula. Cellasene™**

Cellasene is a trademark licensed exclusively to Sundown® Vitamins.



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.

ISLANDIA MEDICAL INSTITUTE STUDY

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.

ISLANDIA POPULATION STUDY

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?