



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Division of Advertising Practices
Bureau of Consumer Protection

Mary Koelbel Engle
Associate Director

April 10, 2008

Via Federal Express and Electronic Mail

Thomas M. Hughes, Esq.
Hunton & Williams, LLP
1900 K St., N.W.
Washington, D.C. 20006-1109

Re: Design Assistance Construction Systems, Inc.

Dear Mr. Hughes:

As you know, the staff of the Federal Trade Commission conducted an investigation into advertising claims made by your client, Design Assistance Construction Systems, Inc. ("DACs"), about its shelving product, Punch Deck. The staff's investigation followed a referral involving these claims from the National Advertising Division ("NAD") of the Council of Better Business Bureaus. For the reasons stated below, the staff has decided to close the investigation.

The staff's inquiry focused on DACs' claims that its Punch Deck product is "50% open" and therefore complies with NFPA 13, a standard promulgated by the National Fire Protection Association setting forth requirements for sprinkler systems based on the type of shelving present in a facility. Sierra Shelving Inc., the competitor of DACs that filed the complaint with NAD, alleged that DACs improperly excludes the shelving support beams in measuring the open area of Punch Deck. Sierra Shelving contended that, when taking into account the solid area of the support beams, the surface area of Punch Deck is less than 50% open. DACs argued that the NFPA definition of "open shelving" is ambiguous with regard to including the support beams in measuring surface area. DACs also has represented that its most recent version of Punch Deck, which it began selling in 2007, is 50% open using any measurement methodology.

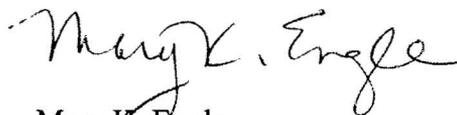
After reviewing the materials received from NAD and consulting with experts in the field, the staff has determined not to recommend enforcement action. The staff's decision is based on several factors, including the fact that, whether or not Punch Deck is "50% open," DACs has submitted evidence that the product does not constitute a safety hazard. Specifically, DACs submitted results of sprinkler tests performed on the previous version of Punch Deck and of fire tests performed on the current version of the product. The staff also has taken into consideration the fact that facilities using the Punch Deck product are inspected and approved by local authorities with responsibility for building and safety code compliance (known as "authorities having jurisdiction" or AHJs). Finally, the staff's decision is informed by the fact that the target audience of the advertising claim at issue consists of sophisticated, commercial customers who are familiar with the NFPA standard.

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Please note that the staff is not making any formal determination regarding the specific claim that Punch Deck is "50% open," for either the old or new version of the product. The staff notes, however, that for purposes of current and future advertising, in 2006, the NFPA committee responsible for NFPA 13 took the position that the shelving support beams should be included when calculating the open area of a shelf. Although the committee's proposal codifying this view ultimately did not become part of the NFPA code, the staff views the committee's expressed position as relevant to the issue of the proper methodology for calculating a shelf's open area.

The staff's decision to close this investigation is not to be construed as a determination that a violation may not have occurred, just as the pendency of an investigation should not be construed as a determination that a violation has occurred. The Commission reserves the right to take such further action as the public interest may require.

Very truly yours,

A handwritten signature in cursive script that reads "Mary K. Engle". The signature is written in black ink and is positioned above the printed name.

Mary K. Engle
Associate Director for Advertising Practices