

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, DC 20580



Division of Advertising Practices

Mary K. Engle
Associate Director

July 9, 2019

Eric L. Yaffe, Esq.
Partner
Gray Plant Mooty
600 New Hampshire Ave., NW, Suite 700
Washington, DC 20037

Re: Prevent Biometrics Inc., FTC Matter No. 182-3089

Dear Mr. Yaffe:

As you know, staff of the Federal Trade Commission's Division of Advertising Practices conducted an investigation into the advertising of an impact sensor mouthguard by your client, Prevent Biometrics Inc., for possible violations of Sections 5 and 12 of the FTC Act, 15 U.S.C. §§ 45, 52. The mouthguard was marketed as being able to: 1) accurately measure the linear and rotational forces, location, and direction of head impacts; 2) filter out false positives and light impacts in order to measure the true positive impacts; and 3) prevent concussions from going undetected.

Section 5 of the FTC Act requires that advertising claims be truthful and nonmisleading, and Section 12 prohibits false advertisements for foods, drugs, devices, services, or cosmetics. Generally, health benefit claims in advertising are deceptive if the advertiser does not possess competent and reliable scientific evidence substantiating the claims prior to their dissemination. *See, e.g., FTC v. Direct Mktg. Concepts, Inc.*, 569 F. Supp. 2d 285, 298-300 (D. Mass. 2008), *aff'd*, 624 F.3d 1 (1st Cir. 2010). We were concerned that the claims for the mouthguard were not adequately substantiated.

Upon careful review of the matter, including non-public information submitted to the FTC, we have determined not to recommend enforcement action at this time. In reaching this conclusion, we considered a number of factors, including that the product was not yet available for sale, the company had substantiation for some claims, and the company modified its advertising and marketing materials.

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This action is not to be construed as a determination that a violation of law did not occur, 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 blue ink that reads "Mary K. Engle". The signature is written in a cursive style with a large, looping initial "M".

Mary K. Engle
Associate Director
Division of Advertising Practices