

Subcommittee on Commerce, Manufacturing, and Trade
March 13, 2014
Improving Sports Safety: A Multifaceted Approach
Questions For The Record Response
Mr. Richard Cleland, Federal Trade Commission

The Honorable Lee Terry

1. How do products come to your attention for scrutiny of advertising or safety claims?

Products come to our attention through numerous means. In some instances – as was the case with the claims made by the major football helmet manufacturers – a Senator or Member of Congress asks the Commission to look into a particular issue. Issues that are discussed in general media (*e.g.*, newspapers), trade journals, or social media can also alert us to potentially questionable claims. In addition, we occasionally receive referrals from advertising self-regulatory bodies (*e.g.*, the National Advertising Division of the Council of Better Business Bureaus), and we have open lines of communication with staff at other federal agencies whose missions include consumer protection (*e.g.*, the Food and Drug Administration and the Consumer Products Safety Commission). We also receive complaints from businesses about their competitors’ advertising claims, as well as complaints from consumers. Finally, agency staff members read and watch advertising with an eye out for potentially problematic claims.

2. You stated during your testimony that the Federal Trade Commission believes it is essential for safety claims to be truthful and substantiated. How do you determine or measure such claims?

The first step is to determine the messages an ad is likely to convey to consumers, which the Commission does by considering the “net impression” conveyed by all elements of the ad.

An advertiser must have a reasonable basis for all objective claims reasonably conveyed by its advertising at the time it makes those claims. To determine what evidence will be sufficient to support a particular claim, the Commission generally considers the following factors: (1) the type of product, (2) the type of claim, (3) the benefits of a truthful claim, (4) the

ease of developing substantiation, (5) the consequences of a false claim, and (6) the amount of substantiation experts in the field would agree is reasonable.¹

Applying these factors, the Commission generally requires advertisers to have competent and reliable scientific evidence to substantiate claims involving health or safety. Moreover, if the advertiser represents that it has a particular level of substantiation for its claims – for example, the advertisement says that “clinical studies prove” the product provides a specific benefit – the advertiser must have at least the level of substantiation specified in the advertisement, and the clinical studies in that case must be properly designed and conducted, and the results properly analyzed.

3. The FTC requires that advertisers “have a reasonable basis for all objective claims[.]” What is reasonable? How would you explain this to parents so they understand how much trust than put in safety claims?

As noted above, what qualifies as a “reasonable basis” for a particular claim is case-specific. When competent and reliable scientific evidence is required, the Commission considers the quality and quantity of evidence generally accepted in the relevant scientific field to substantiate that a claim is true. For example, a claim that a product prevents cancer would need more rigorous substantiation than a claim that a product boosts metabolism.

We cannot realistically expect parents to critically assess concussion protection claims made for football helmets or other athletic headgear. In most cases, the advertiser’s purported substantiation will not be readily accessible, and even if it was available, few consumers would be able to meaningfully evaluate that evidence – that is, to determine whether the testing done on the product was appropriate, properly conducted, and correctly analyzed. That being the case,

¹ *Pfizer, Inc.*, 81 F.T.C. 23 (1972); *see also* FTC Policy Statement Regarding Advertising Substantiation, appended to *Thompson Medical Co.*, 104 F.T.C. 648, 839 (1984), *aff’d*, 791 F.2d 189 (D.C. Cir. 1986).

we believe that the most important messages to parents are: (1) no product currently on the market has been shown to prevent concussions; (2) improvements in impact absorption (as measured by drop tests) do not necessarily result in corresponding or proportional reductions in concussion risk;² and (3) to date, the weight of scientific evidence does not show that mouthguards are effective in reducing the risk of concussions, although they do help protect against dental injuries.

We would also suggest to parents that although there does not appear to be any football helmet that can prevent concussions or any test method developed to date that can fully assess the impact of both direct and rotational forces, some helmets may provide better protection than others; parents can look to independent, third-party researchers who have no financial interest in any particular brand of helmet as a potential source of useful information.

4. After the Brain-Pad settlement, the FTC sent several letters to other sports safety equipment manufacturers. How many changed their behavior right away?

Nearly all of the 18 sports equipment manufacturers who received warning letters immediately after the announcement of the Brain-Pad settlement responded positively to those letters by changing their websites and/or packaging. In most cases, there was some initial exchange concerning what representations were allowed and the type of science required to support those representations. In some cases, staff engaged in a series of conversations with company representatives before the problematic claims were resolved.

² Less impact on the brain is certainly better than more impact, but the staff's understanding is that researchers have not identified a specific correlation between a reduction in impact as measured by standard drop tests and a corresponding reduction in concussion risk.

5. In the case of football helmets by the three major manufacturers, you stated that the manufacturers “discontinued potentially deceptive claims” by the time the FTC closed the investigations. Can you explain what these potentially deceptive claims were and if they were deceptive because there was insufficient substantiation?

The staff’s investigation of Riddell Sports Group, Inc.’s advertising focused on claims that research proved that Riddell Revolution® varsity and youth football helmets reduced the risk of concussion by 31% compared to “traditional” helmets. Riddell cited the results of a study published in the journal *Neurosurgery* that compared the concussion rates over three years between high school football teams that received new Revolution® helmets and teams that wore “traditional” helmets from their schools’ existing stock as substantiation for these claims.³ FTC staff concluded that this study did not substantiate Riddell’s advertising claim, given two “significant limitations” identified by the study’s authors and discussed in detail in the Commission’s March 13, 2014 Prepared Statement, “Improving Sports Safety: A Multifaceted Approach.”

With respect to both Xenith, LLC and Schutt Sports, Inc., the staff investigated whether those companies had disseminated unsubstantiated claims that the companies’ helmets reduced concussion risks. Xenith’s advertising had included references to the results of player surveys and statements about reductions in the occurrence of concussive episodes; Schutt’s advertising had, among other things, showed the company’s helmets performing better than competing helmets in impact absorption tests.

However, it must be noted that all three investigations were closed by the staff without formal Commission action, and no agency determination was made as to whether the claims at issue violated the FTC Act.

³ M. Collins, et al., “Examining Concussion Rates and Return to Play in High School Football Players Wearing Newer Helmet Technology: A Three Year Prospective Cohort Study,” 58 *Neurosurgery* 275 (Feb. 2006).