



U.S. Federal Trade Commission Ad Interpretation and Substantiation June 10, 2008

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Three basic forms of deception in advertising

- False representations
- Unsubstantiated representations
- Deceptive omissions

Ad Interpretation

- General Principles for Reviewing and Interpreting Advertising
 - Advertisers are liable for all reasonable interpretations
 - Ads are viewed from the perspective of the target audience
 - Net impression based on all of the elements of the ad (as consumers would view the ad)
 - More than one reasonable interpretation may be possible
 - Reasonable if a significant minority of consumers take away the message
 - Claims can be express or implied

Ad meaning evidence

- Evidence of ad meaning
 - Primary evidence of ad meaning is the ad itself
 - Express claims mean what they say
 - Implied claims (net impression)
 - Headlines
 - Pictures and other depiction
 - Placement of various phrases in the ad
 - Nature of the claim
 - Product name (“Aspercreme”)
 - Extrinsic evidence of ads
 - Common usage of terms
 - Expert opinion as to how an advertisement might reasonably be interpreted
 - Generally accepted principles of consumer behavior
 - Copy tests and surveys

Kraft

How could I shortchange my shortstop?



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. Depicted comparison to imitation cheese slices. © 1995 Kraft, Inc. For more information on Kraft Singles, call 1-800-325-0798 ext. 0114.

Ad Substantiation

- “Before disseminating an advertisement, the advertiser must substantiate all claims – express and implied – that the ad conveys to reasonable consumers.” FTC Policy Statement on Substantiation, appended to Thompson Medical Co., 104 F.T.C. 648 (1984)

Substantiation

“REASONABLE BASIS” STANDARD

When an ad does not make an express or implied reference 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

Before disseminating an ad, the advertiser must be able to support all objective claims with:

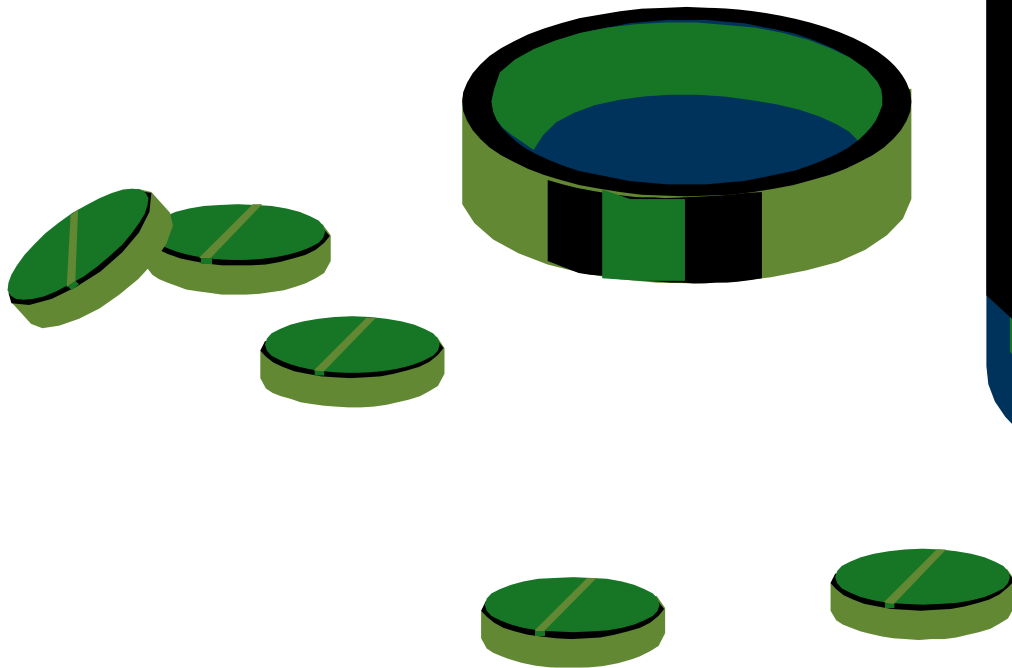
**COMPETENT AND
RELIABLE EVIDENCE**

Green Relief



“Green Relief tastes good”

**“Three out of four
doctors
recommend
Green Relief for
patients suffering
from back pain”**



**Three out of four
doctors recommend
Green Relief for
patients suffering
from back pain**

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 ...”

Egg-Land's Best

Tests show how
you can eat real eggs again.
(Even if you're concerned about cholesterol.)



In clinical tests, people ate a dozen Egg-land's Best® eggs a week and showed no increase in their serum cholesterol.

How? Simply by enjoying these fresh, delicious eggs while staying within the fat limits recommended by the Surgeon General for all adults. Namely, a diet with less than 10% saturated fat, 30% total fat.

What makes the test results such astonishing news is that the eggs they ate were real, whole eggs. With the usual 213 mg. of cholesterol per egg, or 71% of the FDA's maximum Daily Value.

Imagine! A way to enjoy real, whole eggs again. And not increase your serum cholesterol!

To be sure you're getting the same fresh, delicious eggs used in the clinical tests, insist on Egg-land's Best.

Then just limit your fat and enjoy your eggs.

**Egg-land's Best.
You can eat real eggs again.**

50¢ 12 EGGS PER CARTON

Save 50¢ on one dozen Egg-land's Best Eggs



50¢

00222 MANUFACTURER'S COUPON EXPIRES 04/30/95



Bertolli

On February 2, medical science confirmed olive oil can lower cholesterol, blood pressure and blood sugar. For people who use Bertolli, this was old news.



The February 2, 1990 issue of The Journal of The American Medical Association reported that monounsaturated oils like olive oil are healthier than other oils, margarine or butter.

The study, conducted in Italy, showed people who had the most olive oil in their diet had the lowest levels of blood cholesterol, blood pressure and blood sugar. These findings support

prior research in the United States that found monounsaturated oils, such as olive oil, can actually reduce the cholesterol, known as LDL, that is bad for you.

Let them protect the cholesterol, known as HDL, that is good for you.

That's something corn oil, sunflower oil, vegetable oil, margarine and butter can't do. All of this information

simply confirms what we at Bertolli have known for generations.

Bertolli olive oil is healthier. And, although the American Medical Association failed to mention it, you should know Bertolli is also delicious.

For more information about the health benefits of olive oil, write to the Bertolli Nutrition Center, P.O. Box 26177, Secaucus, NJ 07096-2617.

BERTOLLI
Eat well. Live long. Be happy.™

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

Advertisers must substantiate all objective performance, efficacy, health, and safety claims – express and implied – with:

**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”

Competent and Reliable Scientific Evidence

WHAT IT ISN'T

- Anecdotal evidence from consumers
- Popular press articles
- Sales materials from manufacturer
- Low return rate
- Money-back guarantee
- Studies on animals

Complete and Reliable Scientific Evidence

WHAT IT IS

- Methodologically sound tests, studies, scientific research
- Based on expertise of professionals in field
- Objectively conducted by qualified people
- Using accurate procedures
- Yielding statistically significant results

Ad Substantiation

- To evaluate an advertiser's substantiation, FTC looks primarily to experts outside of the FTC – researchers at universities, employees at other government agencies, and members of professional societies.
 - Also, consult economists within agency



Ad Substantiation

- Comparative Advertising
 - Benefits of saying bad things about your competitors' products
 - Risks of saying bad things about your competitors' products

Ad Substantiation

- Supporting Comparative Advertising Claims
 - Good advertising practices
 - Comparative claims need to be truthful
 - Results of scientific studies are objectively presented
 - Unacceptable practices
 - Using product demonstrations where certain attributes or conditions differ from a consumer's normal use
 - Manipulating before-and-after photos