

# FTC Exercises Stronger Standards for Health-related Advertising with Reebok as Latest Example

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Reebok International, Inc. ("Reebok") has agreed to settle Federal Trade Commission ("FTC") charges that the company engaged in deceptive advertising, in violation of Sections 5(a) and 12 of the FTC Act, by making unsubstantiated claims about its toning shoes. The settlement requires Reebok to pay \$25 million in consumer redress and to substantiate future claims that toning shoes strengthen muscles better than regular shoes with at least one randomized, controlled, blinded study of at least six weeks duration. It is unusual for the FTC to obtain monetary relief in a substantiation case, particularly of such a significant amount. Companies should take note of the FTC's recent focus on national brands and review the support they have for advertising claims, particularly claims touting a health or fitness benefit.

## Toning Claims

Reebok marketed its EasyTone and RunTone toning shoes as having "micro instability" that tones and strengthens muscles as a consumer walks or runs. For example, the FTC challenged the following claims:

"Reebok EasyTone shoes not only look fantastic, they'll help make your legs and butt look great too. It's the shoe proven to work your hamstrings and calves up to 11% harder and tones your butt up to 28% more than regular sneakers."

"Compared to a traditional running shoe, RunTone, a close cousin to our EasyTone shoe, encourages more activation in key leg muscles like the calves and quads....RunTone patented sole technology features 8 pods of moving air that forces your muscles to work harder; encourages increased muscle activation, toning, strength and endurance."

Variations of these claims appeared in print, television and internet advertising and on shoe boxes and retail displays.

The same advertising claims were the subject of a 2010 decision by the Council of Better Business Bureau's National Advertising Division ("NAD") recommending that Reebok discontinue the claims. According to the NAD decision, to support its claims, Reebok commissioned a study by a specialist in exercise science and biomechanics at the University of Delaware. The study included five subjects wearing toning shoes, regular walking shoes, or no shoes while walking on a treadmill for a duration of five minutes. The specialist concluded that the toning shoes showed the potential for greater muscle force generation and greater metabolic energy expenditure. The study was not published in any peer-reviewed journal. Although the NAD considered Reebok's study to be independent, it concluded that the small size and limited duration of the study rendered it insufficient to support the

claims.

## Consumer Redress

Reebok has agreed to pay \$25 million, which is high for any FTC case, but is particularly high for a substantiation case. The payment may be used to resolve private class action lawsuits, provided that the settlements meet certain criteria. Reebok's toning shoes were the subject of at least 5 class action lawsuits in state and federal courts before the FTC settlement was announced.

### FTC Continues to Strengthen Its Standards for Substantiation

The Reebok order is an example of how the FTC is clarifying its testing standards for health-related advertising. Historically, the FTC has required companies to substantiate health claims with "competent and reliable scientific evidence," a broad and flexible standard that required consideration of a combination of several factors. Now, the FTC includes much more specific standards for substantiation of certain health-related claims in an order. The FTC changed the way it handled orders in the wake of its experience with previous contempt proceedings.

Under this order, Reebok must have at least one "adequate and well controlled human clinical study" to substantiate any claim that its toning shoes strengthen muscle or that wearing the toning shoes will result in a quantified percentage or amount of muscle toning or strengthening. Such a study is defined in the order as "a clinical study that is randomized, controlled, blinded to the maximum extent practicable, of at least six-weeks duration, uses an appropriate measurement tool or tools (e.g., a dynamometer if measuring strength), and is conducted by persons qualified by training and experience to conduct and measure compliance with such a study." Any other claims of health or fitness benefits of the toning shoes must meet the more flexible "competent and reliable scientific evidence" standard.

The Reebok case is another example of the FTC imposing stronger substantiation standards for health-related advertising claims. In each of these cases, the FTC challenged claims that the product would produce improved health or fitness, including use of language such as "proven" or "lab results show," to refer to research that the FTC alleged was inadequate to support the claims. Although the requirements of the orders are limited to the covered products, advertisers should consider the FTC's requirements before making any claims related to health or fitness.

## Kelley Drye & Warren LLP

The attorneys in Kelley Drye & Warren's [Advertising and Marketing practice group](#) have broad experience at the FTC, the offices of state attorneys general, the National Advertising Division (NAD), and the networks; substantive expertise in the areas of advertising, promotion marketing and privacy law, as well as consumer class action defense; and a national reputation for excellence in advertising litigation and NAD proceedings. We are available to assist clients with developing strategies to address issues contained in this Advisory.

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