

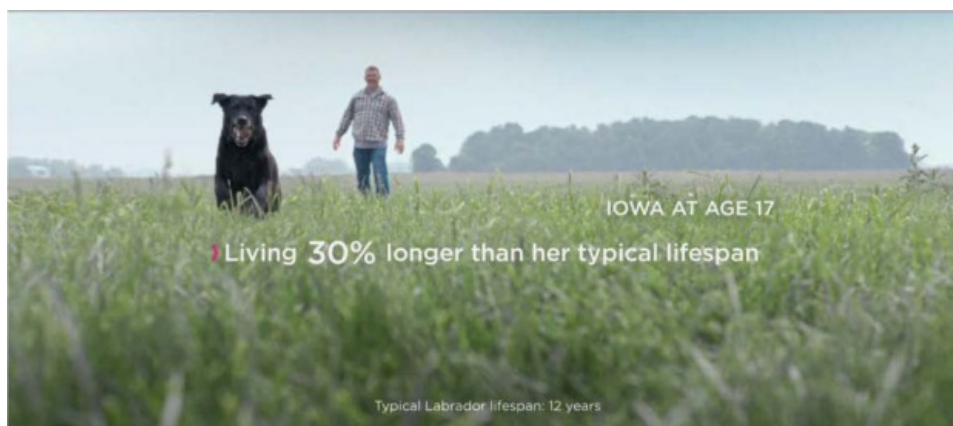
Health Claim Substantiation Has Not Gone to the Dogs

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The FTC [announced](#) a settlement with Mars Petcare U.S. concerning allegations that the company did not have proper substantiation to support quantified health benefit claims for its Eukanuba brand dog food.

The FTC's complaint alleges that a 2015 ad campaign for Eukanuba expressly or impliedly claimed that the dog food could increase the lifespan of dogs by 30 percent or more or could help to provide an "exceptionally long life." Claims included examples of dogs living 17 years with disclosures of the typical breed lifespan.



The complaint contends that these claims were based on a single, 10-year study of dogs that were fed Eukanuba, the results of which showed no significant difference in the median age at death of the dogs in the study relative to the typical age at death of dogs of the same breed.

The proposed stipulated order applies broadly to all health benefit claims for Mars Petcare's Pet Food (defined in the order as "any food that is used for food or drink for domestic pets"), and prohibits the company from making any of the following representations absent competent and reliable scientific evidence:

1. That with any Pet Food, dogs live 30 percent or more longer than their typical lifespan;
2. That any Pet Food can enable dogs to live exceptionally long lives; or
3. About the health benefits of such products.

The order also prohibits any misrepresentation: (A) about the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research, including that studies, research, or trials prove that, with its Pet Foods, dogs live 30 percent or more longer or substantially longer than

their typical lifespan or that the Pet Foods enable dogs to live exceptionally long lives; or (B) that any health benefits of such product are scientifically proven or otherwise established.

The settlement differs from others involving health benefit claims (see [here](#), [here](#), and [here](#)) insofar as it does not prescribe a definition of “competent and reliable scientific evidence” beyond the language that has traditionally been used, nor does it include a provision requiring the company to maintain clinical study data beyond the typical record retention requirements. Notwithstanding, it is still worth noting for companies selling foods or dietary supplements, because it demonstrates the risks in making quantified claims and the importance of ensuring a close nexus between the study endpoint and the advertising claim. It is also one of only a handful of FTC settlements involving pet care products in recent years and clearly evidences that the standards required for substantiation are applied to products intended both for two-legged and four-legged consumers.*

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**Crystal Skelton and Griffin at Kelley Drye’s “Take Your Dog to Work” Day*[/caption]