



Comparative Advertising Claims Cause a Legal Cat Fight

Church & Dwight Co. manufactures several cat litter products under the Arm & Hammer brand, including Super Scoop Clumping Litter and Double Duty Clumping Litter. Clorox produces Fresh Step cat litter, which, as of 2010, used carbon rather than baking soda to reduce odors. That year, Clorox aired television advertisements that showed cats choosing Fresh Step litter boxes over others, with a voiceover claiming that Fresh Step's scoopable litter with carbon was more effective at eliminating odors than Arm & Hammer litter.

Testing Comparative Claims

Clorox released another commercial in 2011 that portrayed cats performing clever stunts, emphasizing feline intelligence and suggesting that cats could "choose the litter with less odors." In response, Church & Dwight commissioned a study testing whether 158 cats would reject Super Scoop litter boxes. The results showed that fewer than 4% of cats rejected the Super Scoop boxes, while 5% rejected Fresh Step. Based on these findings, Church & Dwight filed a complaint arguing that the Clorox advertisements were literally false. The complaint was voluntarily dismissed after Clorox discontinued the ads.

Conducting Sensory Studies

Clorox returned within two weeks with another commercial showing a laboratory comparison of carbon and baking soda. The ad depicted jars labeled "Fresh Step with carbon" and jars containing baking soda, with a voiceover claiming that carbon was more effective at reducing odors.

To support these claims, Clorox conducted an in-house sensory study known as the "Jar Test." Under the supervision of a sensory testing expert, the company prepared jars containing baking soda, carbon, or no additives, added cat urine and feces, and allowed the odors to develop over 22 to 26 hours. Eleven trained panelists then smelled and rated each sample four

times, for a total of 44 measurements. The results indicated that carbon reduced odor by 32% more than baking soda, consistent with the commercial's claims.

Challenging Competitors' Results

Church & Dwight challenged the validity and relevance of the Jar Test, arguing that it did not reflect the actual conditions under which cats use litter and that the results were improbable. The court agreed, finding that the test failed to substantiate the implied claims in the advertisement because cats do not confine their litter in sealed jars, and odors can develop over time in real-world settings.

Additionally, the court deemed it highly implausible that eleven panelists would consistently report no unpleasant odors across 44 trials, particularly given earlier tests demonstrating detectable malodor in clean litter boxes. As a result, the court concluded that Clorox's advertisements made literally false claims and issued an injunction prohibiting further airing of the ads.

Relying on Sensory Research

The *Fresh Step v. Super Scoop* litigation illustrates the critical importance of properly designed sensory research to support comparative product claims. Comparative claims, whether regarding entire products or individual ingredients, must reflect real-world use conditions to withstand regulatory and legal scrutiny. Improperly designed studies can result in false advertising lawsuits and significant financial and reputational risks.

Reach out to contactus@imslegal.com today to discuss how our sensory research experts can help strengthen your marketing and compliance strategies.

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