



Clarifying Consumer Understanding in a Pregnancy Test Case

Church & Dwight Co., Inc. (C&D), a manufacturer of health and hygiene products, brought a false advertising suit against SPD Swiss Precision Diagnostics GmbH (SPD), a competitor in the home pregnancy test market. SPD's *Clearblue Advanced Pregnancy Test with Weeks Estimator* was at issue. The product was marketed as being able to determine how many weeks along a woman is in her pregnancy.

The Case Challenge

The US Food and Drug Administration (FDA) approved SPD's product for estimating the time since ovulation. Physicians typically measure pregnancy duration based on time since a patient's last menstrual period (LMP), which often results in a different number of weeks compared to the measure since ovulation. C&D alleged that SPD's advertising, specifically television commercials, misled consumers into believing that the Clearblue test measured pregnancy duration in the same way a doctor would, leading to consumer confusion and constituting false advertising under the Lanham Act and New York State law.

The Expert Solution

C&D retained consumer survey expert Bruce Isaacson, DBA, to assess the messages conveyed by the Clearblue advertising campaign. Dr. Isaacson designed a custom consumer perception survey to measure whether the Clearblue television advertisement misled consumers. The survey addressed three main issues: 1) Whether viewers believed the product estimated "how many weeks pregnant" a woman is, 2) whether viewers understood that the estimate was based on time since ovulation, and 3) whether the estimate aligned with what a doctor would report.