Putting the Truth Back in Advertising: Case Analyses of Power Balance and Reebok

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Poster

(Matthew Ballroom)

In 2009, the National Sporting Goods Association reported that athletic and sports equipment accounted for $23.89 billion in U.S. retail sales, and athletic and sport footwear totaled $17.07 billion (NSGA, 2011). With billions of dollars at stake, companies are constantly looking for the next consumer must-have product. Whether a casual runner or an avid athlete, the sport product consumer is always looking for a competitive advantage. It may be in the form of a sport beverage which will replenish the body after a workout or a shirt which diverts moisture from the skin. No matter what he or she desires, there are numerous products on the market to satisfy almost every need.

Focusing on the need to improve athletic performance, Power Balance, LLC entered the market in 2006. The company launched a silicone wristband which included a holographic device designed to improve balance, flexibility, and strength. The product was endorsed by several prominent athletes such as Shaquille O’Neil, Lamar Odom, and Vernon Davis (PowerBalance, 2011). When the bracelet was initially sold, company sales were a little over $8,000. In 2010, it is estimated that the Power Balance brand generated more than $35 million in sales (Marshall, 2011). In 2011, the company was named as a defendant in multiple class action lawsuits stating the advertising claims of the sport bracelet were false, and the bracelets were useless in enhancing athletic performance.

Reebok International Ltd. faced similar issues with its EasyTone walking shoes and flip flops and RunTone running shoes. In 2009, the company promoted a new brand of shoes that were created utilizing Moving Air Technology and built-in balance pods (Reebok.com, 2011). The technology incorporated in the shoes would result in "tone buttocks 28 percent more than other sneakers and [would] build calf muscles by more than 11 percent" (Forden, Fisk & Townsend, 2011). The Federal Trade Commission (FTC) stepped in for a refund.

These two cases have one thing in common; they were both settled. Reebok settled with the FTC for $25 million dollars. The settlement only covers advertising starting in 2009 for these products. Power Balance settled its class action lawsuit for $57 million. Both have denied any wrong doing or liability to consumers who have purchased their products. Both companies have disclaimers “individual results may vary.” Under the Magnuson-Moss Warranty Act, this may be deemed unacceptable.

The Act is the federal statute that governs warranties on consumer products. It states that “in order to improve the adequacy of information available to consumers [and] prevent deception, ... any warrantor warranting a consumer product to a consumer by means of a written warranty shall, to the extent required by rules of the Commission, fully and conspicuously disclose in simple and readily understood language the terms and conditions of such warranty” (15 USC §2302). If the claims made regarding the hologram technology are unsubstantiated (which was the basis of the lawsuits), this should be disclosed to consumers, and under §2304(a)(4) the companies “must permit the consumer to elect either a refund for, or replacement without charge”. Consumers should not have to sue or have the FTC step in for a refund.

It could also be argued that both Reebok and Power Balance breached an implied warranty of fitness for their products. Section 2-315 of the Uniform Commercial Code (UCC) states that “where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller’s skill or judgment to select or furnish suitable goods, there is unless excluded or modified... an implied warranty that the goods shall be fit for such purpose.” Both companies possess the requisite knowledge regarding their products. Consumers are relying on their expertise to make an informed decision about whether or not to purchase the product.

In Power Balance and Reebok’s defense, their advertising claims could be deemed puffery. Mere exaggerations that the reasonable consumer would not believe have been identified as legal and not in violation of the FTC regulations. The purpose of this poster presentation is to provide examples of the marketing campaigns for each product, a
discussion of the false advertising claims in both cases, and an explanation of the duties that sport marketers have to consumers for their products as well as the potential legal implications of false advertising.