TRIFORMX / XCELERATE FUEL TABS

Introduction

This memorandum will explain how TriformX / Xcelerate Fuel Tabs determines if it has sufficient data to support a particular claim. It will also discuss specific claims associated with the use of our products and whether we believes there is sufficient data to support these claims.

FTC Analysis

Our determination of which claims we can support is directly related to whether the claim can meet the standards set by the Federal Trade Commission (the "FTC"). We believe that adhering to these standards will ensure that we are complying with applicable laws and do not subject ourselves to unnecessary scrutiny.

The FTC has outlined the process it follows to determine whether an advertisement is deceptive.[1] The first four steps in the process are: (1) determining the message of the advertisement[2], (2) identifying the explicit and implicit claims of the advertisement, (3) evaluating whether the advertisement makes any relevant omissions[3], and (4) distinguishing the advertisement's material claims from its non-material claims.[4] The first three steps let the FTC know what the advertisement is saying or what the advertisement should have said, while step four tells the FTC which claims in the advertisement are important, i.e. what claims the FTC should be concerned about. After identifying the advertisement's material claims the FTC concludes its evaluation by determining whether the advertiser has "sufficient evidence" to support these claims.[5] This final step is critical because if the advertiser has sufficient evidence to support the advertisement's claims then the FTC will determine that the advertisement is not deceptive. However, if the advertiser does not have sufficient evidence then the FTC will likely

[1] *See* Federal Trade Commission, Advertising FAQ's: A Guide for Small Business (April 2001), http://business.ftc.gov/documents/bus35-advertising-faqs-guide-small-business.

[2] *Id*. When determining the message of the advertisement the FTC assumes the role of the "reasonable consumer." The reasonable consumer is the "typical person" that is advertisement is attempting to communicate with.

[3] *Id*. The FTC's example of a relevant omission is advertising a collection of books, but failing to mention that that the books are abridged versions.

[4] *Id*.

[5] *Id*.

determine that the advertisement is deceptive and the advertiser will be subject to stiff penalties.[6] Consequently, the question for the advertiser is what type of evidence is sufficient to support a claim?

Although the FTC's "substantiation" requirement is somewhat vague, the FTC has not left advertisers without some direction.[7] The FTC has stated that the essential requirement is that the advertiser must have a "reasonable basis" for making the claim.[8] In other words, the advertiser must have objective evidence that the claim is true.[9]

The evidence necessary to support a claim is dependent on the claim itself. For example, if the claims states "Dentists prefer Brand X toothpaste," then the FTC will want to see that the advertiser has evidence, i.e. a survey, that dentists actually prefer Brand X over other brands of toothpaste.[10] However, if the claim is "Brand X toothpaste prevents cavities," then the FTC will want to see that the advertiser has "competent and reliable scientific evidence" to support this claim.[11] Regardless of whether the claim is specific or general the claim must have objective evidence supporting it.[12]

Our Test Data

Our formulator's fuel additive products were developed in the mid-1980s. Shortly thereafter they began testing the efficacy of the products. For nearly three decades they have tested the products in nearly every type of equipment, operation, and application imaginable. Although the results of these tests are never the same, the tests have consistently shown that our products have an effect on the combustion process. These tests have shown increased efficiency, decreased emissions, and other benefits associated with better combustion.

Although we have a substantial body of testing to support the efficacy of our products, the question is not whether we have testing. Instead, the question is whether our body of testing meets the FTC's requirement of "objective evidence" needed to substantiate a claim. If we conclude that our testing data regarding a claim meets or exceeds the FTC's requirements then we will proudly stand by that claim. However, we cannot and will not make any claim without a reasonable basis. In other words, if we believes that our testing data is not sufficient to support the claim then we will not make, nor will it authorize its partners to make, that claim.

Claims

Below is a list of claims that are typically related to fuel additive products. Next to each claim is a brief description of the evidence supporting the claim. The claims are grouped into two categories: (1) United States Claims and (2) International Claims. "United States Claims"

[6] *See* Federal Trade Commission, Advertising FAQ's: A Guide for Small Business (April 2001), http://business.ftc.gov/documents/bus35-advertising-faqs-guide-small-business. Reebok was recently fined $500,000 and forced to pay more than $25,000,000 in customer refunds for claims it made regarding its "Toning Shoes."
[7] *Id*.
[8] *Id*.
[9] *Id*.
[10] *Id*.
[11] *Id*.
[12] *Id*. Letters or statements from satisfied customers do not fulfill the FTC's requirements.

are the claims that we believe are supported by sufficient objective evidence and will meet the standards of the FTC. "International Claims" are the claims that have some support, but it is questionable whether these claims could withstand scrutiny from the FTC.

- **United States Claims**

A. Improves Combustion Efficiency: Our product improves combustion, i.e. they help the engine capture more of the available energy. Our products are very good at what they do.[13]

A. Reduces Harmful Emissions: Perfect fuel and perfect combustion produces carbon dioxide and water. However, fuel and combustion are never perfect. Consequently, harmful emissions are produced. We have decades of test data showing that using our products reduces several categories of harmful emissions, including: nitrogen oxide, carbon monoxide, and unburned hydrocarbons.[14]

A. Reduces Exhaust Opacity: See explanation for "Reduces Harmful Emissions."

A. Does Not Change Fuel Specifications: Each grade of gasoline or diesel fuel has certain specifications. We have tested fuels before and after our products were added to the fuel. The tests confirmed that our products do not change the fuel's specifications.[15]

A. Dissolves Faster: O u r patented, solid fuel additive dissolves faster than other solid fuel additives. In fact, this is one of the features that allowed us to obtain a patent for our product.[16]

A. Increases Horsepower: We have tested many vehicles to determine whether our products affect the power that the vehicles produce. The results of these tests are often dramatic.[17] Therefore, we believe that there is enough evidence to substantiate this claim.

A. Extends Oil Life: Our products reduce the amount of soot and iron in engine oil. Soot and iron are wear materials and reducing their presence in engine oil can extend the life of the engine oil. We have test data to support that its products may extend oil life.[18]

- **International Claims**

[13] *See* Environment Canada Test; American and Foreign Auto Emissions Test. These test showed a substantial reduction in unburned hydrocarbons in vehicles treated with our product.
[14] *See* Intertek Test, American and Foreign Auto Test; Environment Canada Test; Diesel Inspection Test; McCartney Construction Company Test; Kiewit Test; Quality Tire Test; City of Leesburg Test.
[15] *See* LubeTrak Test; Core Laboratories Test.
[16] We conducted dissolution tests on its product and a leading competitor's product. Our product fully dissolved in minutes while the competitor's product did not dissolve within sixty minutes.
[17] *See* Vehicle Chassis Dynamometer Tests and Caterpillar Dynamometer Test.
[18] *See* LubeTrak Test.

A.Reduces Carbon Deposits: As was mentioned earlier, Our products improve combustion. Better combustion will reduce the amount of unburned fuel ("carbon") in the engine. In addition, our products help to remove existing deposits from combustion surfaces, including values, spark plugs, injectors, cylinders, pistons, rings, and exhaust headers.[19] Although we have data showing a visible reduction of carbon in an engine, we have not, as of yet, conducted a test specifically designed to measure the reduction of carbon.[20]

A.Improves Fuel Mileage by 7-14%: Measuring improved fuel efficiency is elusive. Predicting a specific increase in fuel efficiency is even more elusive. This is due to the fact that fuel efficiency is affected by many factors. Our test data on fuel efficiency clearly demonstrates the problems with claiming a specific range of improvement. Testing with our products has shown anywhere from negligible effects on fuel efficiency to improvements as high as 26.38%.[21] However, the bulk of the testing produced results ranging from 4.5-16.30%.[22]

A.Reduces Carbon Dioxide ("CO2") Emissions: An overall reduction in fuel consumption will produce an overall reduction in harmful emissions, including CO2. A test conducted on our products determined that the CO2 emissions declined during the testing period.[23] Nevertheless, the immediate effect of our products may increase CO2 emissions.[24]

A.Anti-Knock Agent: Our products and their components have known "anti- knocking" properties. However, the evidence supporting these claims was not conducted on our products. Instead, the research was conducted on components of our products.[25]

A.Octane Requirement Increase Inhibitor ("ORI"): Our products do not increase the octane rating of gasoline. Instead, our products reduce the need for a higher octane rating. There is published literature supporting this claim.[26]

A.Lowers Diesel Fuel Pour Point: Diesel fuel will "gel" at low temperatures. Diesel fuel that gels is impossible to transfer and can cause serious problems inside an engine. We have compelling test data showing that diesel fuel treated with product gels at much lower temperatures than untreated diesel fuel.[27]

[19] *See* Florida Crushed Stone Test; Southern Aggregates Test (Yancey Brothers Caterpillar).
[20] *Id*.
[21] *See* Hamilton Memorandum; McCartney Construction Company Test.
[22] *See* Environment Canada Test; Davis County Test; Bill Barrett Corporation Test; Parish Chemical Test; Savage Trucking Test; Silo Trucking Test; Southern Aggregates Test; Walmart Test; City of South Daytona Test.
[23] *See* Environment Canada Test.
[24] *See* American and Foreign Auto Test.
[25] SAE International's "Automotive Fuels Handbook" discusses ferrocene's anti-knock properties.
[26] SAE International has conducted thorough testing on components used in our products and determined that these components reduce the necessity of higher-octane fuels.
[27] We have a laboratory test report showing that our products reduce the gel point of diesel fuel. However, this test report belongs to a customer and we are not allowed to share the test report with others.