

Air Cleaner Cases Speak to Truth in Advertising

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The perils of over-promising and under-delivering have become even clearer in light of recent settlements concerning the marketing of air purifiers from Brookstone and Sharper Image.

Brookstone sold both its own Pure-Ion model and Sharper Image's Ionic Breeze air purifiers. These companies implied results that the products apparently did not deliver. Disgruntled customers filed lawsuits claiming that the companies deceived them and that the products did not effectively remove dust, pollen and other impurities from the air, thus failing to perform their marketed and warranted purpose. These lawsuits were recently settled, and the court documents supporting the settlements tell an interesting story about the hazards of overzealous advertising.

Brookstone

In accordance with the settlement agreement, Brookstone must mail class notices by Feb. 12, describing the suit and the settlement to all persons who purchased a full-room Pure-Ion air purifier other than the Pure-Ion Advanced. Brookstone is also directed to publish the class notices in USA Today.

Brookstone is to give each member of the settlement class a \$20 store credit toward the purchase of any Brookstone product and valid for one year. Members of the settlement class may opt to return their units for a store credit equal to the purchase price paid.

In addition, the settlement agreement enforces multiple conditions regarding the production of the Pure-Ion air purifier. Prior to future marketing or mass production, units must be submitted for testing of its clean air delivery rate, the standard for overall efficiency and effectiveness of indoor air purifiers.

CADR indicates the volume of contaminant-free air delivered by an air purifier, measuring smoke on a scale of 10 to 450, dust on a scale of 10 to 400, and pollen on a scale of 25 to 250. The higher the numbers, the faster the unit filters the air.

The only full-room ionizing air purifiers Brookstone can continue selling under the settlement are new units that achieve an average CADR of more than 100 in the three categories and that also meet the Underwriters Laboratory's Standard 867 standards for ozone emissions.

The settlement agreement also forces Brookstone to alter its marketing by May 1. In all marketing materials, Brookstone must publish average CADRs and any reference to CADR testing must include a statement providing a link to a Web site that explains CADR testing and provides a summary of the actual test results. Brookstone advertising, product packaging and owners' manuals for full-room ionizing purifiers must include a statement that the unit is "not a medical device." Furthermore, Brookstone is prohibited from referring to the Pure-Ion or the Ionic Breeze as the "leading silent air purifier" or from using language indicating that the unit effectively cleans the air.

A hearing for the final approval of the settlement is set for April 5. The costs of the attorneys' fees portion of the lawsuit are limited to \$1.2 million. However, the full cost remains unknown and depends on how many members of the settlement class return their products and use their \$20 vouchers.

Sharper Image

The Sharper Image settlement dealt with similar issues for the Ionic Breeze air purifier. A settlement on Jan. 16 requires the company:

- to offer \$19 merchandise credits to the 3.2 million consumers who purchased the products,
- to sell Ozone Guard attachments for \$7 per unit,
- to test all Ionic Breeze models for ozone emissions using the UL 867 test protocol, and
- to restrict its advertising.

With respect to the advertising restrictions, Sharper Image has agreed:

- to make claims based solely on reliable scientific testing,
- not to state that the Ionic Breeze is a medical device, and
- not to claim that ozone produces health benefits.

Sharper Image will pay the plaintiffs' attorneys' fees up to \$1.875 million.

In 2004, Sharper Image sued Consumers Union, publisher of Consumer Reports, with claims of libel and that a negative review of the Ionic Breeze air purifier was false and malicious. Not only was the case dismissed, but Sharper Image was required to pay defense costs.

An article (David Governo, "New Advice: Let the Sellers of Air Cleaners Beware") appearing in the October 2004 issue of IE Connections, reports several specific investigations and rulings from the Federal Trade Commission, which regulates claims made against companies regarding the products that they sell. The author also contributed to the 2006 "Best and Worst of IAQ" in the December 2006 issue, describing the worst as "ozone generation, chlorine dioxide and other 'cures' [that] still have limited applications but apparently endless marketing opportunities."

The recent settlement and accompanying documents show that the marketing opportunities of ozone-generating air purifiers now do have their limits.

These settlements serve as a warning to other manufactures of air purifiers that may be at risk for litigation due to claims they make. Since false or deceptive advertising can cost a company millions of dollars, it is imperative for companies to analyze their potential for liability and to use careful, precise and accurate language in advertising.

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