



UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

Office of the Secretary

Commission Letter Addressing Public Comments

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and the opinion of relevant experts. See FTC Policy Statement Regarding Advertising Substantiation, 104 F.T.C. 839 (1984) (appended to Thompson Med. Co., 104 F.T.C. 648 (1984), aff'd, 791 F.2d 189 (D.C. Cir. 1986); Thompson Med. Co., 104 F.T.C. at 821 n.59; Removatron Int'l Corp., 111 F.T.C. 206, 297 (1988). When determining the proper level of substantiation for health-related claims, Commission staff regularly consults with experts in the relevant health and regulatory spheres (e.g., experts in the fields of neurology, vision, and the design of clinical trials),

whereby all training appears equally active to participants . . . as well as keeping engagement roughly matched across groups and noting two state of the art examples: the control group can play a less challenging version of the same game (different video game). J. Deveau & A.R. Seitz, Applying Perceptual Learning to Achieve Practical Changes in Vision in *Frontiers in Psychol* (Oct. 2014) (“[f]uture studies with a double blind active control group are essential in determining the effectiveness of perceptual learning based vision training.”)

A few commenters indicated that they used Ultimateyes and believed it improved their vision. Although the Commission appreciates hearing about consumer individual experiences, anecdotal user evidence is not reliable support for a claim that a product will cause the same effect in the general population.

Some commenters raised concerns about the equitable monetary relief. Some believed it to be excessive while others noted that they believed a large “fine” imposed on a researcher could discourage other researchers and chill innovation. The Commission does not have the authority to impose a fine for an initial violation of the FTC Act. However, as is the case here, it often seeks equitable monetary relief based on consumer injury, not the gains attributed to the law violation. Individuals are often jointly responsible with a corporation for both conduct and monetary relief, particularly if the corporation is essentially the alter ego of the individuals. See, e.g., *FTC v. Affordable Media*, 179 F.3d 1228, 1234 (9th Cir.; 1999); *Southwest Sunsites, Inc.*, 105 F.T.C. 7, 3703 (1980), *aff’d sub nom Southwest Sunsites, Inc. v. FTC*, 785 F.2d 1431 (9th Cir. 1986). The Commission also considers ability to pay, if raised by a respondent, in accepting a settlement amount. The complaint in this case alleges that sales of Ultimateyes – the consumer injury – exceeded \$350,000 based on all the information available in this case. The respondents, including Dr. Seitz, and counsel for the Commission settled for equitable monetary relief of \$150,000, which the Commission believes is an appropriate amount.

Several commenters believed that other targets would have been appropriate for Commission action. The Commission appreciates commenters’ referrals of other advertising they believe is deceptive, however, possible wrongdoing by others does not obviate the need for the Commission to address respondents’ alleged law violations.

After carefully considering your comment, along with others received in this matter and the investigative record, the Commission has determined that the proposed relief set forth in the consent agreement is appropriate and necessary to remedy the violations alleged in the proposed complaint, and it is in the public interest to issue the Decision and Order in final form with modification. A copy of the final Decision and Order, along with other relevant materials, is available from the Commission’s website at <http://www.ftc.gov>

Thank you again for your comment. Hearing from a variety of sources aids the Commission in its analysis and we appreciate your interest in the matter.

By direction of the Commission.

Donald S. Clark
Secretary