

**BEFORE THE
SENATE SUBCOMMITTEE ON
CONSUMER PROTECTION, PRODUCT SAFETY, AND INSURANCE**

**HEARING ON
ADVERTISING TRENDS AND CONSUMER PROTECTION**

July 22, 2009

**TESTIMONY OF
GREG RENKER, CO-FOUNDER, GUTHY-RENKER**

**GREG RENKER
Co-Founder
Guthy-Renker**

**3340 Ocean Park Boulevard #3055
Santa Monica, CA 90405**

**41-550 Eclectic Street, Suite 200
Palm Desert, California 92260**

Chairman Pryor, Members of the Subcommittee, my name is Greg Renker.

Thank you for the opportunity to testify today. I am one of the co-founders of Guthy-Renker, one of the world's largest direct response television companies with annual sales of approximately \$1.5 billion. We are known as the leading producer of high-quality commercials and company-owned products designed for direct response television sales. We are headquartered in California, but have offices in Europe, Asia and Australia, and market throughout the world.

I have been active in the direct response industry since the founding of Guthy-Renker in 1988. I have had the privilege and pleasure of serving as Chairman of what was the National Infomercial Marketing Association ("NIMA"), and am currently Chairman *Emeritus* of the Electronic Retailing Association, NIMA's successor. In addition, Guthy-Renker serves on the Board of Directors of the Direct Marketing Association. As Chairman of NIMA, I presided over the formation of the Association's self-regulatory program, which currently works hand-in-hand with the National Advertising Review Council, represented here today by Lee Peeler. The Electronic Retailing Self-Regulation Program reflects my firm belief that consumers and our industry benefit from clear and fair rules enforced initially by self-regulatory action and, if necessary, action by the Federal Trade Commission ("FTC" or "Commission") to ensure that our customers have confidence in the integrity of direct response marketers.

According to a recent report by the DMA, the direct response industry generated 2.058 trillion dollars in sales in 2008 and is projected to grow 5.3 percent over the next five years, which is particularly impressive given the current economic climate. Direct response marketing supports 10.9 million U.S. jobs. Advertising continues, even in these tough times, to be a leading contributor to the U.S. economy. Advertising and marketing have proven their unparalleled value in connecting consumers with products and services that they are likely to be interested in purchasing and using.

The success and ongoing growth of the direct response industry and broader advertising industry is due in large part to the effectiveness of consumer testimonials and endorsements. Testimonials by users of our products and services are a very powerful form of communication, and studies have found that consumers find statements by other consumers to be, in many cases, more credible than direct statements about products by the advertiser. That is why testimonials are so widely used, not only on television, but throughout advertising in all sorts of media. Testimonials are crucial to the success of this industry and to the success of consumer products such as our ProActiv® Solution product, the largest selling non-prescription acne treatment product in the world, as well as our other well-known skin care, exercise, and entertainment products. I have seen first hand over the past twenty years that our testimonials provide hope and motivation to our consumers' lives and well-being.

With that background, I want to discuss the standards that apply to testimonials and provide my perspective with respect to one of the proposed modifications to the

FTC's Guides Concerning the Use of Endorsements and Testimonials in Advertising, which are currently pending at the Commission. The current Guides have for many years set the standard for the use of endorsements and testimonials in advertising. As part of its periodic review of all of its Guides, the Commission has proposed changes to its longstanding standards for testimonials with the goal of limiting deception of consumers. There is no question that the Commission's intentions are laudable, and that the Commission has been very successful in combating the use of fraudulent and deceptive endorsements and testimonials. But I and my colleagues in the legitimate and leading segment of the direct response industry are concerned that the proposed modification would have significant negative consequences on both advertising and consumers. We believe that there are other, more direct and equally effective, solutions to address the concerns the Commission is grappling with.

The current Guidelines have been out in the advertising world since 1980, and a whole industry has grown up following these "rules of the game." The Commission's interest in the use of testimonials is appropriate considering the public's widespread acceptance of testimonials and reliance on information obtained through testimonials when making purchase decisions. To be clear, we at Guthy-Renker share the goals of the Subcommittee and the Commission for a fair and healthy marketplace and for responsible use of endorsements and testimonials.

As I understand it, the basis of the Commission's concern in this area is the belief that a statement made in a consumer testimonial regarding the particular results of an

individual using the product or service being advertised may be understood by some consumers as a representation that they can expect the same result. To use a common example to illustrate the Commission's concern, if a consumer testimonial reports that by running on a treadmill he/she lost 30 pounds over a six-month period, the Commission believes that the advertiser is representing that the ordinary consumer who purchases that product will achieve the same or similar results.

In many cases, it is difficult or impossible to say what the "average" experience of a consumer using their product may be. The treadmill is a good example. We all know that regular use of a treadmill can result in weight loss, but the marketer of the treadmill does not know whether the purchaser will use it one day, three days, or five days a week, or how many minutes the purchaser will spend on the treadmill or how fast he/she will run. Consequently, the existing Guides have always allowed the marketer of a product using a testimonial that may not be typical to state "Your Experience Will Vary," or similarly disclaim the typicality of the testimonial's experience. These disclosures have become familiar to consumers over the years.

The Commission has identified a concern with the use of such so-called "typicality" disclaimers because they apparently do not believe that consumers understand even simple and conspicuous disclaimers. To address this concern, the Commission's proposed modification would require marketers to disclose the average results of consumers that use the product or service. In many cases, especially where we are dealing with product design specifications that apply irrespective of the use of the

product, this would not be a problem. For example, the statements on light bulb packages about the average number of hours the bulb will function are generally consistent among all users.

But when it comes to products where the results obtained by consumers are variable or depend fundamentally on decisions that consumers themselves make – how frequently to use the product and for how long, for example – the proposed modification would require that marketers disclose facts that simply cannot be determined. This is the basis for the advertising community’s concerns with the Commission’s proposal. The proposal would have the effect of limiting the use of truthful statements by individuals about their experience with the product because of an assumption that consumers will take those statements as gospel truth but ignore or fail to comprehend plain-language typicality disclaimers that accompany them.

The industry believes that there may be other more effective ways of addressing the problem identified by the Commission. While I focus more on running the business than the legal framework, I know that the Commission has strong existing enforcement authority and uses it regularly. This type of enforcement helps foster a healthy marketplace for consumers and limits fraudulent competitors.

For example, as I understand it, the Commission has highlighted as a problem area the fact that some disclaimers, in some commercials, are too small or use confusing or ambiguous language. This is a problem where the Commission could bring an

enforcement action under its existing authority against those marketers, and require that they make the disclaimers larger or remain on the screen longer, or rewrite them in plain language so that consumers are not confused or deceived.

Similarly, some advertisers use extraordinary testimonials to promote products that don't work at all. Here, the issue is not the typicality of the testimonial, but the lack of proof that the product works as claimed.

We believe the current Guides set an appropriate standard and one that is widely understood in the advertising industry. If an advertiser is using testimonials that convey a misleading “net-impression” of what the product or service is capable of doing, the Commission can and should go after the marketer under well-established existing law. The Commission’s enforcement efforts and self-regulatory programs supported by the Commission have helped clean up and maintain a robust advertising industry for consumers and businesses alike.

Given the Commission's existing tools, and the potential negative impact on endorsements and testimonials that benefit consumers, we believe that the Commission can achieve its important goals without essentially banning the use of truthful consumer testimonials.

I thank you for the opportunity to speak with you today and for your commitment to these important issues. I am submitting for the record my prepared testimony and the

comments provided by the Electronic Retailing Association and the Council for Responsible Nutrition to the Federal Trade Commission as part of its comment process.

I would be happy to take any questions you might have.

* * *