

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, DC 20580



Division of Advertising Practices

Mary K. Engle
Associate Director

July 9, 2019

Amanda M. Fielder, Esq.
Partner
Warner Norcross + Judd LLP
900 Fifth Third Center
111 Lyon Street, NW
Grand Rapids, MI 49503

Re: MBTIsense LLC, FTC Matter No. 182-3090

Dear Ms. Fielder:

As you know, staff of the Federal Trade Commission's Division of Advertising Practices conducted an investigation into the advertising of the ROSH sensor by your client, MBTIsense LLC, for possible violations of Sections 5 and 12 of the FTC Act, 15 U.S.C. §§ 45, 52. The ROSH sensor was marketed as being able to: 1) accurately measure and record the magnitude and location of multiple impacts experienced throughout a game; 2) warn users of potentially serious head injuries; and 3) allow users to avoid secondary impact syndrome.

Section 5 of the FTC Act requires that advertising claims be truthful and nonmisleading, and Section 12 prohibits false advertisements for foods, drugs, devices, services, or cosmetics. Generally, health benefit claims in advertising are deceptive if the advertiser does not possess competent and reliable scientific evidence substantiating the claims prior to their dissemination. *See, e.g., FTC v. Direct Mktg. Concepts, Inc.*, 569 F. Supp. 2d 285, 298-300 (D. Mass. 2008), *aff'd*, 624 F.3d 1 (1st Cir. 2010). We were concerned that the claims for the ROSH sensor were not adequately substantiated.

Upon careful review of the matter, including non-public information submitted to the FTC, we have determined not to recommend enforcement action at this time. In reaching this conclusion, we considered a number of factors, including minimal sales of the ROSH sensor and the company's decision to cease operations.

This action is not to be construed as a determination that a violation of law did not occur, just as the pendency of an investigation should not be construed as a determination that a

Amanda Fielder, Esq.
July 9, 2019
Page 2

violation has occurred. The Commission reserves the right to take such further action as the public interest may require.

Very truly yours,

A handwritten signature in blue ink that reads "Mary K. Engle". The signature is written in a cursive style with a large, looped "M" and "E".

Mary K. Engle
Associate Director
Division of Advertising Practices