

# Playtex Loses \$13 Million in False Advertising Case

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Some cases just stink . . . literally!

Especially when they involve baby diapers and advertising claims about diaper disposal pails and their ability to control odors.

Munchkin Inc. sued its competitor in the diaper pail disposal arena, Playtex Products, arguing that claims by Playtex that its Diaper Genie Elite product was “Proven #1 In Odor Control” were literally false, and that Playtex deliberately sought to deceive consumers. [[Yahoo! Finance](#)]

A federal jury in the Central District of California agreed, and “found that Playtex’s false advertising had deceived a ‘substantial number of consumers,’ and that its statements had likely affected consumers’ purchasing decisions. In addition, the jury ruled that Playtex had intentionally sought to deceive consumers in advertising that its Pink Pail diaper pail was ‘#1 Recommended Among 1st Time Moms.’”

Munchkin Inc. received a \$13.492 million jury verdict, but still faces post trial motions and potential appeals before a final judgment is rendered.

Munchkin’s case undoubtedly relied in large measure on the Lanham Act, which deals with false advertising claims in addition to trademark infringement and trademark dilution claims.

Section 43(a) of the Lanham Act provides for civil liability in several situations, including any “false or misleading description of fact, or false or misleading representation of fact, which . . . in commercial advertising or promotion, misrepresents the nature, characteristics, qualities or geographic origin” of goods or services.

The Munchkin case also demonstrates the risk in making advertising claims that cross the line from mere puffery to false and misleading. As noted in our earlier [article](#), puffery is not actionable because consumers are not thought to be misled by such, able to realize that claims which cannot be proved or disproved are merely a form of exaggeration.

But it’s often difficult to know when mere puffery crosses the line and opens a business up to potential liability for false advertising. That’s why running ads by an attorney experienced in advertising law is advisable.

In the case of Playtex, the jury must have concluded that the company was engaged in more than mere puffery by using the word “Proven”, among other things, in its ads.

The importance of advertising in driving new business and sales growth is vital, but as this case demonstrates, false advertising claims can subject a business to increased liability.

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