



Standard Guide for Sensory Claim Substantiation¹

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INTRODUCTION

Formats or standards for testing related to sensory claim substantiation cannot be considered without a frame of reference of where that format or standard would fit within the legal framework that surrounds the topic. Product sensory claims tests are performed for three basic reasons: (1) *Comparison of Products*—Determines how one product compares to another, usually a competitor or earlier version of itself. (2) *Substantiation of Claims*—Enables marketing personnel to use positive references through advertising or packaging, or both, in the presentation of the product to the consumer. (3) *Test Performance*—Ascertains and establishes the tested product performance within the scope of its intended use.

The risk associated with each claim is assessed when considering claims substantiation. Compelling and aggressive claims are sure to be scrutinized closely by competitive firms, and if inconsistencies are found through competitive test data, the claims could be challenged in one or more of the following venues: (1) National Advertising Division (NAD) of the Advertising Self-Regulatory Council (ASRC), (2) one or more media, such as print, broadcast, or electronic media, (3) Consumer Advocacy Organizations, and (4) Civil or Federal courts. No single test design or standard test will prevent challenges. The criteria used by each of the potential forums are not identical and are constantly evolving. With the introduction of new technologies coupled with changing consumer demands, testing processes and protocols that were sufficient five or ten years ago may not hold up under today's criteria and scrutiny. Testing requirements of the future can only be a matter for speculation. The one constant is that, as advocates of their clients' positions, attorneys will defend their clients' testing processes and protocol while questioning with great detail every aspect of their competitor's protocol in the attempt to sway the arbiter to agree that their clients are in the right. Legal counsel should be part of any team developing claim substantiation.

This guide demonstrates what a group of professionals who are skilled in the science of testing consider appropriate from a scientific and technical standpoint, and represents an effective method for both defendant and challenger to determine the viability of a sensory claim. The key word is "appropriate." If a particular aspect of a test, or method, is not appropriate for a specific application, it should not be used. Care should be taken to clearly define the reasons and data supporting a deviation from the standard, as any departure invites scrutiny. Since departures are inevitable, the word "should" is used in this guide to indicate when other techniques may have applications in certain unusual circumstances. Whenever a test protocol has been completed, it should be critiqued for weaknesses, including whether experts in the relevant field would consider the research objectively designed, conducted, and analyzed, using procedures that give accurate and reliable results. If weaknesses are found, corrective action should be taken, since the competition may point out any weakness or discrepancy and challenge the study.

While the scientific and technical community identifies the appropriateness of a research method used to support a sensory claim, the legal community evaluates substantiation for legal claims using "reasonableness" as the criterion. With the importance of having a legal "reasonable basis" for a claim, the question remains, "What is reasonable?" Unfortunately, there is no specific answer to that legal question, as it will depend on the type of claim, product application and use, applicable regulations where the product is sold, and other factors. These considerations, market pressures (such as timing), and testing budgets can influence and impact the protocols to support a specific claim. This guide provides principles and considerations that need to be addressed for good sensory and consumer testing practices.