

# Lawsuit Tough to Swallow

By Reg P. Wydeven  
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NBC's hit reality show *Fear Factor* is well known for the outrageous challenges its contestants must endure in order to win the \$50,000 grand prize. Players routinely must bungee jump from helicopters, drive cars off buildings, or leap from a semi-tractor trailer to another trailer while traveling down a highway at 65 miles per hour. The most extreme challenges involve critters – contestants sometimes must sit in a box filled with tarantulas or snakes, or they must eat things like cow brains, worms or cockroaches.

While disgusting, the show makes for exciting television. One episode, however, caused too much excitement for a Cleveland man. A fan of *Fear Factor*, Austin Aitken sued NBC for \$2.5 million for injuries he suffered as a result of watching the show. Aitken's handwritten complaint alleges that his blood pressure suddenly rose, he became dizzy and lightheaded, and eventually vomited after watching a contestant eat a rat that was gooified in a blender. Aitken then became disoriented and ran into a doorway, causing "suffering, injury and great pain."

Aitken attempted to change the channel, but just wasn't quick enough. A part-time paralegal, Aitken claims he isn't concerned with winning a cash judgment in court. Rather, he indicated that he wants to send a clear message to NBC and other networks with his lawsuit that some of their programming has gone too far.

NBC responded by issuing this simple statement: "We believe that the claim is completely without merit."

After the incident, Aitken was definitely in need of some mouthwash. If he grabbed some Listerine in the hopes of not only freshening his breath but also battling plaque, Aitken may have another lawsuit on his hands.

A Manhattan federal judge recently granted an injunction against Pfizer Inc., preventing the manufacturer of Listerine from claiming in advertisements that "Listerine's as effective as floss at fighting plaque and gingivitis. Clinical studies prove it."

The nation's largest manufacturer of dental floss, McNeil-PPC, a subsidiary of Johnson & Johnson, sued Pfizer for false advertising and unfair competition. McNeil-PPC's suit alleged Pfizer's Listerine ad campaign claiming the mouthwash is as effective as flossing was causing irreparable harm to McNeil-PPC's business.

Further, McNeil-PPC alleged that the clinical studies referred to in the ads were flawed and did not, in fact, prove that Listerine was as effective at preventing prevent plaque as proper flossing. Coincidentally, the clinical studies were also sponsored by Pfizer. Results from the two six-month studies showed that rinsing with Listerine twice a day was more effective than flossing among subjects with mild or moderate gingivitis. Researchers believe, however, that the subjects in the studies were not flossing properly. The studies also did not include subjects with severe gingivitis or periodontitis, a more serious gum disease.

McNeil also furnished the judge with consumer research studies commissioned by both McNeil-PPC and Pfizer showing that a large number of consumers who saw Pfizer's ads believed using Listerine could essentially replace flossing, even after reading Pfizer's disclaimers that "there's no replacement for flossing."

Armed with this information, the federal judge granted the injunction, stating the ads were indeed false and could mislead consumers, possibly posing a public health risk. In addition to yanking the ads, special labels attached to all Listerine bottles claiming it's more effective than flossing may have to be removed or covered.

Harold Weinberger, McNeil-PPC's attorney, applauded the judge's decision and hopes it will warn marketers to be accurate in their advertising.

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Finally, the American Dental Association strongly encourages *Fear Factor* contestants to floss after eating blended rats.