

Sergeant's False and Misleading Advertising

25. Sergeant's false advertising campaign of 2013 consists mainly of two commercials—one for Fiproguard (the "Fiproguard Commercial", a storyboard of which is attached as Exhibit 2) and one for Pronyl (the "Pronyl Commercial," a storyboard of which is attached as Exhibit 3). In addition to airing on television, these commercials were posted on the Internet. Sergeant's also has posted related misleading content on its websites and has distributed a coupon with false and misleading claims.

The Fiproguard Commercial

26. Upon information and belief, the Fiproguard Commercial first aired in March 2013 on network television, and is scheduled to run at least until June 2013. It was also posted to Sergeant's website for Fiproguard at <http://www.fiproguard.com/index.php> and the popular Internet Commercial streaming website YouTube at http://youtu.be/m_w6fuxqtQ4.

27. The Fiproguard Commercial falsely claims that (a) Fiproguard causes fleas and ticks to start dying in just minutes, and (b) Fiproguard prevents more fleas from biting than Frontline and K9 Advantix.

28. The Fiproguard Commercial begins with a scene of a fleet of fighter jets piloted by fleas and ticks launching an attack against two dogs, one of which is safely surrounded by a forcefield.



29. As the planes descend, they converge upon the dog without the protection of the bubble. The voiceover warns that “your pets may be under attack if they’re not protected by Sentry® Fiproguard® Max.”



30. The dog with the bubble, clearly having been treated with Fiproguard, sits calmly as fleas and ticks crash futilely into its forcefield, exploding instantly upon

contact. The narrator explains that “Sentry® Fiproguard® Max kills fleas and ticks so fast, they start dying in just minutes.”



31. Meanwhile, the dog without the bubble is furiously scratching.



32. Only later is it revealed that this woefully unprotected dog was on a competing product—either Frontline or K9 Advantix—when the narrator claims that

Fiproguard “even prevents more fleas from biting than Frontline[®] Plus or K9 Advantix[®] II.”



33. The owner of the scratching dog looks on with concern, helpless to prevent her dog's suffering.



34. Finally, the owner of the dog in the bubble hands the other owner a box of Fiproguard.



35. Instantly, a bubble appears around the previously-itching dog, which now also sits calmly without scratching.



36. Later, when the narrator directs the audience's attention to a list of retailers, a nearly illegible disclaimer in tiny print appears stating that "[i]ndependent studies show that Fiproguard[®] Max for dogs prevents more fleas from biting and taking a

blood meal than Frontline® Plus for dogs and K9 Advantix® II for dogs within the first hour after weekly reinfestation averaged over a 5 week period.”



37. These claims are literally false. Fiproguard cannot kill a significant number of fleas or ticks in mere minutes—it takes several hours before Fiproguard can spread across the dog’s body and a significant number of fleas die from Fiproguard. Ticks take even longer to kill. Studies of Fiproguard have demonstrated that the product only kills small numbers of fleas or ticks (0-9% of fleas and 2-11% of ticks) after “as little as an hour”, not mere minutes. Ex. 1, EPA Efficacy Review (Dec. 6, 2010). In the alternative, to the extent Fiproguard does kill any fleas or ticks within minutes, Sergeant’s claims necessarily imply – falsely – that Fiproguard kills a statistically significant number of fleas or ticks in minutes.

38. Fiproguard’s broad establishment claim that it prevents more fleas from biting than K9 Advantix is also literally false. The “independent studies” cited in the

Fiproguard Commercial, even if scientifically valid, do not support the broad claim in the Fiproguard Commercial. The study summary in the tiny “disclaimer” at the end of the ad (which can be read only by pausing the commercial and even then with difficulty) makes clear that the study was in fact very narrow. It says that “Independent studies show that Fiproguard[®] Max for dogs prevents more fleas from biting and taking a blood meal than Frontline[®] Plus and K9 Advantix[®] within the first hour after weekly reinfestation averaged over a 5 week period.” The use of an “average” and measurements only “within the first hour” suggest that, contrary to the broad claim of superiority in the voiceover, K9 Advantix outperformed Fiproguard at certain measurements. It also is suspect to measure efficacy over a “5 week period” for products labeled for monthly (i.e., 30 day) use.

39. The Fiproguard Commercial also makes several other claims that are literally false, or at a minimum, false by necessary implication. The Fiproguard Commercial claims that (a) Fiproguard is more effective than K9 Advantix and Advantage, (b) Fiproguard provides immediate, 100% protection, and (c) Fiproguard repels or kills fleas and ticks before they even come into contact with the pet.

40. The Fiproguard Commercial claims that “[y]our pets may be under attack if they’re not protected by Sentry[®] Fiproguard[®] Max.” This claim necessarily implies that Fiproguard is more effective than competitors’ products, including K9 Advantix (which is specifically mentioned in the ad) and Advantage. This claim is simply not

true—K9 Advantix and Advantage are highly effective at protecting pets from fleas and (in the case of K9 Advantix) ticks.

41. To drive this false claim home, the Fiproguard Commercial juxtaposes two contrasting dogs on the screen for the majority of the commercial. As shown above, one dog, having been treated with Fiproguard, sits happily in a force field as fleas and ticks simply crash into the force field without even coming into contact with the dog. The other, later revealed to be on K9 Advantix or Frontline, desperately scratches itself throughout the entire commercial until, finally, it too is given Fiproguard, at which point a force field instantly appears around the dog and it immediately stops scratching. This powerful visual expressly shows that Fiproguard is more effective than competitors' products, including K9 Advantix and Advantage.

42. The animation also literally conveys through its visuals the false message that Fiproguard provides immediate and complete protection against fleas and ticks—the instant the scratching dog's owner is given Fiproguard, a bubble appears around the dog and fleas and ticks can no longer reach the dog. The bubble protection, as shown when fleas and ticks are attacking the Fiproguard dog, purportedly is complete: no fleas or ticks penetrate the bubble. At a minimum, that message is necessarily implied.

43. Lastly, the force field animation further misleads consumers into believing that Fiproguard not only kills fleas and ticks, but that it is so strong that it prevents fleas and ticks from even coming into contact with the dog—fleas and ticks simply crash into or bounce off the bubble surrounding the Fiproguard dog. This is simply false, as both