The Honorable Deborah P. Majoras  
Chairman  
Federal Trade Commission  
600 Pennsylvanina Avenue, NW  
Washington, D.C. 20580  

Dear Chairman Majoras:

On behalf of CSPI’s 800,000 American members, we urge the Federal Trade Commission to immediately enjoin the national television advertisements of Berkeley Premium Nutraceuticals, Inc. (“Berkeley”)\(^1\) for the herbal supplement Enzyte. One of those advertisements (a story board of which is enclosed) explicitly states it is for “natural male enhancement” and refers the viewer to Enzyte’s website (www.enzyte.com). The first testimonial on Enzyte’s website says “These pills are amazing. The increase in size and sensitivity are apparent. Every time feels like the first time – new meaning to the slogan ‘Satisfaction Guaranteed!’”\(^2\) Enzyte’s label says it “stimulates blood flow, creating firmer, fuller erections for a more satisfying sexual experience.”\(^3\)

The FTC requires that advertising claims for dietary supplements, including those based on testimonials of users, “be backed by sound, scientific evidence.”\(^4\) Berkeley, however, has conceded that it has no scientific studies of Enzyte substantiating any of Berkeley’s claims.\(^5\)

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\(^1\) Berkeley is located in Cincinnati, Ohio.

\(^2\) [www.enzyte.com/success.htm](http://www.enzyte.com/success.htm) (visited September 14, 2004). Elsewhere Berkeley’s website (www.enzyte.com/nme.htm, visited September 14, 2004) states that “While there is no known ingestible proven to alter the natural size or shape of the penis, Enzyte may help your body achieve full, strong erections.”

\(^3\) Class-action suits were filed in March 2004 against Berkeley by dissatisfied purchasers of Enzyte in both Ohio and California. *Adweek* (May 10, 2004).


\(^5\) In response to a request from the Cincinnati Better Business Bureau to supply the results of all medical studies testing Enzyte, Berkeley responded in February 2003 that it only had studies relating to the efficacy of Enzyte’s ingredients.
Section 5 of the Federal Trade Commission Act ("FTC Act") prohibits "unfair or deceptive acts or practices," and sections 12 and 15 of the FTC Act prohibit false advertisements for food, drugs, devices, services, or cosmetics. Such advertisements are defined in section 15 as being "misleading in a material respect," including "not only representations made or suggested by statement, word, design, device, sound, or any combination thereof, but also the extent to which the advertisement fails to reveal facts material in the light of such representations..." The FTC has stated that section 15 applies to advertisements for dietary supplements.\textsuperscript{6}

The overall net impression of the claims in the advertisements\textsuperscript{7} for Enzyte indicates that they are clearly deceptive, and so we urge the FTC to halt Berkeley’s advertisements for Enzyte.

Sincerely,

Benjamin Cohen
Senior Staff Attorney

David Schardt
Senior Nutritionist

closures: storyboard for Enzyte advertisement shown on Late Night with Conan O’Brien on August 17, 2004


\textsuperscript{7} The FTC has said that in determining the legality of a particular advertisement it will assess “the ‘net impression’ conveyed by all elements of the ad, including the text, product name, and depictions.” (emphasis in original). Dietary Supplements: An Advertising Guide for Industry (Federal Trade Commission Bureau of Consumer Protection, 1998) at 3. The FTC’s “net impression” criterion was cited with approval by a federal Court of Appeals. 

\textit{Kraft, Inc. V. Federal Trade Commission, 970 F.2d 311, 313 (CA 7 1992), cert. denied 507 U.S. 909.}
“Sex In a Bottle, The Hard Sell” by David Schardt in Nutrition Action Healthletter (October 2004)