
Magazines' Guides to Products Are Challenged by Manufacturers

*Popular Electronics and
4-Wheel & Off-Road
tied to recent lawsuits.*

By Lorraine Calvacca ■ Two publishers have been put to the test recently after running product reviews in their magazines. While the cases are distinctly different, both illustrate the potential problems of evaluating and reporting on a manufacturer's goods.

Popular Electronics, a 90,000-circula-

tion consumer title published by Gernsback Publications Inc., received unwanted attention as a result of a lawsuit filed in May by The Gillette Company, manufacturer of Duracell batteries, against the Ralston Purina Company and subsidiary Eveready Battery Co. Inc., which produces Energizer batteries.

The false advertising lawsuit alleges that a print and television campaign—which touted Energizer's winning rating in *Popular Electronic's* January 1999

product test feature—misled consumers about the comparative performance of the battery brands, and that the campaign falsely denigrates the performance of Gillette's Duracell ultra batteries.

The campaign, which was televised nationally and in Sunday supplements in April, shows the Energizer Bunny pummeling and stomping competitors Duracell, Rayovac and Panasonic batteries.

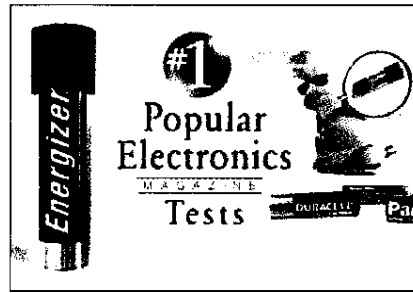
Subsequent to the filing, a judge ordered Ralston Purina Co. to stop running the ads, ruling that the title's test results were unreliable.

The motion was granted based on five criteria, including a finding that testing protocols did not reflect the way that consumers actually use batteries; the number of batteries tested was not statistically significant; and that there is no standardized test to measure the use of high drain batteries such as are used in camcorders and cell phones.

A spokesperson at Golin/Harris, a Chicago-based public relations firm that represents Energizer, said no one at the

company or the firm could comment because of the injunction.

Gernsback's president, Larry Steckler, says the lawsuit has not had any effect "right now," and stands behind the testing methods carried out by the Advanced



Energizer was forced to pull its ad campaign, including this TV commercial, which touts its winning rating in a *Popular Electronics* feature.

Product Evaluation Laboratory in Bethel, Connecticut. "We would not do anything differently," says Steckler, adding that the magazine will continue to test electronic goods. Steckler also notes that Energizer is not an advertiser in *PE*.

While the title is not named in the suit, its association with the ads, says one observer, has a negative effect. "*Popular Electronics* gets bad publicity about its tests," says Kevin Loftus, assistant general counsel of the Gillette Company. If the lawsuit goes to trial, he says, "that means more involvement of the magazine."

Which winch?

In another case, Petersen Publishing's *4-Wheel & Off-Road* is named in a lawsuit brought in April by Mile Marker Inc., a Pompano-Beach, Florida-based winch manufacturer. A November 1997 article, "Winch Shootout," concluded that competitor Warn Industries' XD9000 winch—a device attached to the front bumper of large vehicles that is designed to extricate autos and other objects—"was faster, easier to use and more reliable" than Mile Marker's. The article did not mention that Warn Industries is a major advertiser in *4-Wheel*. The suit charges Petersen and Warn Industries with defamation, civil conspiracy and interference with busi-

ness practices. It asks that Warn stop distributing printed materials that refer to *PE*'s test results, and pay damages. Petersen's lawyer did not return calls.

"Although this is not the first case in which a manufacturer sued a magazine claiming unfair disparagement, it may be unique in that Mile Marker claimed the magazine gave an edge to Warn because it is one of its major advertisers," says Lawrence Savell, a New York-based attorney with Chadbourne & Parke, which specializes in media law.

Regardless of how these cases turn out, he says, "they make an important point. To minimize the risk of being sued and incurring potentially significant defense costs, magazines need to make sure that when they design these tests, they are appropriately and defensibly reasonable and reliable, and accurately reported."

Savell advises full disclosure of advertising or other relevant economic interests: "If there is even a perceived conflict of interest, it is better to tell readers and let them make up their own minds." □
