



# CITY ATTORNEY DENNIS HERRERA

# NEWS RELEASE

FOR IMMEDIATE RELEASE  
WEDNESDAY, MARCH 10, 2010

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(415) 554-4662

## Herrera demands proof of accuracy, safety claims by IntelliGender in-home test

### ***City Attorney invokes authority under Unfair Competition Law in seeking evidence for marketing claims by gender prediction test sold in S.F.***

SAN FRANCISCO (March 10, 2010)—City Attorney Dennis Herrera today invoked his legal authority under California’s Unfair Competition Law to demand substantiation for advertising claims by Intelligender LLC that its in-home fetal gender prediction product, which is sold and marketed in San Francisco, is “totally safe” and over 90 percent accurate.

“California law empowers public sector attorneys to seek proof for marketing claims for products sold to the consumers they’re responsible to protect,” said Herrera. “Intelligender is a product that came to our attention in which some of the advertised claims are dubious, and for which supporting evidence is notably unavailable to potential customers. Women and families interested in purchasing products like this are entitled to see the evidence that will enable them to be better informed consumers.”

According to Herrera’s letter to the Plano, Tex.-based manufacturer:

“The IntelliGender Test purports to accurately identify the gender of a fetus as early as 10 weeks after pregnancy, and well before ultrasound confirmation of fetal gender is available to expectant mothers. However, according to online reviews of your product, it appears that your advertising claim that the IntelliGender Test is ‘over 90% accurate’ is questionable. Additionally, as your product packaging does not identify the contents of the IntelliGender Test, there are concerns about the safety and proper means of disposal of the Test.

“The San Francisco City Attorney hereby requests that you provide evidence of the facts supporting the advertising claims of IntelliGender listed below, pursuant to California Business and Professions Code §17508, which empowers city attorneys to request substantiation of purportedly fact-based advertising claims. For all claims listed below indicating that scientific methods were utilized, please include full reports of experiments, methods, results, and outcomes, in addition to the CVs and biographies of the clinicians retained to perform these trials and tests.”

Herrera asked that Intelligender provide documentation responsive to his request by the end of the month, noting that we would consider seeking “an immediate termination or modification of the claim,” as state law provides, if the information were not forthcoming.

A copy of Herrera's letter to Intelligender LLC is available on the City Attorney's Web site at...

<http://www.sfcityattorney.org>

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DENNIS J. HERRERA  
City Attorney

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March 10, 2010

Rebecca Griffin  
IntelliGender, LLC  
3105 New Britton Dr.  
Plano, TX 75093-3454

Re: *IntelliGender Gender Prediction Test—  
Request for Evidence Supporting Advertising Claims*

Dear Ms. Griffin:

It has come to my attention that your product, the IntelliGender Gender Prediction Test ("IntelliGender Test"), is currently advertised and sold by merchants in the City and County of San Francisco ("City") to City residents.

The IntelliGender Test purports to accurately identify the gender of a fetus as early as 10 weeks after pregnancy, and well before ultrasound confirmation of fetal gender is available to expectant mothers. However, according to online reviews of your product, it appears that your advertising claim that the IntelliGender Test is "over 90% accurate" is questionable. Additionally, as your product packaging does not identify the contents of the IntelliGender Test, there are concerns about the safety and proper means of disposal of the Test.

The San Francisco City Attorney hereby requests that you provide evidence of the facts supporting the advertising claims of IntelliGender listed below, pursuant to California Business and Professions Code §17508, which empowers city attorneys to request substantiation of purportedly fact-based advertising claims. For all claims listed below indicating that scientific methods were utilized, please include full reports of experiments, methods, results, and outcomes, in addition to the CVs and biographies of the clinicians retained to perform these trials and tests.

1. *Advertising Claims on IntelliGender's Website:*

- IntelliGender is "over 90% accurate" between weeks 10 and 34 of a pregnancy.
- "[I]n laboratory results, IntelliGender Gender Prediction Test was proven over 90% accurate."
- "IntelliGender regularly commissions independent surveys to compare real world results with laboratory results and real world results indicate 82%."
- "Preliminary tests indicate that there may be a link between false results and recent sexual activity. We recommend refraining from such activity for at least 48 hours prior to taking the test."
- "IntelliGender Gender Prediction Test is THE ONLY affordable, simple-to-use urine test that provides immediate gender results in the privacy and comfort of the home."

Letter to IntelliGender, LLC  
Page 2  
March 10, 2010

2. *Advertising Claims on IntelliGender Test Product Packaging*
  - "It's a fun test and one that is totally safe."
  - "Patent Pending."
  
3. *Advertising Claims on IntelliGender Test Product Packaging Insert*
  - "If you are having identical twins, the test will indicate boy or girl based on the green or orange color."
  - "If you are having fraternal twins or multiples, you can assume that all babies are female if you achieve a girl result."
  - Regarding multiple pregnancies, "A boy result will simply mean that at least one baby is male."
  - "Preliminary tests indicate that there may be a link between false boy results and recent sexual activity. We recommend refraining from such activity for at least 48 hours prior to taking the test."
  
4. *Documentation Supporting Representation that the IntelliGender Test is "Totally Safe"*

Provide all documentation that IntelliGender is a safe product for pregnant women to use, including:

  - All documentation relating to FDA approval of the IntelliGender Test.
  - Any adverse events reported to the FDA related to the IntelliGender Test.
  - Proof that the IntelliGender Test complies with California's Proposition 65 requirements.

Please provide documents responsive to this request by March 31, 2010. Note that failure to comply with this written request within a reasonable time permits the City Attorney to "[s]eek an immediate termination or modification of the claim."

Very truly yours,

  
DENNIS J. HERRERA  
City Attorney

cc: California Office of the Attorney General  
McGowen & Shaw, PLLC  
Amazon Corporate, LLC  
CVS, Inc.  
Swiss American Products  
Walgreens.Com, Inc.