

EXERCISE

CLOSING ARGUMENT

Background

You're on a litigation team representing plaintiffs in a class action. The lawsuit alleges that the defendant's product, a new running shoe, was falsely advertised to help people lose weight faster by burning more calories. The advertising claimed that the shoes would help you lose weight twice as fast as regular running shoes. Plaintiffs must show that the defendant (1) made a false or misleading statement, (2) that deceived a substantial part of the intended audience, (3) that were material to the plaintiffs' purchasing decision, and (4) that would likely result in injury to the plaintiffs.

Your clients are individuals who have recently started running to lose weight. Based on the advertising, they expected that the shoes would help them reach their goals faster. Instead, the shoes led to injuries and did not help at all. There are some pretty damaging emails from the defendant's management to their marketing team, expressing concerns that "the shoes can't themselves burn calories," and "we don't know where you're supporting these claims about losing weight." Defendant's company made about \$1 million off the shoes in the 2 years that it sold them.

Your team is meeting tomorrow to discuss a plan for closing argument.

Instructions

Come prepared to discuss these questions:

- What are some ways you might structure your closing argument?
- What things should you include in the introduction of your closing?
- Should you address the damaging emails in your closing, and if so, how?