

YOU AND THE LAW


Law Review: The Perception of CrossFit in the Fitness Marketplace

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Prior to Court

In November 2013, researchers published an article in the *Journal of Strength and Conditioning Research (JSCR)*, the official research journal of the National Strength and Conditioning Association (NSCA), titled “CrossFit-Based High-Intensity Power Training Improves Maximal Aerobic Fitness and Body Composition.” The purpose of this study was to examine the effects of a CrossFit-based high-intensity power training (HIPT) program called “The Challenge.” CrossFit training programs consist of high-intensity, functional movements that are tailored to the individual. The organization began increasing in popularity in 2000 and generates revenue by credentialing and certifying trainers and licensing the CrossFit trademark to affiliate gyms. The NSCA is a nonprofit professional organization dedicated to elevating strength and conditioning profession by disseminating research-based knowledge and its practical application (NSCA, 2020).

In this case, the plaintiff (CrossFit) instituted legal proceedings against defendant (NSCA) on the element of falsity of two passages and the underlying data presented in the CrossFit study published by the NSCA. The first passage stated,

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Out of the original 54 participants, a total of 43 (23 men, 20 women) fully completed the training program and returned for follow-up testing. Of the 11 subjects who dropped out of the training program, 2 cited time concerns with the remaining 9 subjects (16% of total recruited subjects) citing overuse or injury for failing to complete the program and finish follow-up testing. (Smith et al., 2013, p. 3168).

It was further specified,

A unique concern with any high-intensity training program such as HIPT or other similar programs is the risk of overuse injury. Despite a deliberate periodization and supervision of our CrossFit-based training program by certified fitness professionals, a notable percentage of our subjects (16%) did not complete the training program and return for follow-up testing. (Smith et al., 2013, p. 3171).

CrossFit claimed that the publication seriously damaged its reputation and caused the organization to lose customers. CrossFit subsequently identified the participants who purportedly did not complete the study due to “overuse or injury” and many of these individuals provided declarations explaining the reason for which they did not complete the study. The NSCA did not dispute that the individuals identified were those who cited injury or overuse for failing to complete the program. Of the 11 subjects who dropped out of the training program, 10 provided their reasons for not finishing the study. Only two individuals mentioned injury (sustained outside of The Challenge) and health conditions (preexisting) as the primary reason preventing them from completing follow-up testing.

Smith et al. (2013) contest that they received the injury data from the owner of the gym where The Challenge was conducted. However, the owner denies making the statement that individuals were not able to complete the study as a result of overtraining or injury. The initial manuscript did not include the injury data. This information was added after the *JSCR* editors and peer reviewers requested additional information about why 11 participants dropped out of the training program. A message from the *JSCR* managing editor indicated that the study needed to address the risk of injury

and that the reviewers wanted to provide the coauthors with the opportunity to revise the paper with these factors and concerns in mind. CrossFit contended that the editorial staff's request for the inclusion of these data is evidence that the NSCA had intent to disparage CrossFit training as unsafe. On January 30, 2015, CrossFit moved for summary judgment on the element of falsity. The Court denied CrossFit's motion for summary judgment to allow the NSCA the opportunity to determine (1) whether CrossFit correctly identified the participants in the study and (2) whether those individuals dropped out due to overuse or injury. Upon determining that only two participants provided that injury or health conditions were the primary cause for dropout in the study, the *JSCR* published an erratum that stated injury rate should not be considered a factor in this publication.

CrossFit made a motion for summary judgment that the injury data in the study were false. The plaintiff filed a five-count amended complaint alleging (1) false advertising in violation of the Lanham Act; (2) false advertising in violation of California Business and Professions Code § 17500, (3) unfair competition in violation of California Business and Professions Code § 17200, (4) declaratory relief, and (5) trade libel. The defendant filed with the court a cross-motion for summary judgment that the manuscript is not commercial speech and therefore is protected under the First Amendment. The NSCA also made a motion for summary judgment with respect to CrossFit's trade libel claim, stating that CrossFit cannot prove special damages occurred as a result of the publication.

Court Action

The U.S. District Court for the Southern District of California granted in part and denied in part the NSCA's motion for summary judgment and granted CrossFit's motion for summary judgment. The court concluded that the NSCA had an economic motive for publishing the injury data as it relates to maintaining its market share in the fitness industry and decreasing the rising popularity of CrossFit. Because there was evidence that those behind the injury data knew the data were false and the publication of this information served to disparage a competitor's product, the court concluded that the passages relating to injury were commercial speech. Commercial speech

that is false or misleading is not protected by the First Amendment. As a result, the court denied the NSCA's motion for summary judgment on this point.

The NSCA also argued that it is entitled to summary judgment in its favor with regard to CrossFit's trade libel claim. Trade libel is the publication of a false statement of fact that is an intentional disparagement of the name and quality of an organization's goods or services that results in pecuniary damage to the plaintiff (*Erlich v. Etner*, 1964). The court rejected the NSCA's argument that CrossFit lacked sufficient evidence to prove special damages. CrossFit provided evidence that the study received much attention in social media outlets and news media, exposing approximately 4 million potential customers to the injury data. CrossFit also provided the court with testimonies from consumers who had seen the publication and estimates that the organization lost \$4 million to \$8 million from revenues relating to consumer fees at CrossFit affiliate gyms. The evidence before the court demonstrated that potential customers who were made aware of the injury rate reported in the study were less likely to inquire about CrossFit services. Therefore, the court denied the NSCA's motion for summary judgment with regard to CrossFit's trade libel claim.

The NSCA next urged the court to dismiss CrossFit's declaratory judgment claim because it was superfluous to other causes of action. CrossFit was seeking relief through a declaration that the reported injury data were false. The court concluded that by ruling on CrossFit's motion for summary judgment, the court is already providing such a statement. Therefore, CrossFit's declaratory judgment cause of action was unnecessary and the NSCA's motion for summary judgment on this point was granted.

CrossFit argued that it is entitled to summary judgment in its favor that the injury data in the *JSCR* publication were false. The court concluded that the declarations from the participants who did not complete the study indicate the data were false. The NSCA did not provide evidence to the contrary. Additionally, the erratum published by the NSCA indicated that the authors of the study no longer stood behind the injury data. The court granted summary judgment in favor of CrossFit on the element of falsity as it relates to each of the organization's causes of action.

Discussion

The results of this decision were filed in September 2016 by the U.S. District Court for the Southern District of California, and the article has been retracted from the JSCR. The purpose of the study was to examine the effects of a CrossFit-based training program on aerobic endurance and body composition. The overall conclusion of the article was that CrossFit-based HIPT training significantly improves VO₂ max and body composition in men and women across all levels of initial fitness. Although the manuscript specified the positive outcomes of this training methodology, the facts of the case show that consumers exposed to the injury data were more likely to rate CrossFit training as dangerous and less likely to purchase a trial membership. This case has serious implications for the production and use of purported science in the health and fitness industry. The fitness marketplace is flooded with a multitude of different training methodologies and ideologies. Therefore, it is important that fitness professionals and consumers are aware of the potential risks and benefits associated with each style of training and are provided decent and truthful information.

Implications of this case could have decision-altering effects for students and clients who have the goal of improving fitness and pursuing physical activity safely and appropriately. With the rising popularity of fitness and the multitude of different trends in the industry, it is important for physical education and health professionals to understand the rationale for why clients may choose one fitness regimen over another. Completing a thorough review of literature will provide the most comprehensive understanding of the risks and benefits associated with popular strength and conditioning programs. This study contributed to the societal notion that CrossFit is unsafe or dangerous. The outcome of this case is significant to health and physical education professionals because it provides no reason to call into question the risk-to-benefit ratio for CrossFit training as a result of this publication in the JSCR. Ethical decision-making in academic research is important for maintaining research integrity and providing the maximum benefits to the participants and consumers. The public has a desire to improve fitness in a safe manner. Reporting research results with the use of honest and verifiable

methods is integral to improving the field of health sciences and providing participants with safe and effective exercise regimens.

References

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