Booster Seat Manufacturers Give Parents Dangerous Advice:

Misleading Claims, Meaningless Safety Testing, and Unsafe Recommendations to Parents About When They Can Transition Their Children from Car Seats to Booster Seats

Staff Report

Subcommittee on Economic and Consumer Policy
Committee on Oversight and Reform
U.S. House of Representatives

December 10, 2020

oversight.house.gov

EXECUTIVE SUMMARY

This staff report was prepared at the request of Rep. Raja Krishnamoorthi, the Chairman of the Subcommittee on Economic and Consumer Policy, and Subcommittee Member Rep. Katie Porter to set forth the findings of the Subcommittee's investigation into concerns raised by parents and consumer advocates about the safety of child booster seats marketed in the United States.

Side-impact crashes accounted for an estimated 25% of vehicle collision fatalities for children under the age of 15 in 2018. Children who survive side-impact collisions often sustain serious injuries such as traumatic brain injury; concussion, neck injuries, or whiplash; broken bones in the face, hands, legs, arms, and ribs; and spinal cord injury or paralysis.

In February 2020, the Subcommittee requested documents and information from seven of the nation's largest booster seat manufacturers: Artsana (seller of Chicco brand), Baby Trend, Britax, Dorel, Evenflo, Graco, and KidsEmbrace. This staff report is based on a review of thousands of pages of previously non-public documents from those seven companies, including internal records detailing side-impact testing protocols; written results of side-impact tests; video tapes of side-impact tests; and internal communications regarding marketing, instructions, and safety labeling.

The Subcommittee's investigation found that manufacturers of booster seats have endangered the lives of millions of American children and misled consumers about the safety of booster seats by failing to conduct appropriate side-impact testing, deceiving consumers with false and misleading statements and material omissions about their side-impact testing protocols, and unsafely recommending that children under 40 pounds and as light as 30 pounds can use booster seats. For example:

- Industry videos of booster seat side-impact tests clearly reveal that booster seats expose some children to risk of serious injury and death. The following image illustrates how one popular booster seat performed in a mild side-impact simulation test:

- Despite a decades-old expert consensus that booster seats are not safe for children under 40 pounds, five of the top manufacturers—Evenflo, Graco, Baby Trend, Artsana (Chicco), and KidsEmbrace—marketed booster seats for children as light as 30 pounds. Though Evenflo and Graco have switched to a 40-pound standard as a result of the Subcommittee's investigation, Baby Trend, Artsana, and KidsEmbrace continue to make the unsafe recommendation for 30-pound children to use their booster seats.

- Internal documents reviewed by the Subcommittee show that Evenflo has been among the worst offenders, incurring a $30,000 expense for the ability to continue recommending its booster seats for 30-pound children in the U.S. Evenflo sells the same booster seats in the U.S. and Canada. Canada bans the practice of marketing booster seats for children under 40 pounds. Due to Evenflo's repeated violations of that standard, Canada recalled Evenflo's booster seats three times. After the third Canadian recall, in 2012, Evenflo considered harmonizing the labeling and instructions for its U.S. and Canadian booster seats. Evenflo's top booster seat engineer pressed executives to adopt the 40-pound standard in the U.S. due to safety concerns, but Evenflo executives refused "numerous times." These executives were willing to spend $30,000 for different labels in the U.S. and Canada to keep the same unsafe 30-pound recommendation for seats sold in the U.S. rather than use the safer 40-pound recommendation for both Canadian and U.S. markets.

- Three manufacturers—Evenflo, Graco, and KidsEmbrace—deceptively market their booster seats as "side-impact tested." The manufacturers have created their own weak testing conditions, which do not even involve an impact. The tests do not measure occupant safety. Instead, the manufacturers grade their booster seats' performance on a standard that it nearly impossible to fail. Evenflo gives its booster seat a passing grade every time a child test dummy does not fully eject and the seat itself does not physically break apart. Graco's self-designed standard also fails to test for occupant safety. Marketing booster seats as "side-impact tested," under these circumstances misleads consumers into believing that the booster seats passed meaningful impact tests, which they did not. It appears from simulations with test dummies that side-impact collisions would result in severe injuries to children.

- KidsEmbrace falsely claims that all of its booster seat models are side-impact tested, when in fact they are not.

- Three manufacturers—Britax, Dorel, and Artsana—deceptively market their booster seats with unsubstantiated claims about "safety features," while failing to disclose that those features have not been objectively shown to increase child safety.

Lax federal regulation enables these booster seat companies to mislead consumers about side-impact safety testing and get away with making unfair and deceptive size and weight recommendations that are not reasonably safe.

Despite having regulatory authority over booster seats, the National Highway Traffic Safety Administration (NHTSA) has failed to regulate them in any meaningful way. It has not set a 40-pound minimum for booster seats, and despite being directed by Congress 20 years ago, it has not created a side-impact testing standard. The Subcommittee recommends that NHTSA fulfill its duty to regulate booster seat safety to ensure that manufacturers do not mislead parents or put children at risk in how they design and market their booster seats.

In addition, the manufacturers' actions appear to constitute unfair and deceptive acts and practices in violation of federal and state consumer protection laws. The Subcommittee encourages the Federal Trade Commission and state Attorneys General to investigate and take appropriate actions to remedy these consumer protection violations.

I. EVENFLO, GRACO, BABY TREND, ARTSANA, AND KIDSEMBRACE UNSAFELY ADVERTISED BOOSTER SEATS FOR 30-POUND CHILDREN DESPITE WARNINGS OF EXPERTS

Appropriate use of child car seats is proven to save lives. Experts and authorities on child safety recommend that young children always be seated in a five-point-harness seat for as long as possible before advancing to the use of a belt-positioned booster seat.[1] Booster seats are not as safe as fully-harnessed seats, and placing a child in a booster seat too early greatly increases risk of serious injury or death in a crash. According to studies cited by the Centers for Disease Control and Prevention, risk of injury to children 12-47 months of age during a crash is reduced by 71% to 82% when children are in car seats, compared to use of seat belt alone. Booster seats are less protective and reduce that risk in children 4-8 years old by 45%.[2] Children who survive side-impact collisions often sustain serious injuries such as traumatic brain injury; concussion, neck injuries, or whiplash; broken bones in the face, hands, legs, arms, and ribs; and spinal cord injury or paralysis.[3]

For more than 20 years, federal authorities and medical groups specializing in child safety have advised that a child should remain in a harnessed car seat until the child has outgrown that seat, and in any case until the child reaches 40 pounds.[4] Despite this decades-long consensus—and in the absence of adequate federal regulation—leading booster seat manufacturers have ignored the prevailing safety knowledge and have deceptively and unfairly made recommendations that mislead consumers into thinking their booster seats are safe for children as light as 30 pounds.

A. Evenflo Knew the Dangers for Children Under 40 Pounds, Yet Continued Unsafely Advertising Its Seats for 30-Pound Children

Evenflo long marketed its booster seats for children as light as 30 pounds. Evenflo only corrected its dangerous practice after the Subcommittee began its investigation. In June 2020, four months into the Subcommittee's investigation, Evenflo switched a 40-pound minimum weight recommendation.[5]

---

[1] National Highway Traffic Safety Administration, *Car Seats and Booster Seats* (online at www.nhtsa.gov/equipment/car-seats-and-booster-seats#find-right-car-seat-age-size-recommendations) (accessed Nov. 30, 2020); American Academy of Pediatrics, *Policy Statement: Child Passenger Safety* (Nov. 2018) (online at https://pediatrics.aappublications.org/content/pediatrics/142/5/e20182460.full.pdf).

[2] Centers for Disease Control and Prevention, *Child Passenger Safety: Get the Facts* (online at www.cdc.gov/transportationsafety/child_passenger_safety/cps-factsheet.html) (accessed Nov. 30, 2020).

[3] National Highway Traffic Safety Administration, *Children Injured in Motor Vehicle Traffic Crashes* (May 2010) (online at https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/811325).

[4] National Highway Traffic Safety Administration, *Car Seats and Booster Seats* (online at www.nhtsa.gov/equipment/car-seats-and-booster-seats#find-right-car-seat-age-size-recommendations) (accessed Nov. 30, 2020); American Academy of Pediatrics, *Policy Statement: Child Passenger Safety* (Nov. 2018) (online at https://pediatrics.aappublications.org/content/pediatrics/142/5/e20182460.full.pdf).

[5] Evenflo, *Big Kid Highback 2-in-1 Belt-Positioning Booster Car Seat* (online at www.evenflo.com/car-seats/big-kid/us_bigkid.html) (accessed Nov. 11, 2020).

Evenflo sells identical booster seats in the U.S. and Canada. Unlike its U.S. counterpart, the Canadian transportation safety regulator prohibits the sale of booster seats intended for use by children under 40 pounds.[6] Evenflo has repeatedly run afoul of the Canadian rules, and Canadian authorities have had to recall Evenflo booster seats three times for recommending that they were safe for children as light as 30 pounds—in 2006, 2008, and 2012.[7] Now, Evenflo reportedly markets its Canadian booster seats only for children over 40 pounds.

However, Evenflo long refused to protect American children by implementing the same standards in the U.S.[8] Evenflo had separate marketing materials and owner's manuals for booster seats in the U.S. and Canadian markets. Canadian packaging for the Big Kid booster seat warns in bold capital letters that a failure to follow the 40-pound requirement could lead to "**SERIOUS INJURY OR DEATH**" of a child, indicating the company's acute awareness of the dangers posed to lighter users.[9] Evenflo's U.S. marketing materials had a similar warning, but with respect to a 30-pound weight minimum.[10]

As of the time of this staff report, Evenflo states on its website that "[m]ost boosters are designed to accommodate children from 30 to 100 pounds," stating also that its "belt positioning booster is a child restraint designed for use by children between 30 and 100 pounds."[11] As of January 18, 2020, Evenflo advertised on the webpage shown below that its Big Kid booster seat was "designed for children 30-110 lbs."[12] Note that by February 17, 2020—mere days after

---

[6] Government of Canada, *Motor Vehicle Restraint Systems and Booster Seats Safety Regulations*, SOR/2010-90 (online at https://laws-lois.justice.gc.ca/eng/regulations/sor-2010-90/page-10.html?wbdisable=true) ("Every booster seat must have stitched onto it … a statement indicating that the booster seat must be used only by persons whose mass is at least 18 kg [39.68 lbs.]").

[7] Transport Canada, *Recall #2012-245* (July 30, 2012) (online at https://wwwapps.tc.gc.ca/Saf-Sec-Sur/7/VRDB-BDRV/search-recherche/detail.aspx?lang=eng&mk=9195!4820!8195&md=CLASSIC&fy=0&ty=9999&ft=&ls=0&sy=0&rn=2012245); Health Canada, *Archived—Child Restraint Systems and Booster Seats* (June 1, 2008) (online at www.healthycanadians.gc.ca/recall-alert-rappel-avis/hc-sc/2008/12510r-eng.php); Transport Canada, *EVENFLO Issued a Recall on the BIG KID EVEREST BOOSTER and BIG KID QUANTUM BOOSTER Models* (Jan. 1, 2006) (online at https://web.archive.org/web/20160726035048/https://healthycanadians.gc.ca/recall-alert-rappel-avis/tc/2006/6451r-eng.php).

[8] Evenflo, *Big Kid Owner's Manual (United States)* (2008) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/08%20-%20Evenflo%202008%20US%20manual.pdf).

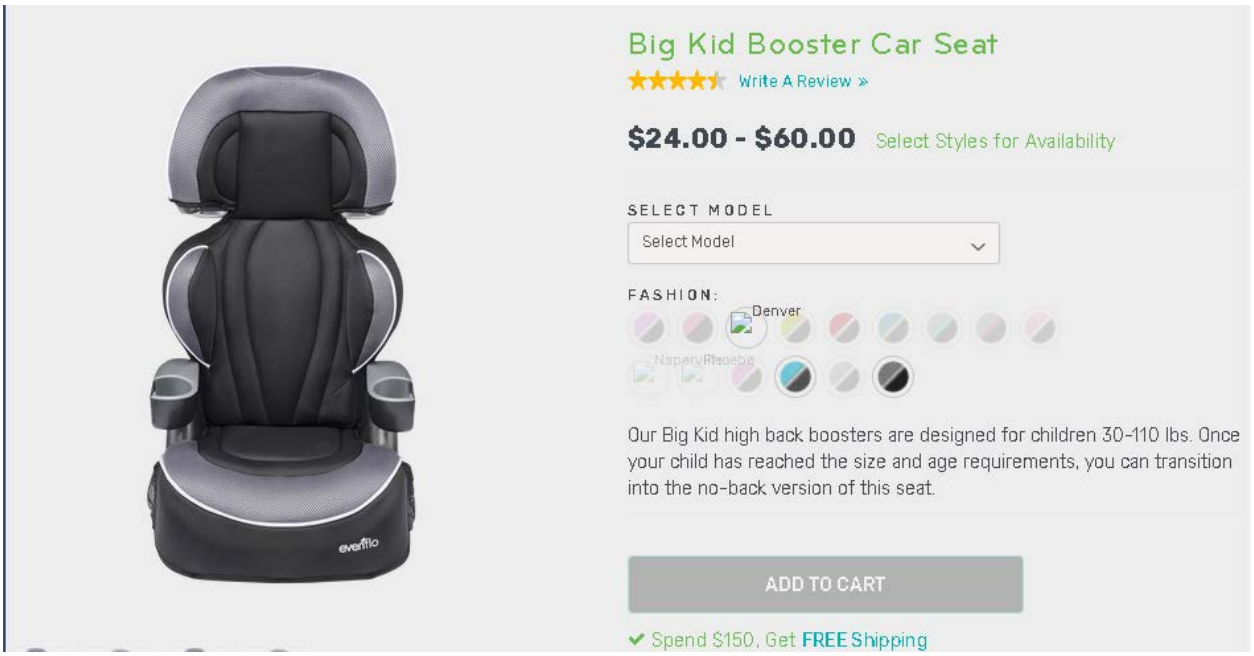
[9] Evenflo, *Big Kid Owner's Manual (Canada)* (2013) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/EvenfloUserManuals/09-Evenflo2013CanadaManual.pdf).

[10] Evenflo, *Big Kid Owner's Manual (United States)* (2018) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/EvenfloUserManuals/10-Evenflo2018USManual.pdf).

[11] Evenflo, *Choosing a Booster Car Seat* (online at https://web.archive.org/web/20190927105407/www.evenflo.com/car-seats/booster/car-seat-guide/buying-guide-booster.html) (accessed Nov. 30, 2020).

[12] Evenflo, *Big Kid Booster Car Seat* (online at https://web.archive.org/web/20191019040906/http://www.evenflo.com/car-seats/big-kid/us_bigkid.html) (accessed Nov. 30, 2020) (citing a capture dated Jan. 18, 2020).

Evenflo received notice of an investigation from the Subcommittee—the product's webpage had updated to show a 40-pound weight minimum recommendation.[13]



Obviously, a 30-pound American child is as vulnerable to injury as a 30-pound Canadian child. Indeed, the Subcommittee is aware of at least three American children who have been severely injured in side-impact crashes while seated in Evenflo's Big Kid Boosters.[14]

Evenflo is aware that its U.S. marketing practices are unfair and deceptive, based on a record of internal disagreement between safety engineers and marketing executives. While the safety team advocated multiple times to increase the minimum weight recommendation from 30 to 40 pounds to prevent safety risks, marketing executives shot down the idea to satisfy other concerns.

In 2012, around the time of its third Canadian safety recall, Evenflo considered harmonizing the U.S. and Canadian booster seat labels and user manuals by changing the U.S. minimum weight of the Big Kid booster seat from 30 pounds to 40 pounds. In a written presentation in February 2012, Evenflo's top booster seat engineer, Eric Dahle, urged his colleagues to raise the weight minimum to 40 pounds, citing an "increased risk of injury" to children switching to boosters to car seats before they were big enough. Mr. Dahle expressed his concern about the perverse incentive Evenflo executives were creating, that "[k]eeping the seat at 30 lbs encourages parents to transition them earlier because they can, and the booster is a less

[13] Evenflo, *Big Kid Booster Car Seat* (online at https://web.archive.org/web/20200614091147/https://www.evenflo.com/car-seats/big-kid/us_bigkid.html) (accessed Nov. 11, 2020) (citing a capture dated Feb. 17, 2020).

[14] *Evenflo 'Big Kid' Booster Seats Could Be Fatal*, The Cut (Feb. 8. 2020) (online at www.thecut.com/2020/02/will-there-be-an-evenflo-booster-seat-recall.html).

expensive option." In a subsequent deposition, Mr. Dahle testified that a "corporate decision" was made to continue to recommend seats for 30-pound children in the U.S.[15]

In July 2012, when the engineering team was planning how to update the Canadian models with a 40-pound recommendation, Mr. Dahle again encouraged "harmonizing" the U.S. and Canadian products with 40-pound labeling. This time, rather than appealing to concerns about children's safety, Mr. Dahle made the case in dollars and cents. In an email exchange with other Evenflo executives, Mr. Dahle stated that using different labeling and packaging for the same seats in U.S. and Canada would increase costs, with $30,000 going to "error proofing on the Big Kid Line to overcome the lack of harmonization."

Gregg Greulich, then–Senior Director of Engineering & Program Management, suggested maintaining the 30-pound labeling in Canada, arguing that "$30k appears to be a poor investment for smaller volume in Canada." After being informed that 30-pound labeling was not legal in Canada, Mr. Greulich asked, "Ok, what are $ impacts/risks if US increased to 40lbs?" McKay Featherstone, then–Vice President of Marketing and Product Development, interjected to make clear that a 40-pound recommendation for U.S seats was out of the question, asserting, "I have looked at 40 lbs for the US numerous times and will not approve this."[16]

[15] *Evenflo, Maker of the 'Big Kid' Booster Seat, Put Profits Over Child Safety*, ProPublica (Feb. 6, 2020) (online at www.propublica.org/article/evenflo-maker-of-the-big-kid-booster-seat-put-profits-over-child-safety).

[16] Emails from Eric Dahle, Director, Engineering and Program Management, Evenflo, to McKay Feathestone, Vice President of Marketing and Product Development, Evenflo, et al. (July 25, 2012) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/11%20-%20Evenflo%20internal%20emails_Redacted.pdf).

From: Greulich, Gregg
Sent: Wednesday, July 25, 2012 8:25 AM
To: Conaway, Jon
Cc: Featherstone, Mckay; Calabrese, Joe; Dahle, Eric
Subject: FW: amp fixtures

Jon – please review margin for Canada sku's and advise financial impact if we reduce to 30lbs or increase US to 40lbs. Investing $30k appears to be a poor investment for smaller volume in Canada.

From: Dahle, Eric
Sent: Wednesday, July 25, 2012 9:11 AM
To: Greulich, Gregg; Conaway, Jon
Cc: Featherstone, Mckay; Calabrese, Joe
Subject: RE: amp fixtures

You cannot reduce Canada to 30lbs. CMVSS requires boosters to be at 40lbs.

From: Greulich, Gregg
Sent: Wednesday, July 25, 2012 9:18 AM
To: Dahle, Eric; Conaway, Jon
Cc: Featherstone, Mckay; Calabrese, Joe
Subject: RE: amp fixtures

Ok, what are $ impacts/risks if US increased to 40lbs?

From: Featherstone, Mckay
Sent: Wednesday, July 25, 2012 9:33 AM
To: Greulich, Gregg; Dahle, Eric; Conaway, Jon
Cc: Calabrese, Joe
Subject: RE: amp fixtures

Gregg, why are we even talking about this? It has always been this way in Canada so I don't understand why it is now a big problem that requires a $30k investment or us to change product. I have looked at 40 lbs for the US numerous times and will not approve this.

This email exchange shows that Evenflo executives' concern for the bottom line trumped the safety concerns raised by its engineers and supported by years of expert consensus. One executive considered using the safe 40-pound labeling for Canada to be a "poor investment," and another had "looked at 40 lbs for the US numerous times" and was willing to incur expenses of $30,000 or more to keep the unsafe 30-pound recommendation.

B. Graco, Baby Trend, Artsana, and KidsEmbrace Dangerously Market Their Booster Seats for Children Under 40 Pounds

Graco, Baby Trend, Artsana, and KidsEmbrace also made the unsafe recommendation of a 30-pound minimum weight for their booster seats at the time the Subcommittee launched this inquiry. Since then, Graco has corrected that practice and adopted a 40-pound recommendation. Baby Trend, Artsana, and KidsEmbrace continue to market their booster seats for children between 30 and 40 pounds.

i. Graco Marketed its Booster Seats for Children as Light as 30 Pounds, Only Recently Correcting Course to Set a 40-Pound Minimum.

Since the start of the Subcommittee's investigation, Graco updated its website and user manual to reflect a new 40-pound minimum: "To continue to meet industry standards, we have increased the weight minimum from 30 to 40 lb."[17]

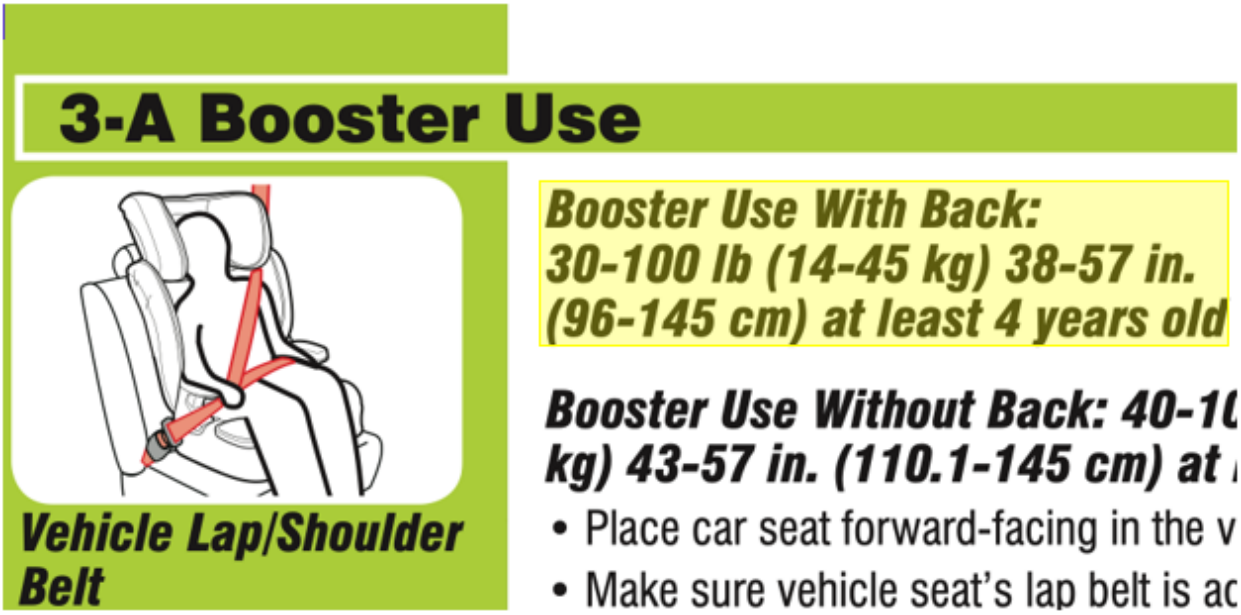
But until that change, Graco had used the unsafe 30-pound standard. Like Evenflo, Graco uses different marketing materials and user manuals in the U.S. and Canadian markets for virtually identical booster seats. The 2018 Canadian user manual for its "TurboBooster" booster seat lists a 40-pound weight minimum and warns consumers that "FAILURE TO USE booster seat in a manner appropriate for your child's size may increase the risk of serious injury or death."[18] By contrast, in the United States, Graco issued no such warnings. Instead, Graco advertised a virtually identical product (the "TurboBooster LX Highback") as safe for children between 30 and 40 pounds on the product's webpage and in its user manual, the latter of which is shown below.[19] Graco has sold booster seats in the United States with minimum recommended weights of 30 pounds since at least 2006.[20]

[17] Graco, *TurboBooster® LX Highback Booster with Latch System* (online at www.gracobaby.com/car-seats/belt-positioning-booster-car-seats/turbobooster-lx-highback-booster-with-latch-system/SP_93792.html) (accessed Nov. 30, 2020).

[18] Graco, *Booster Seat Owner's Manual (Canada)* (Nov. 2018) (online at www.gracobaby.ca/html/common/manuals/PD220791E%20TurboBooster%20Eng.pdf) (accessed Nov. 30, 2020).

[19] Graco, *TurboBooster® LX Highback Booster with Latch System* (online at https://web.archive.org/web/20191016231356/http:/www.gracobaby.com/en-US/belt-positioning-booster/turbobooster-lx-highback-seat-with-latch-system-103557) (accessed Nov. 30, 2020) (citing a capture dated Oct. 19, 2020); Graco, *TurboBooster LX Booster Seat Manual* (2015) (online at https://s7d2.scene7.com/is/content/Newellsync/DTC/Graco/Product%20Manuals/PD349048A%20TurboBooster%20LX%20ENG.pdf) (accessed Nov. 30, 2020).

[20] Graco, *Car Seat/Booster Seat Owner's Manual (United States)* (2006) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/12%20-%20Graco%202006%20manual_0.pdf).



ii. Artsana Continues to Unsafely Market its Chicco Booster Seats for 30-Pound Children

Artsana advertises the current model of its "KidFit 2-in-1" seat as safe for children from 30 to 100 pounds, as shown in the image below, taken from its website.[21]

[21] Artsana, *USAKidFit 2-in-1 Belt Positioning Booster Car Seat—Horizon* (online at https://web.archive.org/web/20200925062340/https://www.chiccousa.com/shop-our-products/car-seats/booster/kidfit-2-in-1-belt-positioning-booster-car-seat---celeste/06079014250070.html) (accessed Sept. 25, 2020) (citing a capture dated Sept. 25, 2020).

DuoGuard

Head and torso protection with a rigid shell and energy-absorbing EPS foam throughout 10 height positions

SuperCinch Tightener

Premium LATCH connectors and force-multiplying tightener for stability

Harness Mode - Rear-Facing	-
Harness Mode - Forward-Facing	-
Booster Mode - High Back	30-100 lbs

iii. KidsEmbrace Continues to Market Unsafe Booster Seats for 30-Pound Children

KidsEmbrace advertises on its website that its "High Back" booster seat is safe for children as light as 30 pounds.[22]

[22] KidsEmbrace, *KidsEmbrace DC Comics Batman High Back Booster Car Seat* (online at www.kidsembrace.com/collections/all-kidsembrace-booster-seats/products/kidsembrace-dc-comics-convertible-batman-high-back-booster-car-seat) (accessed Nov. 11, 2020).

KidsEmbrace DC Comics Batman High Back Booster Car Seat

★★★★½ 119 reviews 12 sold in last 17 hour

Vendor:	KidsEmbrace
SKU:	460IBAT
Availability:	Many in stock
Product Type:	High-Back Booster

$79.99

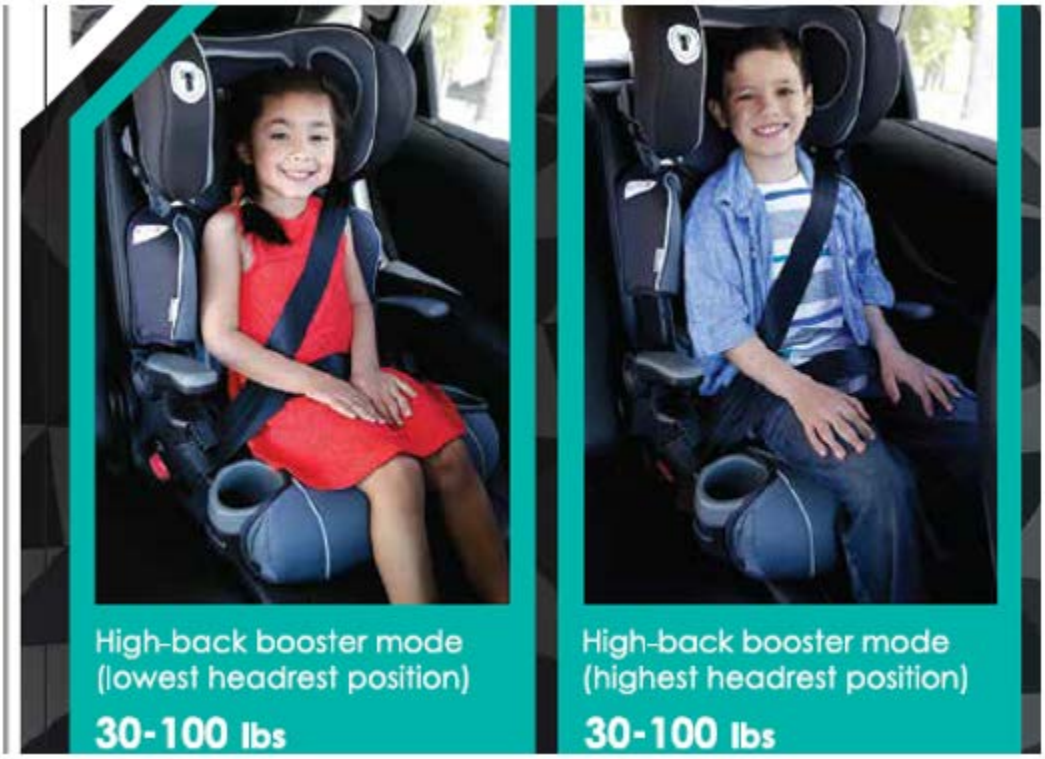
This high back booster can be used for children over 3 years old, 30 to 100 pounds and 38 to 57 inches in height.

iv. Baby Trend Continues to Market its Unsafe Booster Seats for 30-Pound Children

Baby Trend's "PROtect Yumi 2-in-1" booster seat is designed for children weighing between 30 and 100 pounds according to the most recent packaging documents produced to the Subcommittee.[23] A similar model, the "PROtect Yumi Folding High Back" is also sold with 30-pound minimum weight recommendations.[24]

[23] Baby Trend, *PROtect Yumi 2-in-1 Front Label* (2017) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/13%20-%20Baby%20Trend%202017%20front%20label.pdf).

[24] Walmart, *Baby Trend PROtect Yumi Folding High Back Booster Car Seat, Titan* (online at www.walmart.com/ip/Baby-Trend-PROtect-Yumi-Folding-High-Back-Booster-Car-Seat-Titan/47730368) (accessed Nov. 11, 2020); Amazon, *Baby Trend Yumi Folding Booster Car Seat, Ophelia* (online at www.amazon.com/Baby-Trend-Folding-Booster-Ophelia/dp/B01LX02441) (accessed Nov. 11, 2020).



Roll over image to zoom in

Baby Trend Yumi Folding Booster Car Seat, Ophelia

Visit the Baby Trend Store

4.5 out of 5 stars 247 ratings | 13 answered questions

Amazon's Choice for "baby trend yumi folding booster…

Price: $53.24 & FREE Returns

Get $50 off instantly: Pay $3.24 ~~$53.24~~ upon approval for the Amazon Rewards Visa Card. No annual fee.

Color: **Ophelia**

- EZ Off-N-Wash Pad is machine washable and can be snapped off in less than 10 seconds
- 8-position headrest height adjustment
- Engineered with patented side impact head control
- 3-position adjustable shoulder belt routing hooks
- Car seat is designed for a child 30-100 lbs and 38-57" tall.

II. ALTHOUGH EVENFLO, GRACO, AND KIDSEMBRACE MARKET THEIR BOOSTER SEATS AS "SIDE-IMPACT TESTED," IN FACT THEIR TESTING IS MEANINGLESS

Evenflo, Graco, and KidsEmbrace engage in unfair and deceptive practices by claiming that their booster seats are "side-impact tested." The Subcommittee's review of the companies' side-impact testing protocols, standards, and results reveals that these claims are meaningless and bear little relation to child safety. These tests are entirely self-designed, are not rigorous, and fail to adequately assess the risk of injury to children.

When manufacturers claim that a booster seat is "side-impact tested," a consumer would believe that the booster seat went through a realistic crash simulation that showed that the booster seat meaningfully protected the occupant from injury. Without a federal standard, the booster seat manufacturers have chosen low, seemingly arbitrary standards against which to measure the safety of their own products.

A. Evenflo, Graco, and KidsEmbrace's Claims That Their Booster Seats are Side-*Impact* Tested are False

The two primary sources of impact-testing standards for automobiles are NHTSA and the Insurance Institute for Highway Safety (IIHS), an independent safety research group funded by auto insurers. For example, Toyota advertises on its website that its popular 2020 Camry sedan received the "NHTSA 5-Star Overall Safety Rating" as well as the IIHS Top Safety Pick awards.[25]

NHTSA's 5-star safety rating is part of its New Car Assessment Program that rates how vehicles perform under various tests, including two side-impact tests. One involves a 3,015-pound barrier smashing into the side of a vehicle at 38.6 miles per hour. The other involves a sled (resembling the backseat of a car) pulled sideways at 20 miles per hour that crashes into a stationary pole at the driver's seat.[26] The IIHS's side-impact test is similar to the first of NHTSA's tests, consisting of a "stationary test vehicle struck on the driver side by a crash cart…[with] an impact velocity of 50 km/h (31.1 mi/h)"[27] All three of these recognized side-impact tests involve *impacts*.

Although Evenflo, Graco, and KidsEmbrace advertised their booster seats as "Side-impact tested," they were not. All three companies' tests merely involve a booster seat on a bench moving sideways at 20 miles per hour and then decelerating without impact.

---

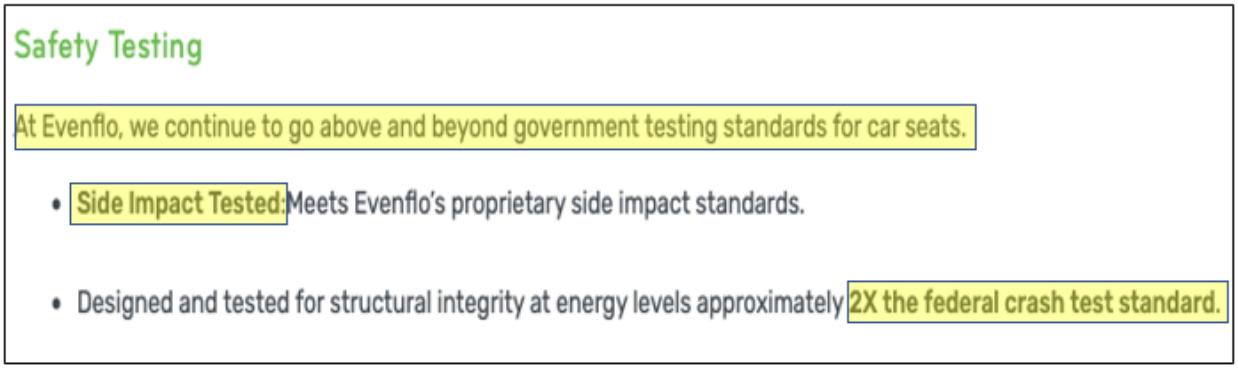
[25] Toyota, *Toyota Camry Awards* (online at www.toyota.com/camry/awards/) (accessed Nov. 30, 2020).

[26] National Highway Traffic Safety Administration, *Ratings* (online at www.nhtsa.gov/ratings) (accessed Nov. 30, 2020).

[27] Insurance Institute for Highway Safety, *Side Impact Crashworthiness Evaluation: Crash Test Protocol (Version X)* (July 2017) (online at www.iihs.org/media/ebc9bd1f-2ca4-4fb9-b96e-f4165f331943/Jil-Xg/Ratings/Protocols/current/test_protocol_side.pdf).

B. Evenflo Unfairly and Deceptively Advertises Its Booster Seats as "Side-Impact Tested"

Evenflo advertises its booster seats as "side impact tested" for safety.[28]



To the contrary, Evenflo uses a proprietary standard that appears to bear little-to-no connection to child safety. Evenflo omits this material fact from its statements to consumers. Evenflo's side impact testing standard has proven impossible to fail, rendering it meaningless. Evenflo gave itself a passing grade in every test it ran.[29] For example:[30]

[28] Evenflo, *Safety Testing* (online at www.evenflo.com/safety-car-seat-us-rollover/safety-car-seat-us-rollover.html) (accessed Nov. 30, 2020).

[29] Evenflo, *Test Booster Seat Certification Test Results* (2016) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/14%20-%20Evenflo%20Booster%20Seat%20Test%20Results.pdf).

[30] Evenflo, *Side-Impact Test Video 01* (July 6, 2016) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/15%20-%20Evenflo%20Side%20Impact%20Video%2001.mp4).

Rather than directly test for risk of injury and death to children by monitoring stress and contortion of a child-sized crash test dummy, Evenflo gave itself a passing score every time the seat itself did not physically break into pieces and the dummy was not completely ejected from the seat. In a February 24, 2020, letter to the Subcommittee, Evenflo set forth the two criteria it uses to gauge safety outcomes: "(1) does the seat maintain its structural integrity or break apart? and (2) in a severe far-side-impact crash, does the test-dummy remain in the seat and the vehicle belt system or does the test dummy get ejected?"[31]

This fails to account for the wide range of dangerous outcomes children face in side-impact collisions, such as severe spinal cord and neck injuries.[32] Using this arbitrary standard, a crash resulting in a severely injured child who otherwise remains in the booster seat would not be considered a failure for the booster seat. Below are other examples of outcomes that Evenflo deemed "successful":[33]

---

[31] Letter from General Counsel Amy Blankenship, Evenflo Company, Inc., to Chairman Raja Krishnamoorthi, Subcommittee on Economic and Consumer Policy, Committee on Oversight and Reform (Feb. 24, 2020).

[32] National Highway Traffic Safety Administration, *Children Injured in Motor Vehicle Traffic Crashes* (May 2010) (online at https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/811325).

[33] Evenflo, *Side-Impact Test Video 02* (July 6, 2016) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/16%20-%20Evenflo%20Side%20Impact%20Video%2002.mp4); Evenflo, *Side-Impact Test Video 03* (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/17%20-%20evenflo%20side%20impact%20video%2003.mp4).

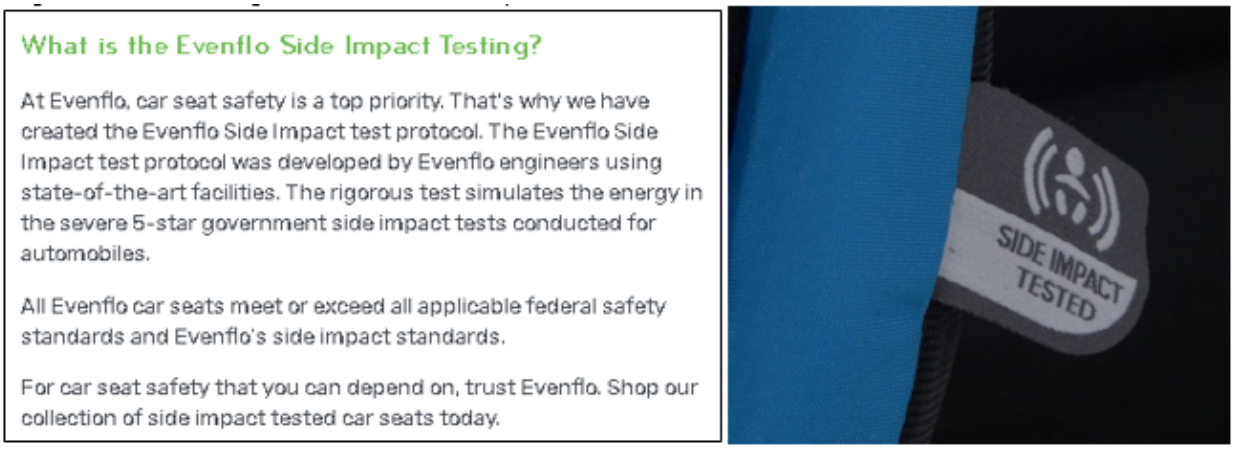
In these troubling images, the dummy's neck is stretched and rotated, and its body is crumpled to the side. This is what happened to Jillian Brown, a five-year-old girl weighing 37 pounds who was seated in an Evenflo "Big Kid" booster seat during a side-impact collision: "Her shoulder slipped out of the seat belt. As her chest and stomach jackknifed over the lap

portion of her seat belt, her head rotated downward and stretched her neck." Suffering what medical experts call "internal decapitation," she was paralyzed from the neck down.[34]

Safety standards that fail to account for the serious—and sometimes fatal—injuries sustained by children in booster seats during side-impact crashes are clearly inadequate. Evenflo's material misrepresentations that its booster seats are side-impact tested for safety—when its self-designed standards are so grossly inadequate—is unfair and deceptive.

Evenflo states that its side-impact test "simulates the energy in the severe 5-star government side impact tests conducted for automobiles."[35] In fact, Evenflo's side-impact tests are not similar to the government's tests (described in the previous section). Rather, Evenflo's test consists of a bench seat moving at approximately 20 miles per hour before it quickly decelerates.[36] There is no impact whatsoever.

Evenflo also advertises that its booster seats "meet or exceed all applicable federal safety standards and Evenflo's side impact standards," as shown in the image below, alongside another side-impact test claim sewn into a booster seat itself.[37] That statement is misleading since there are no applicable federal safety standards for side-impact tests with respect to booster seats.



[34] *Evenflo, Maker of the 'Big Kid' Booster Seat, Put Profits Over Child Safety*, ProPublica (Feb. 6, 2020) (online at www.propublica.org/article/evenflo-maker-of-the-big-kid-booster-seat-put-profits-over-child-safety).

[35] Evenflo, *Safety Technology* (online at www.evenflo.com/safety-learning/safety-tech.html) (accessed Nov. 30, 2020).

[36] Evenflo, *Side-Impact Sled Test Data Summary* (July 11, 2016) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/14%20-%20Evenflo%20Booster%20Seat%20Test%20Results.pdf); Evenflo, *Side-Impact Test Video* (Dec. 27, 2016) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/15%20-%20Evenflo%20Side%20Impact%20Video%2001.mp4) (showing testing conditions).

[37] Evenflo, *Safety Technology* (online at www.evenflo.com/safety-learning/safety-tech.html) (accessed Nov. 30, 2020); *Government Launces Probe Into Evenflo Car Booster Reveals Children Could Be At Risk*, Good Morning America (Feb. 12, 2020) (online at www.goodmorningamerica.com/family/story/investigation-evenflo-car-booster-seat-reveals-children-risk-68821649).

C. Graco Made Unfair and Deceptive Statements About the Safety of Its Booster Seats and Instituted Weak Side-Impact Testing Protocols to Support Those Statements

Graco claims to conduct side-impact testing of its booster seats. However, it does not do so in any meaningful way. For instance, this image from Graco's website highlights "SIDE-IMPACT TESTED" right under a bold title: "MOST RIGOROUSLY CRASH TESTED." [38]

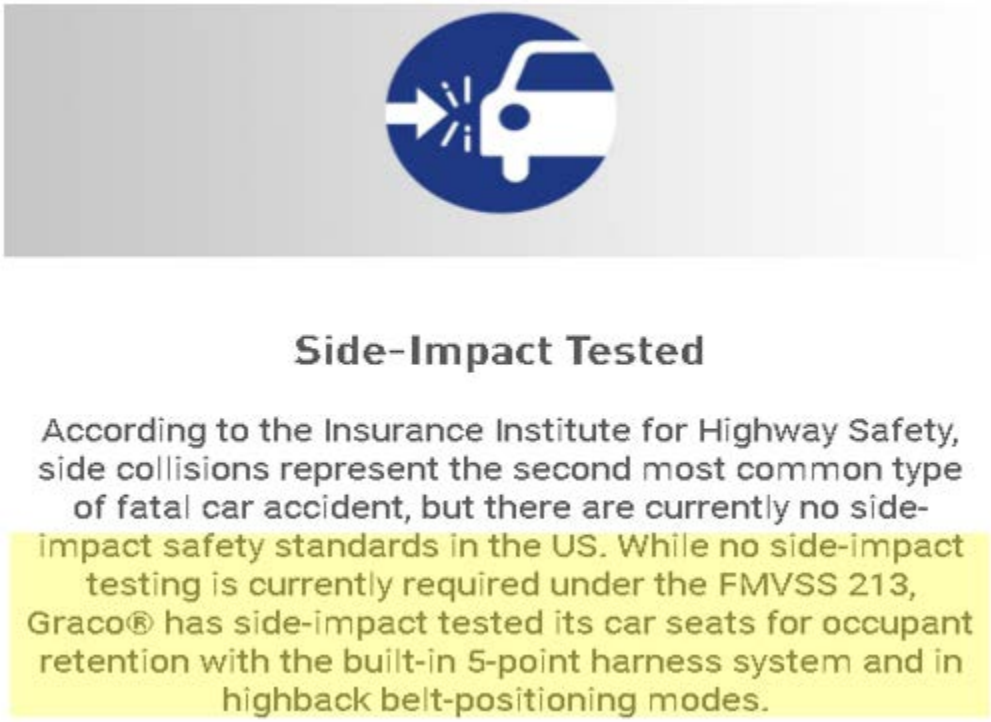
Graco's claim obfuscates inadequacies. First, the Subcommittee's review of Graco's side-impact test data found testing conditions that feature a dummy seated in a booster seat affixed to a mock backseat that travels at 20 miles per hour before it quickly decelerates. As with the Evenflo test, Graco's test does not involve an impact.[39]

Second, Graco's implication that it has "side-impact safety standards" is overstated. In its public materials, such as on its website shown in the image below, Graco contrasts the lack of "side-impact safety standards in the US" with the statement that its booster seats are "side-impact

[38] Graco, *Turbobooster Packaging Label* (2018) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/18%20-%20Graco%20Turbobooster%20Packaging%20Label_0.pdf).

[39] Graco, *Side-Impact Sled Test Data Summary* (Apr. 12, 2019) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/19%20-%20Graco%20Side%20Impact%20Test%20Results_0.pdf) (indicating measured velocity); Graco, *Side-Impact Test Video* (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/21-GracoSideImpactVideo02-1-1.mp4).

tested for occupant retention."[40] Graco's retention test is not a "safety standard" since it does not account for numerous types of potential injuries sustained by children in side-impact crashes.



The image below—showing a dummy in a dangerously contorted position with its neck extremely stretched and rotated—comes from a video what Graco considers a "passing" side-impact test.[41]

[40] Graco, *Car Seat Safety Standards & Testing* (online at www.gracobaby.com/safety.html) (accessed Nov. 30, 2020).

[41] Graco, *Side-Impact Test Video* (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/21-GracoSideImpactVideo02-1-1.mp4).

D. KidsEmbrace Unfairly and Deceptively Misleads Consumers About the Extent of Its Side-Impact Testing

KidsEmbrace makes misleading statements to consumers that give the impression that its booster seats are side-impact tested when they are not. KidsEmbrace admitted in a response letter to the Subcommittee that it does not side-impact test its booster seats at all.[42]

Yet, on its website, KidsEmbrace gives the misleading impression that *all* of its seats, including boosters, are side-impact tested. KidsEmbrace tells consumers, "KidsEmbrace products have tested for side impact environments suggested by the National Highway Traffic

[42] In KidsEmbrace's response to the Subcommittee's request for documents, KidsEmbrace Chief Operation Officer Vincent Mastrangelo wrote, "Although, currently there is no general standard for side impact testing in the USA, there is a proposed standard for side impact with internal harness. We have performed this test with the internal 5 point harness on our combination booster seat. With regards to side impact testing of a *belt positioning booster*, we have not performed any tests for this." Email from Vincent Mastrangelo, Chief Operating Officer, KidsEmbrace, LLC, to Staff, Subcommittee on Economic and Consumer Policy, Committee on Oversight and Reform (Mar. 16, 2020) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/22%20-%20KidsEmbrace%20Response%20Email_Redacted.pdf) (emphasis added).

Safety Administration (NHTSA), something the competition doesn't do."[43] The statement purports to cover *all* KidsEmbrace products, but it applies only to a limited range of *combination* booster seats that convert from a car seat with a 5-point harness to a booster seat, and those combination seats are only tested in the harness configuration, not the booster configuration.

III. BRITAX, ARTSANA, AND DOREL UNFAIRLY AND DECEPTIVELY MARKET THEIR BOOSTER SEATS WITH SAFETY FEATURES THAT HAVE NOT BEEN SHOWN TO INCREASE CHILD SAFETY

Britax, Artsana, and Dorel make unsubstantiated claims about proprietary safety features in side-impact crashes. Such features are untested, and their advertisements provide consumers with a false sense of security. It is unfair and deceptive to advertise a safety feature without evidence that it improves safety.

Britax advertises, "Side Impact Protection surrounds your child's head, neck and torso. We offer varying levels of side impact protection in our different harness-2-booster models."[44] This claim is prominently displayed on the product packaging, as shown in the image below.[45] However, the claim is not based on any type of testing and appears designed to mislead consumers.

[43] KidsEmbrace, *Our Safety* (online at www.kidsembrace.com/pages/safety-is-1-for-kidsembrace) (accessed Nov. 30, 2020).

[44] Britax, *Britax Safety—Harness-2-Booster Car Seats* (online at https://us.britax.com/product-knowledge/articles/britax-safety-harness-2-booster/) (accessed Nov. 30, 2020).

[45] Britax, *Highpoint Booster Seat Packaging* (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/26%20-%20Britax%20Packaging.pdf).

The following image from a side-impact simulation of Britax's Frontier harness-to-booster combination seat, advertised with three layers of side impact protection, shows this purported "safety feature" in action. The child dummy's head is violently slammed against the door of the car as the sled decelerates, and the dummy's head is not protected by Britax's proprietary technology.[46]

[46] CrashNet1, *Britax Frontier | Forward Facing, Side Impact Test | 3 Yr | Child Seat Crash Test*, YouTube (July 23, 2012) (online at www.youtube.com/watch?v=L_KG1iABmeA) (accessed Nov. 30, 2020).

Artsana markets its proprietary "DuoGuard" protection, which it claims "offers two layers of side-impact protection for the head and torso," and the company advertises this feature on its website and on booster seat labels.[47] Artsana tells parents that with DuoGuard they should "Rest Assured."[48]

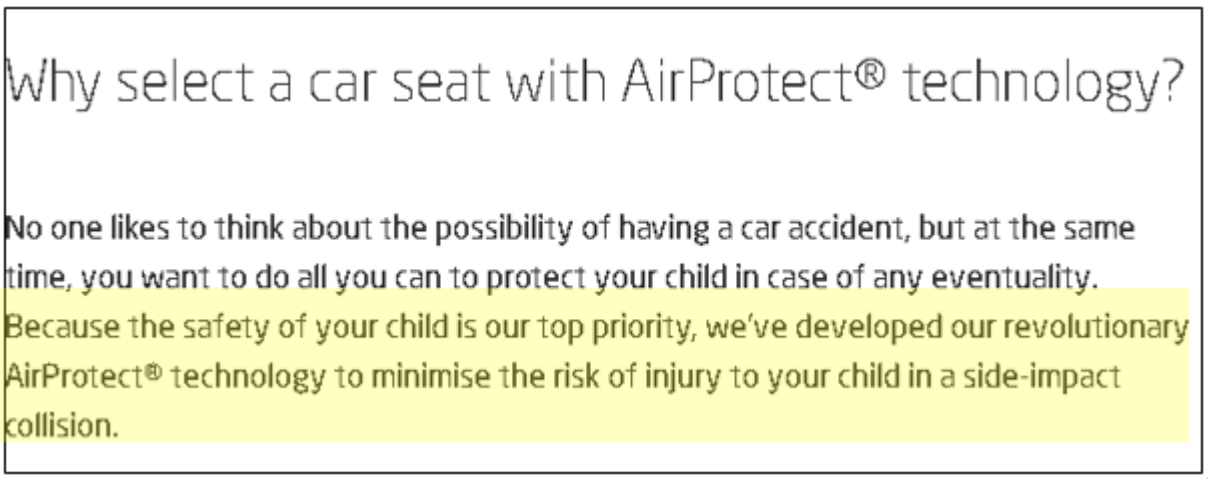
[47] Artsana, *USAKidFit 2-in-1 Belt Positioning Booster Car Seat—Horizon* (online at https://web.archive.org/web/20200925062340/https://www.chiccousa.com/shop-our-products/car-seats/booster/kidfit-2-in-1-belt-positioning-booster-car-seat---celeste/06079014250070.html) (accessed Nov. 25, 2020) (citing a capture dated Nov. 25, 2020).

[48] Artsana, *MyFit Harness+Booster Car Seat* (online at www.chiccousa.com/myfit/) (accessed Nov. 30, 2020).

However, Artsana omits material information. There is no evidence that the DuoGuard feature provides any protection. Below is an image of an Artsana booster seat side-impact test, in which the dummy's head moved beyond the booster seat's headrest.[49]

[49] Artsana, *KidFit Side Impact Test* (Sept. 4, 2014) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/28%20-%20Artsana%20Test%20Image.pdf).

Dorel also extensively markets a proprietary "AirProtect" feature, which it claims minimizes the risk of injury to children in side-impact collisions.[50] Like the other companies' claims, this is unsubstantiated and misleads consumers into thinking the seats are actually safe.



In the image below, taken from a Dorel test video, the "AirProtect" technology does not appear to protect a child's head and neck from a side-impact collision.[51]

[50] Maxi-Cosi, *Why Select a Car Seat with AirProtect Technology?* (online at www.maxi-cosi.com/c/international/why-select-car-seat-airprotectr-technology#:~:text=AirProtect%C2%AE%20is%20specifically%20designed,absorbing%20them%20into%20the%20headrest.) (accessed Nov. 30, 2020).

[51] Dorel, *Side-Impact Test Video* (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/25-DorelSideImpactVideo-1-1.mp4).

IV. NHTSA HAS FAILED TO REGULATE BOOSTER SEATS AND PERMITTED MANUFACTURERS TO DISREGARD CHILDREN'S SAFETY

For nearly two decades, experts in child safety have recommended that parents delay transitioning their children from fully-harnessed car seats to booster seats until they weigh at least 40 pounds—yet federal regulations do not yet prohibit the marketing of booster seats to children under 40 pounds.[52] Despite Congress urging side-impact testing standards for more than 20 years, NHTSA has failed to promulgate any such standards.

As a result, in the absence of authoritative rulemaking by NHTSA, manufacturers market their car seats in ways that put children at risk of serious injury.

A. Despite Two Decades of Scientific Consensus, NHTSA Has Failed to Prohibit the Sale of Booster Seats for Children Under 40 Pounds

Since at least 2002, the American Academy of Pediatrics (AAP) has recommended that children remain in rear-facing car seats until they reach 40 pounds.[53] The government of Canada

[52] *See* 49 C.F.R. § 571.213 (2020) (online at https://ecfr.federalregister.gov/current/title-49/subtitle-B/chapter-V/part-571/subpart-B/section-571.213).

[53] American Academy of Pediatrics, *Policy Statement: Child Passenger Safety* (Nov. 2018) (online at https://pediatrics.aappublications.org/content/pediatrics/142/5/e20182460.full.pdf); American Academy of Pediatrics, *Selecting and Using the Most Appropriate Car Safety Seats for Growing Children: Guidelines for*

recognizes these dangers and prohibits the sale of boosters to children under 40 pounds.[54] It has done so since 1987.[55]

NHTSA acknowledges the expert consensus that booster seats are not safe for any child weighing less than 40 pounds.[56] As early as 2001, NHTSA warned against the potential dangers of booster seat use by children weighing less than 40 pounds.[57] According to NHTSA's own research, there is a 27% increased risk of moderate to fatal injuries for 3-to-4-year-olds when restrained in booster seats compared to a fully-harnessed seat.[58]

However, NHTSA has not acted to protect small children from the dangers of booster seat use. The current federal regulation—FMVSS 213—requires only that "booster seats shall not be recommended for children whose masses are less than 13.6 kg [30 lbs]."[59]

B. Despite Two Decades of Congressional Direction, NHTSA Has Failed to Establish Side-Impact Test Standards for Booster Seats

In 2000, Congress directed NHTSA to "initiate a rulemaking for the purpose of improving the safety of child restraints, including minimizing head injuries from side impact collisions."[60] NHTSA did not initiate any rulemaking. Instead, in a 2004 report to Congress, NHTSA excused its failure by citing "a number of areas of uncertainty regarding the performance of child restraints in side impact crashes."[61] By 2012, NHTSA still had not issued a rule. Congress then passed the Moving Ahead for Progress in the 21st Century Act, requiring

---

Counseling Parents (Mar. 2002) (online at https://pediatrics.aappublications.org/content/pediatrics/109/3/550.full.pdf).

[54] Government of Canada, *Motor Vehicle Restraint Systems and Booster Seats Safety Regulations, SOR/2010-90* (online at https://laws-lois.justice.gc.ca/eng/regulations/sor-2010-90/page-10.html#h-768867 l) ("Every booster seat must have stitched onto it … a statement indicating that the booster seat must be used only by persons whose mass is at least 18 kg [39.68 lbs].").

[55] *Evenflo, Maker of the 'Big Kid' Booster Seat, Put Profits Over Child Safety*, ProPublica (Feb. 6, 2020) (online at www.propublica.org/article/evenflo-maker-of-the-big-kid-booster-seat-put-profits-over-child-safety).

[56] National Highway Traffic Safety Administration, *Car Seats and Booster Seats* (online at www.nhtsa.gov/equipment/car-seats-and-booster-seats#find-right-car-seat-age-size-recommendations) (accessed Nov. 30, 2020).

[57] National Highway Traffic Safety Administration, *Premature Graduation of Children to Seat Belts* (Aug. 2001) (online at https://one.nhtsa.gov/people/outreach/traftech/TT253.htm).

[58] National Highway Traffic Safety Administration, *Booster Seat Effectiveness Estimates Based on CDS and State Data* (July 2010) (online at https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/811338).

[59] 49 C.F.R § 571.213 (2020) (online at https://ecfr.federalregister.gov/current/title-49/subtitle-B/chapter-V/part-571/subpart-B/section-571.213).

[60] Pub. L. No. 106-414 (2000), 114 Stat. 1800.

[61] National Highway Traffic Safety Administration, *Report to Congress, Child Restraint Systems, Transportation Recall Enhancement, Accountability, and Documentation* (Feb. 2004) (online at www.nhtsa.dot.gov/nhtsa/announce/NHTSAReports/TREAD.pdf).

that NHTSA amend FMVSS No. 213 within two years with a final rule "to improve the protection of children seated in child restraint systems during side impact crashes."[62]

Instead, NHSTA issued a proposed rule that would require all seats designed for children up to 40 pounds (or children in the infant to four-year-old range) to be tested in a simulated side-impact collision. Instead of banning the marketing and sale of booster seats for children under 40 pounds, the proposed rule required manufacturers to conduct testing if they wanted children under 40 pounds to use their booster seats. The proposed rule assumed that to cut costs, manufacturers would opt to only sell booster seats designed for children over 40 pounds, rather than pay for expensive safety testing.[63] The comment period was extended to October 2014 at the request of car seat manufacturers.[64] Six years later, the final rule for side-impact standards still has not been issued. According to reports, the industry has sought to delay the side-impact rule.[65]

C. After Oversight and Legislative Pressure from the Subcommittee, NHTSA Finally Pushed Forward with Long-Awaited Rulemaking

On March 18, 2020, Chairman Krishnamoorthi and Representative Katie Porter sent a letter to NHTSA Acting Administrator James Owens asking why NHTSA had failed to complete the Congressionally-mandated rulemaking on side-impact testing for children's car seats.[66] On July 8, 2020, Acting Administrator Owens replied, explaining that NHTSA's failure was due in-part to a lack of available crash test data, promising the Subcommittee that it would issue a final rule by the end of the year establishing a new child-sized crash test dummy that allows more precise data collection for side-impact collisions.[67]

---

[62] Pub. L. No. 112-141 (2012), 126 Stat. 774.

[63] National Highway Traffic Safety Administration, *Federal Motor Vehicle Safety Standards; Child Restraint Systems, Child Restraint Systems—Side Impact Protection, Incorporation by Reference*, 79 Fed. Reg. 4569 (Jan. 28, 2014) (proposed rule) (online at www.federalregister.gov/documents/2014/01/28/2014-01568/federal-motor-vehicle-safety-standards-child-restraint-systems-child-restraint-systems-side-impact).

[64] National Highway Traffic Safety Administration, *Federal Motor Vehicle Safety Standards; Child Restraint Systems—Side Impact Protection*, 79 Fed. Reg. 32211 (June 4, 2014) (reopening of comment period) (online at www.federalregister.gov/documents/2014/06/04/2014-12899/federal-motor-vehicle-safety-standards-child-restraint-systems-side-impact-protection).

[65] *The Car Seat Industry Helped Delay a Child Safety Regulation—Again*, ProPublica (Aug. 20, 2019) (online at www.propublica.org/article/the-car-seat-industry-helped-delay-a-child-safety-regulation-again).

[66] Letter from Chairman Raja Krishnamoorthi and Rep. Katie Porter, Subcommittee on Economic and Consumer Policy, Committee on Oversight and Reform, to James Owens, Acting Administrator, National Highway Traffic Safety Administration (Mar. 18, 2020) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/27%20-%20RK%20and%20KP%20to%20Owens%20NTHSA%20re%20Rulemaking.pdf).

[67] Letter from Adam J. Sullivan, Assistant Secretary for Government Affairs, Department of Transportation, to Chairman Raja Krishnamoorthi, Subcommittee on Economic and Consumer Policy, Committee on Oversight and Reform (July 8, 2020) (online at https://oversight.house.gov/sites/democrats.oversight.house.gov/files/29%20-%20NHTSA%20Reposnse%20re%20Booster%20Seats%20and%20Side%20Impacts.pdf).

On June 30, 2020, Chairman Krishnamoorthi offered an amendment to H.R. 2, the *Moving Forward Act*, requiring clearer height and weight recommendations on the labels of booster seats prevent premature transitions from safer car seats to less safe booster seats. The amendment instructed NHTSA to require manufacturers to print a specific warning label directly on booster seats indicating that they should not be used by children under 40 pounds and four years old and that it is strongly recommended that children remain in fully-harnessed car seats until they reach the manufacturer-determined height and weight limit.[68] The amendment was adopted *en bloc*, and the bill passed the House of Representatives on July 1, 2020.[69]

NHTSA made limited progress in its September 24, 2020, proposed upgrade to Federal Motor Vehicle Safety Standard (FMVSS) No. 213. While NHTSA adopted Chairman Krishnamoorthi's recommendation to label booster seats as unsafe for children under 40 pounds, the proposed rule fell short in preventing premature transitions to booster seats by choosing to "*lessen* restrictions on the labeling requirements," allowing manufacturers to present information "in their own words at locations that they deem most effective in instructing caregivers on the correct use" of the car seat. As NHTSA characterized the changes, "mostly they are deregulatory."[70]

On September 24, 2020, NHTSA released a final rule establishing a child side-impact dummy specifically designed for testing child seats in side-impact crash tests—known as the Q3s—as promised to Chairman Krishnamoorthi in NHTSA's July 8, 2020, letter.[71] This long-overdue final rule will provide "more realistic data about the effect side impact crashes have on children, enabling NHTSA to assess the safety of child seats in side crashes."[72] This is an encouraging step; for years NHTSA had cited the lack of a final rule on child dummy design as a key barrier to side-impact testing for children's car seats.[73]

The Subcommittee urges NHTSA to quickly issue a final rule setting forth rigorous testing conditions and standards that use the finalized Q3s dummy to assess the likelihood of risk and injury to children in car seats during side-impact collisions.

---

[68] H. Amdt. 12 to H.R. 2, Moving Forward Act (2020).

[69] H.R. 2, Moving Forward Act (2020).

[70] National Highway Traffic Safety Administration, *Federal Motor Vehicle Safety Standards; Child Restraint Systems, Incorporation by Reference* (Sept. 24, 2020), Docket No. NHTSA-2020-0093 (online at www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/2127-al34_frontal_upgrade_nprm_fmvss_213.pdf).

[71] National Highway Traffic Safety Administration, *Anthropomorphic Test Devices; Q3s 3-Year-Old Child Side Impact Test Dummy; Incorporation by Reference* (Sept. 24, 2020), Docket No. NHTSA-2020-0088 (online at www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/sept_23_q3s_final_rule.pdf).

[72] National Highway Traffic Safety Administration, *Press Release: NHTSA Announces Major Improvements to Child Passenger Safety* (Sept. 24, 2020) (online at www.nhtsa.gov/press-releases/major-improvements-child-passenger-safety).

[73] National Highway Traffic Safety Administration, *Report to Congress, Child Restraint Systems, Transportation Recall Enhancement, Accountability, and Documentation* (Feb. 2004) (online at www.nhtsa.dot.gov/nhtsa/announce/NHTSAReports/TREAD.pdf).

V. THE MANUFACTURERS' ACTS APPEAR TO BE UNFAIR AND DECEPTIVE PRACTICES UNDER FEDERAL AND STATE CONSUMER PROTECTION LAWS

The booster seat manufacturers' unsafe recommendations for booster seat use at 30 pounds and the false and misleading statements about side-impact testing, appear to constitute unfair and deceptive practices under federal and state consumer protection laws.

Section 5 of the Federal Trade Commission (FTC) Act states that "unfair or deceptive acts or practices in or affecting commerce[] are hereby declared unlawful," and it empowers the Federal Trade Commission to enforce against such practices with injunctive and civil monetary penalties.[74]

FTC has broad discretion under its "unfair and deceptive acts or practices," or "UDAP," authority, which allows it to stamp out a wide variety of consumer harms across business sectors. Under FTC's and the federal courts' interpretation of Section 5, UDAP violations include marketing that is likely to mislead consumers about material information.[75] UDAP violations also include business practices that create unwarranted safety risks.[76]

Each state has a UDAP law, enforceable by consumers and/or State Attorneys General, that prohibit deceptive and/or unfair practices.[77] One example is the Maryland Consumer Protection Act, which prohibit "any unfair or deceptive trade practice" and defines such practices to include "[f]alse, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers" and "[f]ailure to state a material fact if the failure deceives or tends to deceive."[78]

As this staff report has shown, manufacturers have endangered children by recommending that booster seats may be used safely by children that weigh only 30 pounds. The expert consensus, confirmed by guidance from the federal regulator, NHTSA, is that children should remain in a fully harnessed seat until they can no longer fit in it, and in no case before the child is at least 40 pounds and 4 years old. The manufacturers' failure to label and market booster seats according to those guidance renders the seats not reasonably safe and appears to constitute an unfair and deceptive practice.

This staff report also has shown that manufacturers appear to have engaged in unfair and deceptive practices by making claims that children's car seats and booster seats are "side-impact

---

[74] Federal Trade Commission Act (FTC Act), Section 5 (codified at 15 U.S.C. § 45).

[75] Federal Trade Commission, *FTC Policy Statement on Deception* (Oct. 14, 1983) (online at www.ftc.gov/system/files/documents/public_statements/410531/831014deceptionstmt.pdf).

[76] Federal Trade Commission, *FTC Statement on Unfairness* (Dec. 17, 1980) (online at www.ftc.gov/public-statements/1980/12/ftc-policy-statement-unfairness).

[77] National Consumer Law Center, *Consumer Protection in the States: A 50-State Evaluation of Unfair and Deceptive Practices Laws* (Mar. 2018) (online at www.nclc.org/images/pdf/udap/udap-report.pdf).

[78] Maryland Consumer Protection Act, Md. Code Ann., Comm. Law §§ 13-301, 13-303.

tested" and have "side-impact protection" features. Safety is indisputably material, if not the most important factor, in a parent's purchase of a child's car seat. A parent would read those claims to mean that the product increased safety by reducing the risk of injury during side-impact collisions. These claims are false and misleading, as the manufacturers did not conduct testing under reasonably rigorous simulated crash conditions and did not assess for risk of injury or death.

VI. CONCLUSION

Parents who want to keep their children safe by choosing the appropriate car seat or booster seat encounter false claims and misleading advertising in the marketplace. This results in premature transitions from car seats to booster seats. In some cases, that tragically results in serious injury or death.

The Subcommittee's investigation found that booster seat manufacturers have endangered children by recommending that children as light as 30 pounds can use a booster seat, despite expert consensus that using booster seats for children under 40 pounds is not reasonably safe. They appear to have violated their legal duty to market their car seats in a way that is reasonably safe.[79]

The Subcommittee also finds that booster seat manufacturers have misled parents by advertising their seats as "side-impact tested." When a parent sees a car seat advertised as "side-impact tested," they reasonably believe that a child test dummy in the seat was subjected to conditions closely simulating a real-life side-impact collision and that the test standards bore a close connection to the risk of injury to the child. None of the manufacturers' self-designed evaluations resemble this type of reasonable safety test.

Manufacturers' misleading and dangerous practices occurred in NHTSA's willful absence of adequate federal regulation. Though it has made mildly encouraging progress in this area, NHTSA's failure to regulate the car seat industry is all too representative of an agency that has failed time and time again to keep motorists and their families safe through regulatory delay and deregulation. Reform is needed at all levels of NHTSA to speed up the rulemaking process and crack down on companies flouting the rules.

Finally, the manufacturers' unsafe recommendations and false and misleading statements about side-impact testing appear to be unfair and deceptive practices under federal and state consumer protection laws.

[79] Aaron D. Twerski & James A. Henderson Jr., *Fixing Failure to Warn*, Indiana Law Journal (Winter 2015) (online at https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=2551&context=facpub).