



A service of the advertising industry and Council of Better Business Bureaus



Digital Marketing Digest

The Advertising Industry's Self-Regulatory System monitors advertising in all media, including digital marketing, to assure that advertising claims are truthful, accurate and not misleading. The self-regulatory system is a service of the advertising industry and the Council of Better Business Bureaus (CBBB).

Although compliance with self-regulatory decisions is voluntary, the self-regulatory system enjoys a high rate of compliance with its decisions – more than 90 percent of companies that appear before one of the self-regulatory units agree to abide by the terms of decisions that require advertising to be modified or discontinued.

The Advertising Self-Regulatory Council (ASRC) is the governing body for advertising industry self-regulation. ASRC's 11-member Board of Directors is comprised of the top leadership of the American Advertising Federation (AAF), American Association of Advertising Agencies (AAAA), Association of National Advertisers (ANA), CBBB, Direct Marketing Association (DMA), Electronic Retailing Association (ERA) and Interactive Advertising Bureau (IAB).

The Self-Regulatory Programs:

- **NAD** – The National Advertising Division (NAD) monitors national advertising in all media, enforcing high standards of truth and accuracy. NAD examines advertising claims made for goods and services as diverse and critical as telecommunications, infant nutrition, over-the-counter medications and dietary supplements and “green” products. NAD accepts complaints from consumers, competing advertisers and local Better Business Bureaus. NAD's decisions represent the single largest body of advertising decisions in the U.S. In addition to its own monitoring, NAD provides a fast, expert forum for the resolution of competitors' disputes. NAD handles about 150 cases each year and publicly reports its formal decisions.

Advertising Self-Regulatory Council • 112 Madison Avenue, 3rd Fl. • New York, NY • 10016 •

www.asrcreviews.org

©2018 Council of Better Business Bureaus. NAD®, CARU® and ERSP® are trademarks of the Council of Better Business Bureaus.

- Accountability Program – The Online Interest-Based Advertising Accountability Program charged with ensuring industry compliance with the Self-Regulatory Principles for Online Behavioral Advertising (Principles). The Principles require third parties to provide consumers with an easy-to-use mechanism that allows the consumer to exercise choice regarding the collection and use of data from their device for online behavioral advertising (OBA) purposes.
- CARU – Recognizing the special vulnerability of young children, the Children's Advertising Review Unit holds advertisers to high standard of truth and appropriateness when they direct advertising to young children. Among other things, CARU's guidelines provide that advertisers cannot state or imply that their products will make children more popular with their peers, advertise vitamins or other products that carry "keep out of reach of children" labels, or advertise products that are unsafe for young children to use. CARU examines advertising in all media, including electronic media, and monitors Websites and online services such as apps to assure that they are compliant with CARU's guidelines and the Children's Online Privacy Protection Act (COPPA).
- ERSP – Developed with the Electronic Retailing Association, the Electronic Retailing Self-Regulation Program (ERSP) examines the truth and accuracy of core claims made in electronic direct-response advertising. ERSP monitors the \$170 billion direct-response marketplace, providing a strong self-regulatory presence on the frontier of electronic commerce.

ASRC programs are funded through a variety of sources — membership dues to the CBBB make up a substantial portion. The remainder is provided through the support of industry associations (ERA, CRN, Digital Advertising Alliance), the direct support of children's advertisers and child-directed media and revenue from the sale of products and services.

National Advertising Division

Epson America, Inc.

3LCD Projectors

Case #6183 (5.01.18)

NAD recommended that the advertiser modify two websites, 3lcd.com and colorlightoutput.com, which it used to explain information about 3LCD technology to disclose Epson's connection to the website at the top of the landing page, as well as on each page within the website, so that the disclosure is easy to notice, read and understand. The challenger asserted that the material connection between the advertiser and these websites was not clearly and conspicuously disclosed. NAD determined that the disclosures were not clear and conspicuous because appeared in small font on busy webpages that feature colorful images and large text headlines. In addition, the disclosures appeared at the bottom of each webpage and require consumers to scroll to the bottom of long webpages in order to view them.

Epson agreed to comply with NAD's recommendation.

Carma Laboratories, Inc.

Carmex Cold Sore Treatment

Case #6182 (4.27.18)

After the commencement of this challenge, the advertiser agreed to permanently discontinue certain challenged claims in its digital advertising. These included claims in social media posts which the challenger alleged were express or implied claims with a reasonable takeaway that Carmex Cold Sore Treatment speeds healing, shortens symptom duration, prevents cold sores, or stops progression of the virus. Additionally, the advertiser agreed to discontinue its use of testimonials and reviews on its website, retailer websites, and via social media, making claims about Carmex Cold Sore treatment that were not supported and modify any incentivized reviews to disclose the existence of a material connection between the reviewer and Carma Labs. Finally, the advertiser also agreed to permanently discontinue the claim that Carmex Cold Sore Treatment was "improved." In reliance on the advertiser's representations, NAD did not review these claims (or the alleged implied claims stemming therefrom) on their merits. The voluntarily discontinued and modified claims will be treated, for compliance purposes, as though NAD recommended their discontinuance or modification and the advertiser agreed to comply.

Shell Oil Company
Shell V-Power NiTRO+ Premium Gasoline
Case # 6065 (3.16.17)

NAD recommended that Shell Oil Company discontinue the use of a video in its advertising because the video did not disclose the material connection between the maker of the video and Shell. The YouTube channel, "Engineering Explained," featured the host walking viewers through Shell's claims for SVPN+ and the underlying testing. The host was not a Shell employee, Shell did not produce or have editorial rights over the video, and the video was not paid advertising. The host did not receive any fees or honorarium, but Shell covered his travel to its facilities as part of the featured event. However, NAD determined that this potentially significant financial connection between Shell and the host required disclosure, as it could impact the weight that consumers give to the statements made about the benefits of SVPN+.

Shell appealed the NAD's recommendation to the NARB.

The NARB (#221 – 11.14.17) recommended that Shell modify the Fenske "Engineering Explained" video appearing on Shell's website and in any Shell advertising to clearly and conspicuously disclose in the video itself any material connection – including payments made by Shell to Mr. Fenske for travel expenses or for other reasons – between Shell and Mr. Fenske.

The advertiser agreed to comply with the NARB decision.

Beauty Science Group, Inc.
Hair La Vie
Case # 6055 (2.21.17)

NAD recommended that Beauty Science Group, Inc. advise ConsumersSurvey.org that they cannot make unsupported claims, including through the use of testimonials, that the advertiser cannot itself substantiate and that the advertiser must clearly and conspicuously disclose the relationship between itself and ConsumersSurvey.org in order to be effective. Beauty Science Group has an affiliate marketing relationship with ConsumerSurvey.org. ConsumerSurvey.org has two webpages which feature Hair La Vie. Consumers are likely to weigh ConsumersSurvey.org's recommendation of Hair La Vie differently if consumers have knowledge that ConsumerSurvey.org receives compensation for purchases of Hair La Vie from its website. Also, paid endorsements may not convey any express or implied claims that would be misleading if made directly by the advertiser. Because Beauty Science Group failed to support its claims that Hair La Vie grows thicker, stronger, or fuller hair, ConsumersSurvey.org could not make the unsupported claims.

Beauty Science Group agreed to comply with NAD's recommendations.

Kardashian, Kourtney, et. al.

FitTea

Case # 6046 (1.18.17)

Kourtney Kardashian, Khloe Kardashian and Kylie Jenner agreed to modify their social media posts about FitTea to disclose that they were being paid to endorse the product. NAD raised concerns that the Kardashians failed to disclose in any way their material connection to FitTea, a connection that consumers would not expect when viewing their social media posts about the product. When a social media post expresses a personal opinion about how much a poster likes a product or how frequently the poster uses a product, consumers might not understand whether the post is a paid endorsement or the post is spontaneous, without any payment or other compensation being exchanged. Consumers are likely to weigh an opinion differently if it is a paid endorsement for a product. As a result, such a payment is a connection that is material to consumers and should be disclosed. NAD did not review this matter on its merits. The voluntarily modified advertising will be treated, for compliance purposes, as though NAD recommended its modification and the advertisers agreed to comply.

The advertiser declined to submit an Advertiser's Statement after voluntarily modifying their advertising.

Reckitt Benckiser LLC

Finish® Automatic Dishwasher Detergent

Case # 6043 (1.4.17)

To the extent that Reckitt Benckiser LLC provides incentives to dishwasher manufacturers for their recommendations or endorsements of its products, NAD determined that it should disclose this connection when it advertises that it is the "#1 World's Recommended Brand."

RB appealed this finding in NAD's decision. The NARB affirmed NAD's decision.

Fit Products, LLC

FitTea

Case # 6042 (12.28.16)

NAD appreciated Fit Products' voluntary modifications to social media posts republished on Fit Products' website. NAD will treat these modifications, for compliance purposes, as though NAD recommended their discontinuance and the advertiser agreed to comply.

NAD recommended that Fit Products, LLC discontinue posting customer testimonials that made the claims Fit Products agreed to permanently discontinue or that NAD recommended should be discontinued. NAD cautioned Fit Products that it should insure

that its paid endorsers avoid conveying messages for which it lacked support. Finally, NAD advised Fit Products to separate its endorsements and testimonials from its product reviews as well as to prominently disclose that the reviews on its website are authentic user reviews and that Fit Products does not edit those reviews.

Fit Products agreed to comply with NAD's recommendations.

BA Sports Nutrition, LLC
Body Armor SuperDrink
Case # 6026 (11.21.16)

NAD recommended that BA Sports Nutrition, LLC discontinue reposting or linking to content on its social media pages that conveys the message that BodyArmor is "all natural" or that falsely denigrates Gatorade as "junk." When an advertiser reposts or links to third party content on its own social media pages, it is using that content as advertising and is thus responsible for the truthfulness and accuracy of the messages reasonably conveyed by the content it links to or re-posts.

BA Sports Nutrition agreed to comply with NAD's recommendations.

Goop, Inc.
Moon Juice Action Dust and Brain Dust Dietary Supplements
Case # 5977 (7.16.16)

Goop elected to permanently discontinue advertising claims for its Moon Juice Action Dust and Brain Dust dietary supplements challenged by the National Advertising Division. Goop is an online lifestyle publication founded by celebrity Gwyneth Paltrow. The dietary supplements at issue were featured in Goop's online store together with an apparent endorsement by Ms. Paltrow. The product efficacy claims and the endorsement imposed an obligation on Goop to verify that the products provided the benefits claimed. The obligation to insure that advertising claims are truthful extend to third-party or affiliate entities who "persuad[e] the audience of the value or usefulness of a . . . product" engage in "national advertising." Because Goop discontinued the advertising, NAD did not review these claims on their merits. The voluntarily discontinued claims will be treated, for compliance purposes, as though NAD recommended their discontinuance and the advertiser agreed to comply.

Goop accepted the decision of the NAD and voluntarily and permanently discontinued the advertising.

Vestagen Technical Textiles, Inc.

Vestex Fabric

Case # 5972 (7.13.16)

NAD recommended that articles cited by Vestagen as evidence of the need for apparel made from its Vestex material appearing on its website, in advertising and sales materials or on its blog that were authored by current or former Vestagen employees clearly and conspicuously disclose the material connection to the advertiser and/or be labeled as advertising.

Vapore, LLC

MyPurMist Handheld Steam Inhaler

Case # 5971 (7.12.16)

NAD recommended that Vapore discontinue the claim that its MyPurMist Handheld Steam Inhaler received “More 5-star reviews than any other steam inhaler.” Where the 5-star reviews were verified, this does not guard against the potential for double-counting of reviews, which undermines the reliability of the reviews. In addition, certain reviews were too dated to be considered sufficiently reliable. Further, star ratings do not indicate why the rating was given, and they may have been given for reasons other than the attributes mentioned in the commercial. However, NAD noted that nothing in this decision precluded Vapore from making a more qualified claim about its product being highly-rated.

NAD also determined that the disclaimer relating to the material connection between the Dr. Berger and Vapore was clearly and conspicuously disclosed in the television commercial. However, NAD recommended that the version of this disclaimer, which appears in a YouTube video of a doctor's testimonial, be modified to refer to MyPurMist instead of Vapore and that the reference to MyPurMist be easier to read, notice and understand.

Vapore agreed to comply with NAD's recommendations.

Jumpsport, Inc.

Trampolines

Case # 5970 (7.11.16)

A purportedly third-party review site for trampolines that was actually owned and operated by trampoline manufacturer JumpSport, Inc. was misleading and should be discontinued, according to the National Advertising Division in a challenge by competitor Vuly Trampolines Pty. Ltd. Product reviews generated by an advertiser must be clearly identified and not in a format that makes them appear to be independent editorial content. www.TrampolineSafety.com appeared to be operated by an independent third party, but is owned, operated, and controlled by JumpSport. The reviews and ratings were established by JumpSport. The advertising format was

inherently misleading to consumers. Even if a disclosure could cure this false impression, as argued by JumpSport, the disclosures on the website were not clear and conspicuous.

JumpSport agreed to comply with NAD's recommendations.

Joyus, Inc.

Dr. Brandt's Needles No More Wrinkle Relaxing Cream

Case # 5956 (5.19.16)

NAD recommended that Joyus, an online shopping retailer, disclose that its "Stuff We Love" page was advertising and not editorial content. Joyus is an e-commerce platform for lifestyle products. Joyous brings consumers online shopping using videos to showcase new products. NAD was concerned that advertising for Joyus products appeared in a format that made it look like the advertising was editorial content. The FTC has advised that advertising should be identifiable as advertising to avoid misleading consumers into believing that an advertisement is independent and impartial. Consumers did not know that "Stuff We Love" was promoting products for sale in the videos before watching the shopping video. As a result, consumers could give greater credence to claims made in the product descriptions than they would if they were aware that this is a form of advertising for those products, and further, consumers may interact with this content because they think it is editorial and not advertising. NAD therefore recommended that Joyus (in collaboration with People Magazine) revise the link so that it is clear that by clicking on the "Stuff We Love" link, consumer will be taken to a list of items for sale by Joyus. The link itself or text surrounding the link should advise consumers that the content to which consumers are linking is an advertisement or make clear that the links are "shopping" links.

Joyus, Inc. voluntarily discontinued advertising claims for Dr. Brandt's Needles No More Wrinkle Relaxing Cream, which the National Advertising Division treated as though NAD recommended their discontinuance and the advertiser agreed to comply. NAD asked Joyus to substantiate claims about the efficacy of the advertised product. The claims were discontinued by Joyus after the commencement of this challenge.

Joyus agreed to comply with NAD's recommendations.

KLF International, Inc.

Venus Factor Weight Loss System for Women

Case # 5938 (3.15.16)

KLF International, Inc. voluntarily and permanently discontinued advertising for its Venus Factor Weight Loss System for Women on its website and in promotional videos after the National Advertising Division opened a review of certain express claims. KLF explained that some of the challenged claims were not made by KLF but were made by affiliates. It further explained it takes it takes several steps to insure that advertising by its affiliates

for Venus Factor is truthful and accurate. NAD appreciated the efforts taken by KLF to insure that marketing by its affiliates is truthful, accurate and not misleading. NAD did not review the claims on their merits, and the voluntarily discontinued claims will be treated as though NAD recommended their discontinuance.

KLF agreed with NAD's analysis and appreciated NAD's efforts to ensure fair and truthful advertising in the fitness industry.

SharkNinja Operating LLC

Shark Rocket DeluxePro

Case # 5929 (2.11.16)

NAD recommended that Shark clearly and conspicuously disclose the material connection between itself and consumers in its advertising. The consumers in the commercial signed up for a product testing program in which they are provided with Shark vacuums and contacted weekly to discuss their experiences with the vacuum. The consumers were not told that they can keep the vacuum or that they will receive anything of value in exchange for a positive review. Some consumers were then asked if they would be willing to allow filming of a test with their vacuum, but were not told that they would appear in a television advertisement. NAD questioned whether the use of a product for free, even when it is borrowed, might materially affect the weight or credibility of an endorsement because a purchasing decision generally involves weighing costs and benefits of one product as compared to another. NAD was also concerned that the multiple interactions between the company and the consumer was a connection that a reasonable consumer would not reasonably anticipate when viewing an infomercial proclaiming "real people, real results."

SharkNinja agreed to comply with NAD's recommendations in its future advertising.

New WinCup Holdings, Inc.

Vio Cups

Case # 5902 (11.9.15)

NAD appreciated that WinCup removed its Facebook post which included a "biodegradable" claim without any qualifying language. This was necessary to meet FTC regulations requiring that biodegradability claims be qualified where the product will not decompose within one year after customary disposal. Further, unless WinCup is capable of properly qualifying its biodegradability claims on Twitter, NAD recommended that it refrain from making biodegradability claims on this platform. With regard to WinCup's Vio video on YouTube, NAD recommended that the qualification in the description box be moved in immediate proximity to the heading "Vio™ Biodegradable* Foam Cups," and that the font size be increased to a size that is more easily visible. With regard to the Vio video itself, NAD determined that the qualifications for WinCup's biodegradability claims were sufficiently clear and prominent.

The Scotts Company, LLC
Ortho Home Defense, Ortho Bug-B-Gon, Ortho Weed-B-Gon
Case # 5889 (10.5.15)

NAD appreciated Scotts' voluntary discontinuance of the challenged commercials, and the claims therein. In reliance on the advertiser's representation that these claims have been permanently discontinued, NAD did not review these claims on their merits. The voluntarily discontinued claims will be treated, for compliance purposes, as though NAD recommended their discontinuance and the advertiser agreed to comply.

NAD was satisfied that Scotts took sufficient and proper remedial steps upon learning that its customer reviews were written and posted without the required disclosure indicating they were incentivized. A sweepstakes to win a \$25 Visa gift card was run by Scotts as an incentive for consumers to review Scotts products, thus providing a level of engagement and a connection between the consumers and the advertiser that was not expected and must be disclosed. Once Scotts became aware that consumers were not including the proper disclosure as part of their sweepstakes entry, it took several remedial steps in order to address the possible misimpression that a positive entry was unincentivized.

Scotts was pleased that the NAD has agreed that Scotts took sufficient and proper action in connection with reviews generated pursuant to a sweepstakes and accepted NAD's decision to consider the spots and challenged claims presented therein "discontinued" in light of a lack of evidence in the record and not based on a determination regarding the merits of the challenge.

Euro-Pro Operating, LLC
Shark Rotator Powered Lift-Away NV650 Vacuum
Case # 5860 (7.6.15)

Reviews relied upon by lacked important indicia of reliability and representativeness to provide a reasonable basis to support its broad "More 5-Star Ratings online than any other vacuum brand" claim. Dyson, Inc. challenged Euro-Pro's advertising claim that its Shark Rotator Powered Lift-Away NV650 vacuum received "More 5-Star Online Ratings." The "online ratings" claim reasonably conveyed the message that Euro-Pro conducted an extensive compilation of reliable and representative "5-Star" online-wide reviews in support of its claim. Euro-Pro gathered 5-star review data from online retailer websites comprising the top 85% of online retailers. The websites that were subject to Euro-Pro's analysis did not have consistent policies as to how long consumer reviews were displayed, which meant that some may have been more heavily weighted towards the review of outdated models. Such inconsistencies and uncertainties were particularly problematic when attempting to combine reviews from various sources to support a single, broad superiority claim. Even if NAD accepted Euro-Pro's tally of reviews for the

seven sites considered in support of its claim, NAD questioned the reasonableness of selection of a \$149.99 price point (or above) for its calculation of 5-star reviews. This unnecessarily narrowed the limited data upon which Euro-Pro based its claim.

Euro Pro agreed to take NAD's findings into consideration in its future advertising and supports the self-regulatory process.

Pursuit of Research, LLC
Nutriveda Dietary Supplement
Case # 5725 (6.16.2014)

Pursuit of Research, LLC was required to properly disclose the association between it and a website that directly or indirectly promoted Pursuit of Research's dietary supplement. Pursuit of Research maintained "The Cherub Foundation" website, which hosts a blog and forums where parents can lend support and offer information with each other regarding their children's pressing health and neurological issues. NourishLife, LLC argued that the Cherub Foundation, which links to the Pursuit of Research, was used to sell Nutriveda without disclosing its close ties to the Pursuit of Research. NAD recommended that Pursuit of Research clearly and conspicuously disclose on the Cherub Foundation website and on the Cherub Foundation blog post the material connection between the Cherub Foundation and the Nutriveda product that is promoted in a manner that is easy to notice, read and understand.

Pursuit of Research agreed to comply with NAD's recommendations.

General Mills, Inc.
Yoplait Blended Greek Yogurt
Case # 5715 (5.19.14)

NAD determined that General Mills could support certain claims made for its Yoplait "Greek" yogurt in online advertising and social media, but recommended the advertiser discontinue or modify other claims. The claims at issue were challenged by Chobani, Inc. and included, "The Greek Yogurt Taste-Off is on: Yoplait Greek Is Significantly Preferred over Chobani;" "People agree Yoplait Greek Blueberry tastes better than Chobani Blueberry with fruit on the bottom.* *Based on a nationwide, double-blinded taste test of Yoplait Greek Blueberry yogurt and Chobani Blueberry Fruit on the Bottom Yogurt;" and "In a national taste test, nearly 2 out of 3 Americans agree that Yoplait Greek tastes better than Chobani."

NAD reviewed both the reliability of a taste test comparing Yoplait Greek blueberry flavor to Chobani blueberry fruit on the bottom, as well as the advertising campaigns surrounding the taste test results. NAD determined that the taste test between the two brands' blueberry flavored yogurt was reliable and supported certain versions of the advertiser's claims about consumers' preferences of blueberry flavored yogurt. However,

the advertiser taste preference claims concerning blueberry-flavored yogurt appeared alongside user generated content in social media, including Twitter, Facebook and Tumblr that it encouraged consumers to share. NAD considered whether, in this context, the claims conveyed a broader taste preference message than was supported by the taste test results. NAD recommended that in future advertising the advertiser more clearly separate its claims about Yoplait's taste test results on Yoplait Greek blueberry and Chobani blueberry fruit on the bottom from the comments it has solicited on taste preferences.

Finally, NAD recommended that when the advertiser offers incentives for product reviews, it advise reviewers of their disclosure obligations, and – to the extent that General Mills is aware of a material connection – it discontinue re-posting reviews on social media or modify such re-postings to clearly and conspicuously disclose any material connection between the reviewer and General Mills.

Taboola, Inc.

Online Advertising

Case # 5708 (5.5.14)

NAD recommended that Taboola clearly disclose that it was linking consumers to sponsored content rather than news stories. Congoo, LLC, an Internet-based advertising company, challenged the practices of competitor Taboola with respect to the way it displayed image-plus-text ad units. Taboola and its competitors purchase advertising space from a variety of online publishers on behalf of clients. Congoo argued that Taboola's ad units were so vaguely labeled as to confuse consumers into believing they were going to be linked to editorial content when they were actually directed to an advertisement. NAD recommended that Taboola modify its disclosures to disclose that it was linking consumers to sponsored content.

While Taboola strongly believed that its current disclosure methods were best-in-class and far surpass what other recommendation platforms are using, Taboola agreed to modify the appearance of its disclosures in future iterations of its widget, as recommended by NAD.

American Media, Inc.

Shape Water Boosters

Case # 5665 (12.18.13)

NAD recommended that American Media clearly and conspicuously designate content as advertising when it advertises its SHAPE-branded products in its SHAPE magazine. In an article that appeared to be an editorial about the health value of hydration was an advertisement for Shape Water Boosters. NAD was concerned that consumers may give more credence to the advertiser's objective claims about the product's attributes because of the context in which the claims appeared. American Media argued that

because consumers were aware of the connection between the magazine and the SHAPE-branded product, it has no obligation to disclose that its promotion of SHAPE-Branded products was advertising. There was also an editor's note on page 32 of the magazine that disclosed the connection between SHAPE Magazine and SHAPE Water Boosters. Although consumers may be aware that SHAPE Water Boosters were related to SHAPE magazine, those same consumers can reasonably attach different weight to recommendations made in an editorial context than recommendations made in an advertising context. Consumers may reasonably believe that editorial recommendations in SHAPE magazine are independent of the influence of a sponsoring advertiser. Thus, the NAD recommended that American Media clearly and conspicuously designate content as advertising when it promotes SHAPE-branded products.

American Media agreed to modify the format in which it promotes its branded products.

Nutrisystem (Pinterest)

"Real Consumers. Real Success."

Case # 5479 (6.29.12)

NAD, following its review of "Real Consumers. Real Success." – a Pinterest board maintained by Nutrisystem, Inc. – determined that the weight-loss success stories "pinned" to such boards represent consumer testimonials and require the complete disclosure of material information. NAD noted its appreciation that Nutrisystem took immediate steps to provide such disclosures.

Nutrisystem's "Real Consumers" pinboard featured photos of "real" NutriSystem customers and highlighted their weight-loss successes. The customer's name, total weight loss and a link to the NutriSystem website appeared below each photo.

Claims at issue in NAD's review included:

- "Christine B. lost 46lbs on Nutrisystem."
- "Michael H. lost 125 lbs. on Nutrisystem."
- "Lisa M. lost 115 lbs. on Nutrisystem."
- "Christine H. lost 223 lbs. on Nutrisystem."

Upon receipt of NAD's inquiry, the company asserted that necessary disclosures were inadvertently omitted from Pinterest. The advertiser stated that the testimonials at issue had appeared on Pinterest for less than two months, and said the disclosures were added immediately upon receipt of NAD's letter.

CHIPOTLE MEXICAN GRILL (YouTube)

Chipotle Restaurants

Case # 5450 (4.18.12)

NAD determined that Chipotle Mexican Grill could support implied claims made in an animated feature, "Back to the Start," that all animals which provide the meat for Chipotle products are naturally raised.

The advertising at issue appeared on the YouTube website, online at Chipotle.com, on Chipotle's Facebook page, in movie theaters in advance of feature films, and on television. It uses stop-motion animation to depict a farmer's journey to sustainable farming.

NAD requested that the advertiser provide substantiation for two implied messages:

- *Chipotle's goal is to exclusively use "naturally-raised" meat in its restaurants*
- *Chipotle has already achieved this goal and all of the animals which provide the meat (pork, chicken and beef) for Chipotle products are, in fact, "naturally-raised."*

The video – a first for Chipotle – was directed by London-based John Kelly and featured a cover of the Coldplay song "The Scientist," sung by music icon and family farm advocate Willie Nelson.

Following its review of the evidence in the record, NAD found that the advertiser provided a reasonable basis for the two messages implied in the "Back to the Start" film – both its aspirational message and the message that all of the animals which provide the meat for Chipotle are, in fact, "naturally-raised" according to Chipotle's own definition of the term.

However, NAD cautioned the advertiser that, although its implied messages are currently substantiated, to the extent that supply constraints result in shortages of "naturally-raised" meats in particular markets, future advertising may need to disclose this fact."

Coastal Contact, Inc. (Facebook)
Like-Gated Ad Campaign
Case #5387 (10.25.11)

In a case of first impression, NAD determined that the display of the total number of "likes" on the Facebook page of Coastal Contacts, Inc., conveys a general social endorsement.

NAD determined that the display of Facebook "likes" on a company's Facebook fan page can mean many things to consumers, including that consumers like the company, product or service, that the individual who "liked" the content entered a like-gated promotion contest or sweepstakes, or that the consumer wanted to share some content on the company's page with their "friends."

Because actual consumers “liked” the Coastal page, and those consumers who participated in the like-gated promotion received the benefit of the promotion, NAD determined that Coastal had the general social endorsement that the “likes” convey. NAD noted for the record, however, that the outcome of the case would have been quite different if the evidence in the record demonstrated that consumers who participated in the like-gated promotion could not or did not receive the benefit of the offer, or that the advertiser used misleading or artificial means to inflate the number of Facebook “likes.”

With respect to the statements made in press releases to the investor community, NAD recommended that Coastal clarify that the number of Facebook “fans” or “likes” noted in the press releases is based on the total number of “fans” or “likes” the Company has received from all of its Facebook pages globally.

NAD further recommended that Coastal Contacts, Inc., discontinue an “up to 70 percent” savings claims and modify advertising that promoted “free” products.

LALA-USA, Inc. (YouTube)
La Crème Real Dairy Creamer
Case #5359 (08.08.11)

This case involved in part a series of “Cow Tip” vignettes that claimed competing non-dairy creamers contained ingredients also found in paint, glue, shampoo and shaving cream, and that some non-dairy creamers are flammable and contain trans fat. The vignettes were also linked to YouTube videos where non-dairy creamers were shown as a replacement for glue or paint. During the course of NAD’s review, the advertiser said it would permanently discontinue the challenged vignettes and claims, an action that NAD found necessary and proper.

NAD determined that the challenged advertisements did not convey an implied all-natural claim and concluded that the advertiser could support the claims “100% Dairy” and “Real Dairy.”

Bridgestone Golf, Inc.
Golf Ball Fitting
Case #5357 (08.02.11)

Bridgestone argued that its name on Twitter is not advertising. Section 1.1(A) of the *NAD/NARB Procedures* states that the term “national advertising” includes commercial

messages “in any medium...if it has the purpose of inducing a sale or other commercial transaction or persuading the audience of the value or usefulness of a company, product or service . . . and if the content is controlled by the advertiser.” “In any medium” clearly encompasses social media sites. Twitter is an information network where anyone can read, write and share messages of up to 140 characters. These messages, or Tweets, are public and available to anyone interested in them. Twitter users subscribe to an advertiser’s messages by following its account. Subscribers receive them in a feed of all the accounts to which they have subscribed. Further, NAD has previously considered other social media claims that have appeared on YouTube and Facebook and determined that when claims are controlled or disseminated by the advertiser they may be considered national advertising.

With regard to the advertiser’s Twitter account, one of the names the advertiser reserved was “1BallFitter.” It is common Twitter practice when categorizing and organizing Tweets or searching for other Tweets about a particular topic that Twitter users will place a hash tag (“#”) in front of the topic heading. NAD determined that when Twitter users use the “#1BallFitter” to Tweet about or find Tweets about the advertiser’s golf ball fittings, they understand the meaning of the “#” symbol to be a “Number 1” claim, particularly since “1Ballfitter” standing alone is confusing at best and literally (i.e., that the advertiser has only one ball fitter) not the message the advertiser wishes to convey.

Consequently, NAD determined that it has jurisdiction to consider claims made on Twitter because they constitute “national advertising” within the meaning of NAD Procedure § 1.1(A).

Children’s Advertising Review Unit

Cartoon Doll Emporium

www.CartoonDollEmporium.com

Case #5743 (7.17.14)

CartoonDollEmporium.com was described as a safe, carefully moderated gaming website and social network where children can play games, make friends, upload photos, enter contests, invite friends, create avatars, and purchase and acquire virtual goods.

Upon review, CARU found that the site: employed an age-screening process that allowed visitors to go back the original registration screen and change their ages, circumventing certain privacy protections; did not include a link to its privacy policy or inform the parent or guardian that personally identifiable information (PII), including full names and street addresses, could be shared by children in its direct notice to parents or guardian, allowed children to disclose PII without first obtaining parental consent, allowed children to upload photos of themselves and attach captions that included PII

without first obtaining parental consent; contained advertisements for products that were rated for mature audiences; did not obtain parental consent before allowing third parties to collect information that was then used to recognize users over time and across different websites for advertising purposes.

CARU recommended that the operator modify its privacy practices to bring the site into compliance with CARU's guidelines and the federal Children's Online Privacy Protection Act (COPPA), which the company agreed to do. The company, in its advertiser's statement, said that it has "reviewed the case decision and accepts CARU's decision in its entirety and has already made all of the changes recommended by CARU.

SPIL Games, BV
Girlgogames.com
Case #5533 (1.9.13)

CARU recommended that the SPIL Games, NV, operator of the website, girlgogames.com, modify its site to better protect the privacy of child visitors. The company agreed to do so.

CARU was concerned that the website, which allows members to create profiles, view profiles of others, allowed children under 13 to disclose personally identifiable information without first providing parental notice or obtaining parental consent. CARU was also concerned that the site invited children to register for the site using social media tools, such as Facebook and Twitter, which do not permit participation by children under age 13.

The operator agreed to make the changes recommended by CARU, including the disabling of its feature that allowed log-in through social media and removed links to Twitter.

Electronic Retailing Self-Regulation Program (ERSP)

CONSUMERAFFAIRS.COM, INC.
ConsumerAffairs.com
Case #353 (9/4/2014)

ERSP reviewed online advertising claims for ConsumerAffairs, including:

- "Consumer Affairs is a consumer news and advocacy organization founded in 1998 by James R. Hood, a veteran Washington, D.C. journalist and public affairs executive. Our website includes consumer news, recall information and tens of thousands of pages of consumer reviews."
- "ConsumerAffairs.com is a private, non-governmental entity that empowers consumers by providing a forum for their reviews."

The challenger also expressed concerns regarding the filtering of reviews on the website; a lack of disclosure to consumers that describes how the ratings system operates; the message that ConsumerAffairs.com is a consumer advocacy organization; and the lack of disclosures describing the material connection between Consumer Affairs clients and their review pages.

ConsumerAffairs is a website that publishes stories on various topics and compiles consumer news, recall information, consumer resolutions, and company features along with press releases and alerts from different public sources. The site also maintains a publicly searchable database of consumer reviews of companies; each page pertaining to a company on the website includes a five-star "satisfaction rating" based upon complaints and reviews.

As the marketer's website encompasses all aspects of customer contact, including products, services, sales and complaints, ERSP did not object to the marketer's characterization of its website as a "... consumer news and advocacy organization."

ERSP found that the relationship between ConsumerAffairs and its accredited members was not adequately disclosed and thus, recommended the marketer clearly and conspicuously disclose the material connection it has with its accredited members throughout its website.

ERSP also recommended that ConsumerAffairs modify its website to clearly and conspicuously disclose to visitors of the website that reviews and complaints upon which the satisfaction ratings are based are displayed differently for accredited members and nonaccredited members.

EUROPHARMA

Curamin

Case #361 (2/4/2015)

ERSP considered whether EuroPharma failed to adequately inform consumers of the material connection between EuroPharma and the website TerryTalksNutrition.com, which features Terry Lemerond, a founder and president of EuroPharma.

The marketer asserted that the TerryTalksNutrition site is a third-party, educational website containing information relating to health and nutrition and that the content is based on the opinions and experience of Mr. Lemerond.

EuroPharma said that as a demonstration of good faith, future references on the site will be made only to ingredients and not specific formulas. EuroPharma also explained that it had removed links from the blog to EuroPharmaUSA.com and Curamin.com.

LIQUID HCG DIET, LLC (Twitter)

Liquid HCG Diet
Case #246 (6.16.10)

Claims for the homeopathic Liquid HCG Diet product appeared on Twitter. In particular, the twitter claims attested to the effectiveness of the Liquid HCG Diet. The marketer argued that they were not behind the posting of messages related to their product on twitter, and were unaware of how the messages appeared on the Twitter page of "jessicastewart9."

ERSP looked to the FTC Guides Concerning the Use of Endorsements and Testimonials in Advertising, which point out that an advertisement that contains an endorsement that relates to the experience of one or more consumers on a central or key attribute of the product will be interpreted as representing that the endorser's experience is representative of what consumer can generally expect to achieve. ERSP determined that the weight-loss and diet success results attested to on individual Twitter pages is considered advertising for the purpose of communicating general expectation of the product. According to ERSP, without any information to the contrary which may lead consumers to understand that the statements are unrepresentative of typical product performance, these representations must be independently supported by the marketer. In addition, ERSP noted that the fact that the marketer did not know about a consumer making a particular claim does not absolve the marketer from responsibility of the accuracy of the claims.

URBAN NUTRITION, LLC (Blogs)

WeKnowDiets.com (and affiliated websites)
Case #219 (8.11.09)

In this case, ERSP examined advertising claims on the marketer's websites, which were formatted as independent product-review sites.

The challenger argued that the marketer presented itself as an unbiased and independent resource for consumers when there was a potentially material connection between the marketer, the websites and the products reviewed. The challenger also argued that the marketer failed to disclose that it had compensated the individuals writing the product reviews.

Preliminarily, ERSP pointed out that the language on the weknowdiets.com website would appear to indicate that the information was based upon independent assessments of the products. However, the marketer conceded to ERSP that it owned and controlled the weknowdiets.com site, along with other affiliated websites.

It was clear to ERSP that because the marketer owned not only the websites, but several products being reviewed on the site, this relationship constituted a "material connection" that would have a significant effect on the weight or credibility given to the endorsement by that audience. ERSP also concluded that because the marketer hosts and exercises

editorial control over the websites for the purposes of disseminating reviews of products that directly compete with the marketer's own products, it is imperative that the placement of the disclosures regarding material connections be of such prominent nature that consumers understand the relationship of the marketer and the products being reviewed immediately upon visiting the site.

INNOVATIVE MEDIA, INC. d/b/a www.PhantomPlate.com (Second Life)

PhotoBlocker Spray
Case #196 (12.3.08)

ERSP's first case involving advertising that appeared in social media. The advertising at issue was found in Second-Life, which is an internet-based, 3D virtual community that allows users to explore, meet other residents, socialize and create and trade items with each other. ERSP determined preliminarily that advertising within online games may be considered national advertising.

The product, Photoblocker Spray, is designed to be sprayed onto the face of motor vehicle license plates, which will conceal the license plate numbers and/or letters from photo-radar traffic cameras. ERSP concluded that the legality of the product is a material condition in consumers purchasing the product – marketers must inform consumers that the product may not be used legally in certain states.

The ASRC Online Archive is an exclusive resource for the advertising industry and contains decisions authored by the:

- Children's Advertising Review Unit
- Electronic Retailing Self-Regulation Program
- National Advertising Division
- National Advertising Review Board

The full text of each decision issued by the advertising industry's self-regulatory system is available by subscription.

For more information about the ASRC Online Archive, please contact Saveeta Dhanai. She can be reached at 212.705.0115, or by email at sdhanai@asrcbbb.org.