BBB National Programs
National Advertising Division®

2022 Cosmetics, Anti-Aging, and Personal Care Digest

The National Advertising Division (NAD) of BBB National Programs provides independent self-regulation and dispute resolution services, guiding the truthfulness of advertising across the U.S. NAD reviews national advertising in all media and its decisions set consistent standards for advertising truth and accuracy, delivering meaningful protection to consumers and leveling the playing field for business.

NAD cases can be initiated through NAD's independent monitoring of advertising claims or through "challenges" to advertising claims filed by competitors, consumers, or public interest groups. This digest includes excerpts from cosmetics and personal care cases since 2010. Each case involves consideration of the claims made in the advertising and labeling and the supporting evidence provided by the advertiser.

Compliance with NAD decisions is voluntary. Nevertheless, NAD enjoys a high rate of compliance. Advertisers that either refuse to participate in the self-regulatory process or do not implement the NAD recommendations are referred to appropriate government agencies such as the Federal Trade Commission (FTC).

PerSé Beauty Inc.

Prose Haircare Product Reviews

Case #7054RO (March 2022)

NAD determined that PerSé Beauty Inc. (doing business as "Prose") provided a reasonable basis for the claim "225k 5-star product reviews on Review and Refine" for its customizable hair products. However, NAD recommended that the advertiser clearly disclose qualifying information related to how it collects and counts reviews.

The advertiser formulates a customer's product from the result of their online hair and lifestyle survey and continuously tailors the formula based on the customer's post-purchase feedback, a process it refers to as its "Review & Refine" experience. As part of its process, Prose solicits star ratings on aspects of the customer's experience after each purchase — overall experience, satisfaction per product, and various product attributes. It may revise its formulation of the product after each purchase based on the consumer's feedback. For example, if the customer indicated that they would prefer a stronger fragrance – that adjustment is made on subsequent purchases. The iterative process of reviewing and refining happens every time the customer orders. This case was initially brought as a SWIFT challenge by Function, Inc. against Prose with regard to the advertiser's "over 192,000 5-star product reviews claim." In that decision, NAD noted that nothing in the context of the challenged unqualified "192,000 5-star product reviews" claim, or the claim itself, alerts consumers that its count of 5-star reviews is based on Prose's "Review and Refine" experience. NAD determined that the evidence in the record was insufficient to support the challenged "over 192,000 5-star product reviews" claim and recommended that it be discontinued. In the prior proceeding, NAD did recommend, however, that Prose could make a claim based on aggregated product reviews provided it discloses that they were solicited in a neutral manner as part of the "Review and Refine" process from verified purchasers. Subsequently, Function filed a compliance inquiry regarding concerns about Prose's revised "225k 5-star product reviews" claim as well as Prose's failure to adequately disclose how the "Review and Refine" tool impacts its 5-star claim. NAD closed the compliance inquiry upon concluding that the advertiser had made a good faith effort to comply with NAD's decision by modifying references to Review & Refine to state that reviews are based on a back-and-forth process of altering and re-reviewing the product to

increase customer satisfaction. NAD granted Prose's petition to reopen the underlying matter as to the advertiser's revised "225k 5-star product reviews" claim. Given that the challenger did not wish to participate in the reopened matter, NAD proceeded with the matter as if the claims at issue were assessed by NAD in the Standard Track as part of its independent monitoring of truth and transparency in U.S. national advertising.

In its analysis of whether Prose's claims about its consumer reviews are supported, NAD determined that Prose's solicitation of reviews is reliable, the advertiser instituted mechanisms to ensure reviews were properly collected and assessed, and the survey design was reliable. However, NAD noted that Prose uses the 5-star review claim throughout its advertising without important qualifying information related to how it collects and counts reviews. Therefore, although the claim "225k 5-star product reviews on Review and Refine" is supported by a reasonable basis, NAD recommended that the advertiser clearly disclose that: • Prose's star ratings are counted on a per product, not per order, basis; and • The number of 5-star reviews include 5-star reviews of reordered products which initially received 5-star reviews. Further, NAD concluded that the inclusion of only positive reviews on the advertiser's website was not misleading because Prose demonstrated that the reviews reflect typical customer experience and the honest opinions of verified purchasers.

Prose agreed to comply with NAD's recommendation.

Read the press release

The Procter and Gamble Company

Olay Body Wash

Case #7013 (March 2022)

NAD recommended Procter and Gamble Company (P&G) discontinue the claim that Olay body wash "improves skin 3X better" than the leading body wash. NAD also recommended that the advertiser modify the disclosure in its "Lessons in Layering" print advertisement to accurately identify the body wash used in its supporting study. These claims, made by P&G in digital, print, and TV advertising, were challenged by Unilever United States, Inc. (Unilever), maker of competing personal care products.

In each of the challenged advertisements, NAD found one reasonable interpretation of the "improves skin 3X better" claim to be that P&G's Olay Premium body wash improves skin three times better with regard to any one of the skin attributes mentioned in the context of the advertisement, such as brightness, smoothness, radiance, hydration, or wrinkles. Even when the 3x improvement claim is not featured alongside other skin attributes, NAD found that the net impression is still one of general skin improvement.

In addition, NAD concluded that the claim conveyed a comparative superiority message versus Unilever's Dove. Further, NAD determined that the disclosure "versus the leading body wash after 14 days, based on clinical moisture retention" was not sufficient to qualify the takeaway of the claim "improves skin 3X better" to clinical moisture retention.

As support for its claims, P&G relied on the results of its Leg Controlled Application Test (LCAT), a clinical method for in vivo testing of cleansing products. NAD found that P&G's LCAT methodology is consumer relevant and tested an appropriate population. However, NAD concluded that the LCAT study was not a good fit to support the claim that Olay body wash "improves skin 3X better" than Dove body wash because:

- P&G's calculation of the 3X ratio of improvement of Olay Ultra Moisture over Dove Deep Moisture is not accurate or consumer relevant; and
- The testing P&G submitted only tests for moisture retention or moisturization, therefore the LCAT results do not support the 3X improvement messages reasonably conveyed by the challenged advertisements.

For these reasons, NAD recommended that P&G discontinue the claim that Olay body wash "improves skin 3X better" than the leading body wash. In addition, NAD noted that the disclosure in P&G's "Lessons in Layering" print advertisement references a clinical study on Olay Premium body wash, whereas the clinical study submitted by P&G to support the claims was conducted on Olay Ultra Moisture body wash. While NAD found the difference between Olay Ultra Moisture and Olay Premium body washes to be nonmaterial, it recommended that the disclosure be modified to accurately state the product used by the participants in P&G's LCAT. Finally, based on P&G's assurances that a challenged print advertisement featuring Olay Cleansing and Nourishing Body Wash with B3 and hyaluronic acid and television commercials titled "A Struggle" are not current and have been permanently discontinued, NAD did not review these on the merits.

P&G agreed to comply with NAD's recommendations.

Read the press release

Advantice Health, LLC

Kerasal Fungal Nail Renewal
Case #6421RO (July 2021)

NAD determined that Advantice Health, LLC provided a reasonable basis for the claim that its Kerasal Fungal Nail Renewal product "starts improving nail appearance in just 2 days." The claim at issue, which appeared on product packaging and in internet advertising, was originally challenged by Arcadia Consumer Healthcare in 2020. However, after NAD reached its decision in that proceeding, NAD was informed that the challenger had publicized the proceeding in violation of BBB National Programs' Policies and Procedures. Therefore, pursuant to these rules, NAD closed the case and reopened it through NAD's monitoring program. The advertiser initially appealed the decision but withdrew its appeal and agreed to comply with NAD's recommendations. Shortly thereafter, the advertiser petitioned to reopen the matter, explaining that it had conducted a new in-home-use test (IHUT) to address the concerns expressed by NAD in the underlying case. NAD granted the advertiser's petition to reopen.

In support of its claim that Kerasal Fungal Nail Renewal "starts improving nail appearance in just 2 days," the advertiser relied on the results of a four-day IHUT conducted by a third-party research company. NAD assessed the reliability of the IHUT, noting that a properly conducted IHUT requires certain standards and controls to ensure that the response is free from bias (e.g., blinding, randomization), that there is a representative study population, and that there is proper validation of the results. NAD appreciated Advantice's numerous modifications to the IHUT to address NAD's concerns from the prior matter. NAD noted that the results of the IHUT revealed that after two days of product use, 61 percent of the 85 subjects who had a reference nail and were doctor diagnosed or picture approved saw at least some improvement in the overall appearance of the nail, a statistically significant result which combined all positive responses. Based on the evidence provided, NAD determined that the claim that Kerasal Fungal Nail Renewal product "starts improving nail appearance in just 2 days" was supported.

Read the press release

PerSé Beauty Inc.

Prose Haircare Product Reviews
Fast-Track SWIFT Case #6992 (May 2021)

This case was brought as a SWIFT challenge by Function, Inc. against Prose with regard to the advertiser's "over 192,000 5-star product reviews claim." In that decision, NAD noted that nothing in the context of the challenged unqualified "192,000 5-star product reviews" claim, or the claim itself, alerts consumers that its count of 5-star reviews is based on Prose's "Review and Refine"

experience, customer's post-purchase feedback based on which it continuously tailors the formula. It may revise its formulation of the product after each purchase based on the consumer's feedback.

NAD determined that the evidence in the record was insufficient to support the challenged "over 192,000 5-star product reviews" claim and recommended that it be discontinued. However, Prose could make a claim based on aggregated product reviews provided it discloses that they were solicited in a neutral manner as part of the "Review and Refine" process from verified purchasers.

The advertiser agreed to comply with NAD's recommendations.

Read the press release

Johnson & Johnson Consumer, Inc.

Neutrogena Personal Care Products

Case #6926 (June 2021) // NARB Case #288 (September 2021)

The advertiser voluntarily discontinued the claims, "Recommended by dermatologists 2x more than any other skincare brand"; "Our #1 Dermatologist Recommended Platform for Sensitive Skin"; and "#1 Dermatologist Recommended solution visibly reduces fine lines and wrinkles in just one week." In reliance on the advertiser's representation that those challenged 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 recommended that the advertiser discontinue the claims "#1 Dermatologist Recommended Brand"; "#1 Dermatologist Recommended Skincare Brand"; "#1 Dermatologist Recommended"; and "#1 Dermatologist Recommended Skincare." NAD recommended the advertiser modify its use of the claim, "#1 Derm-Trusted Suncare" to avoid the misleading consumer takeaways that (1) it is used by dermatologists in their personal lives specifically because they trust the brand and (2) claim applies specifically to Neutrogena Ultra Sheer products as opposed to the brand in general.

JJCI appealed NAD's recommendation to discontinue the claim "#1 Dermatologist Recommended Skincare Brand," as well as NAD's determination that the challenge was not foreclosed by NAD's prior decision in Neutrogena Corporation (Neutrogena Products), Report #4881, NAD/CARU Reports (July 2008), to the National Advertising Review Board (NARB).

NARB — (#288 — 09.27.2021) — NARB affirmed NAD's jurisdictional determination as well as its recommendation that JJCI discontinue the claim "#1 Dermatologist Recommended Skincare Brand." JJCI agreed to comply with NARB's recommendations.

Read the press release

Function Inc.

Shampoo and Conditioner

Fast-Track SWIFT Case #6938 (February 2021)

Prose brought a challenge to Function's claim that it had "over 110,000 5-star product reviews!" for its Function of Beauty customizable hair care products. NAD recommended that the advertiser discontinue the challenged claim or modify it to tout the number of 5- star reviews it can reliably support. The "110,000 5-star product reviews" claim was appropriate for Fast-Track SWIFT because the issue was limited to whether the advertiser provided a reasonable basis for the claim when it counted reviews in the combined "shampoo and conditioner" category as two separate product reviews, one for shampoo and one for conditioner.

NAD determined that at least one reasonable interpretation of the claim "over 110,000 5- star product reviews!" is the express message that consumers have submitted 110,000 distinct reviews.

Nothing in the context of the claim, or the claim itself alerts consumers that its count of 5-star reviews is based on counting a single review of shampoo and conditioner as two product reviews. Nor did the advertiser provide a reasonable basis to support the claim that it has over 110,000 product reviews for "shampoo and conditioner" because reviewers had no mechanism to rate the products separately.

Function agreed to comply with NAD's recommendation.

Read the press release

L'Oréal USA, Inc.

CeraVe Skincare Products

Case #6921 (January 2021)

L'Oréal USA, Inc. (L'Oréal) failed to support the claims that its CeraVe skincare brand is the "#1 dermatologist recommended skincare brand." Johnson & Johnson Consumer Inc. (J&J), the maker of the Neutrogena skincare line, challenged L'Oréal's online advertising, social media, and in-store materials for CeraVe® skincare products.

L'Oréal provided data from an online survey of dermatologists conducted by IQVIA/ProVoice to support the claims. The parties disputed the extent to which the potential for double counting could have affected the results and the extent to which any double-counting did in fact affect the results. NAD concluded that the ProVoice survey did not adequately instruct respondents not to duplicate their total average weekly recommendations between and among categories. The instruction did not sufficiently advise respondents to record recommended products for indications in only one category. Also, NAD found that the potential for double counting was not resolved by the ambiguous instructions. The survey flaws created a universe of responses for certain categories that could not be reliably combined by including or excluding overlapping categories to demonstrate the overall winner. Nothing precludes L'Oréal from making truthful and non-misleading claims about dermatologists' recommendations for its skincare products based on reliable survey data.

L'Oréal also failed to support the claims that its CeraVe skincare brand is the "#1 recommended non-OTC moisturizer brand for acne-prone skin." L'Oréal provided data from the aforementioned survey of dermatologists conducted by IQVIA/ProVoice to support the claims. J&J noted that CeraVe does not offer an OTC acne drug product moisturizer and the ProVoice survey questioned dermatologists expressly on recommendations for "OTC" acne "Moisturizers/Treatments," the converse of "non-OTC" moisturizers as reflected in the claim and that therefore there was no fit between the substantiation and the claim. While L'Oréal's use of the term "non-OTC" is an effort to accurately distinguish its products from acne drug products sold without a prescription, "non-OTC" may also be understood by consumers as a reference to prescription drug products instead of cosmetic products like CeraVe's. Without a more accurate descriptor such as "non-prescription," NAD thus determined that there was a poor fit between the substantiation and the claim as it appears. Nothing precludes L'Oréal from making truthful and non-misleading claims about dermatologists' recommendations for its skincare products based on reliable survey data.

Although L'Oréal initially appealed NAD's decision, it withdrew the appeal and agreed to comply with NAD's recommendations.

Read the press release

Advantice Health, LLC

Kerasal Fungal Nail Renewal

Case #6421 (October 2020)

NAD determined that Advantice Health, LLC ("Advantice") failed to support the claim that its Kerasal Fungal Nail Renewal product delivered visible results in two days. Competitor Arcadia

Consumer Healthcare ("Arcadia") challenged claims made on Kerasal product packaging and in Internet and television advertising. Advantice relied on an in-home use test (IHUT) to support the claim "VISIBLE RESULTS START IN 2 DAYS" and other similar claims. A properly conducted consumer use survey requires certain standards and controls to ensure that the responses are free from bias (e.g., blinding, randomization), that there is a representative study population, and that there is proper validation of the results. NAD had several concerns with the IHUT, including the population selected for the test and screening questions. The screening questions included a product description that explicitly informs study participants that the product produces visible results fast on nails damaged by fungus before they begin the study, preconditioning them to see visible results, fast. Further, the IHUT was not blinded and had no control group. Additionally, the study did not have dermatologists screen the study population for nail fungus but relied upon self-reporting of nail fungus. For all of these reasons, NAD recommended that Advantice discontinue its claims that its product delivers visible results in two days.

Advantice also failed to support the claim that its Kerasal Fungal Nail Renewal product was clinically proven. Arcadia took issue with the Kerasal product packaging, which included the claims "Reduces discoloration" and "Normalizes thickness" in proximity to the claim "clinically proven." Clinically proven claims are establishment claims that require highly reliable scientific testing that directly correlates with the claims at issue. Advantice submitted four studies, including one test, Piraccini, on the product itself. However, the Piraccini study lacked a control group and a lack of blinding. NAD has stated that "clinical" means "controlled, consistent and reproducible conditions" pursuant to which NAD has repeatedly stated the importance of blinding and a control. Advantice argued that there is a lower standard of substantiation for products touted as improving the appearance of nails damaged by fungus. However, Advantice sets its standard by claiming that the product is "clinically proven." Advantice also contended that the study results were supported by photographic analysis, and submitted some of the photographs to NAD as confidential evidence, but it was not clear to NAD that the photographs were part of the study because they are not mentioned in the published study, are not mentioned in the primary or secondary endpoints of the study, and there is no statistical analysis of them. Because NAD concluded that the studies submitted were not competent and reliable scientific evidence sufficient to substantiate the "clinically proven" claim, it recommended that Advantice discontinue claims that the product is "clinically proven."

Advantice supported the claim that its Kerasal Fungal Nail Renewal product reduces discoloration. "Reduces discoloration" is a qualified claim that suggests that some discoloration remains after the use of the product. Advantice relied on three studies, one of which tested Kerasal itself, while the other two tested similar products. There was a good fit between the evidence and the claim that Kerasal reduces discoloration. In the testing, patients were asked to assess the difference between what the color of the nail should be and what it is, a subjective assessment. The data reported the percentage of patients who saw an improvement and not a cure, and the claim "reduces discoloration" conveyed the message that a patient can expect an improvement in discoloration, not a cure, and that some discoloration will remain. Further, the patient-reported outcomes supplied as evidence are subjective, and "reduces discoloration," here, conveyed the message that the improvement was a subjective one that patients will see.

Advantice did not support the claim that its Kerasal Fungal Nail Renewal product normalizes thickness. "Normalizes thickness" reasonably conveys the message that the thickness becomes normal after the use of the product. Further, while discoloration is a perceived trait regarding deviance from the norm that is arguably subjective, thickness is a trait that can be measured objectively in units of distance. Advantice relied on three studies, one of which tested Kerasal itself, while the other two tested similar products. The fit between the evidence and the claim that Kerasal normalizes thickness was not as good. "Normalizes" reasonably conveys a message of cure, not just improvement, while the data shows that panelists reported improvements, not that nail thickness returned to normal. Further, thickness, while not expressly defined in the case record, can be measured objectively in units of distance, but the data in the case record contains no such measurements. The claim that the product "normalizes thickness" did not convey the message that panelists perceived a visible improvement in their nails but not a complete normalization of their nails, and therefore was not a good fit for the evidence.

NAD recommended that Advantice modify its advertising to avoid conveying the message that clinical studies support that users can generally expect to achieve healthy-looking nails after eight weeks. In a television ad, a damaged digital toe is shown. When Kerasal is applied to it, the shape changes to normal, and the discoloration partly clears, conveying the message that these results are what consumers can expect. The product website has photos labelled "Clinical Study Images" that show a big toe at the following times: "Before," "Week 1," "Week 4," and "Week 8." The photographs, too, show a toe progressing from damaged to near normal. NAD did not find a study supplied by Advantice to support the claims substantiated the "clinically proven" claim or the clinically proven claim of nail improvement after eight weeks. Therefore, NAD recommended that Advantice modify its advertising to avoid conveying the message reasonably conveyed by photographs that clinical studies support that users can generally expect to achieve healthy-looking nails after eight weeks of treatment.

Because there was insufficient evidence to support the message that Kerasal Fungal Nail Renewal caused a user's nail thickness to return to normal, NAD recommended that Advantice discontinue a challenged demonstration in a television advertisement. The commercial shows a complete cure of treated nail's shape as the nail transforms from thick and irregular to thin and regular as a normal nail (but some discoloration remains). The evidence, however, showed that panelists perceived that their nail thickness "improved" after using the product for several weeks, not that any irregularity in thickness disappeared.

NAD recommended Advantice discontinue the claim that its Kerasal Fungal Nail Renewal product is "new and improved" or modify its claim to avoid conveying the message that its product is "new & improved" (e.g., "new & improved dosing directions"). It is well-settled that the claim "new and improved" conveys the message that the product has been modified. Advantice explained that although the ingredients have not changed, the directions for use have changed from once per day to twice per day, and thus, the new dosing instructions make it new and improved. Adding to the likelihood that consumers will take away a message that the product itself has been improved is the use of the word "improved" without qualification. "Improved" conveys the message that the product itself, not simply the directions for use, has been changed. Unless the claim "improved" is tied to the product directions, the claim that a product is "improved" suggests to the consumers that something intrinsic to the product is different. NAD recommended that Advantice discontinue claims that conveyed the message that the product was "new, improved and/or unique" where the advertiser "decided to highlight a pre-existing product attribute."

Although Advantice initially appealed NAD's decision, it withdrew its appeal and agreed to comply with NAD's recommendations.

Read the press release

Mask, LLC

Mask Spotless Acne & Psoriasis Sheet & Spotless Blemishes & Oily Skin Soothing CBD Sheet Mask

Case #6408 (September 2020)

NAD originally challenged the product name Spotless Acne & Psoriasis Sheet and product claims based on advertising appearing on Bloomingdales.com. Based on the advertiser's correspondence with Bloomingdales, it appears that the product originally marketed is now being sold under a different name with modified claims. However, NAD never received confirmation that (1) the advertiser that it had permanently discontinued the product name, Spotless Acne & Psoriasis Sheet, and the challenged claims ("This full-spectrum CBD-infused sheet masks calms signs of inflammation, returning skin to a calmer, clearer state" and "This solution works to help heal acne and psoriasis, encouraging signs of skin renewal and cell turnover to lessen the look of redness and scarring."); and/or (2) that Spotless Blemishes & Oily Skin Soothing CBD Sheet Mask, which the advertiser indicated would replace Spotless Acne & Psoriasis Sheet, is a different product (i.e., different formulation) from the originally challenged Spotless Acne & Psoriasis Sheet and

whether Spotless Acne & Psoriasis Sheet is currently being sold. To the extent that the Spotless Acne & Psoriasis Sheet product name and the originally challenged claims have been modified, the voluntarily discontinued original claims will be treated, for compliance purposes, as though NAD recommended their discontinuance and modification and the advertiser agreed to comply.

NAD recommended that the product name "Spotless Blemishes & Oily Skin Soothing CBD Sheet Mask" be discontinued. The name of the product expressly claims that its CBD face mask confers two benefits: (1) spotless blemishes; and (2) soothes oily skin. Mask failed to conduct or provide any testing on the product itself to support the challenged product name or its claims that the product completely removes blemishes and soothes oily skin. Given that the product name made unsupported express claims, no extrinsic evidence of consumer confusion was required to recommend a product name change. NAD therefore recommended that the product name, Spotless Blemishes & Oily Skin Soothing CBD Sheet Mask, be discontinued.

NAD recommended that Mask, LLC discontinue the claim "Helichrysum Essential Oil may work to help heal blemishes, encouraging signs of skin renewal and cell turnover to lessen the look of redness and scarring." Mask failed to provide a reliable ingredient study demonstrating that the amount of helichrysum essential oil found in the product, which was never specified, had a positive effect on blemishes. A review article and an abstract were insufficient to support the claim.

Mask, LLC refused to comply with NAD's decision. Consequently, NAD referred this matter to the appropriate regulatory authority.

Read the press release

Qf Systems, LLC

Fillerina Dermo-Cosmetic Replenishing Gel

Case #6373 (June 2020)

NAD determined that Qf Systems, LLC was unable to support claims that its Fillerina Dermo-Cosmetic Replenishing Gel "fills in fine lines and wrinkles, revealing a more radiant complexion" and "corrects visible wrinkles and expression lines." At the outset, NAD determined that images of the product vials and the accompanying syringe-like applicators alongside claims referring to the "filling in" or "plumping of wrinkles" and "adding volume to cheeks and lips," reasonably conveyed that the products confer benefits similar to cosmetic procedures which are designed to "fill in" wrinkles and "lift" sagging skin.

Qf submitted a published study—the Nobile Study—conducted on Fillerina Dermo-Cosmetic Replenishing Gel and Nourishing Film as well as the Fillerina day and night creams and the eye/lip cream. The Nobile Study, a double-blind, placebo-controlled and randomized clinical study consisting of 40 women ages 25-55, concluded that Fillerina products improved skin sagging of both the face and cheekbone contours, lip volume and decreased wrinkle depth and volume to a statistically significant degree. NAD was concerned that although the study took place over the course of four weeks, the Replenishing Gel and Nourishing Film were only used for the first two weeks. Also, NAD was concerned about whether the results of the study demonstrate consumer meaningful/noticeable results. While the results demonstrated the products were efficacious, they did not speak to the degree improvement for each parameter—i.e., whether the degree of improvements observed in the study are consumer noticeable/meaningful, as is reasonably communicated by the challenged claims.

Further, NAD had a number of concerns with Qf's interpretation of the data and whether the results demonstrated a difference that was both statistically significant and consumer noticeable. Even assuming that the effects reported in the study were shown to be statistically significant, there was no evidence suggesting that the magnitude of these effects is noticeable by consumers, let alone consumer meaningful or to the degree characterized by claims such as "fills in fine lines and wrinkles" or "corrects visible wrinkles and expression lines" reasonably imply. Nothing prevents Qf from making claims that match the results of the study—e.g., that Fillerina improves the appearance of chronoaged skin in subjects showing mild-to-moderate clinical signs of skin aging."

Qf was unable to support an implied advertising claim that its Fillerina Dermo-Cosmetic Replenishing Gel and Nourishing Film as well as the Fillerina day and night creams and the eye/lip cream removes lines and wrinkles similar to cosmetic procedures, according to the NAD. Nothing prevents Qf from making claims that match the results of the study—e.g., that Fillerina improves the appearance of chronoaged skin in subjects showing mild-to-moderate clinical signs of skin aging."

QF Systems agreed to comply with NAD recommendations.

Read the press release

L'Oréal USA, Inc.

Makeup.com, Skincare.com and Hair.com Websites

Case #6370 (May 2020)

L'Oréal USA, Inc. modified its websites to make clear that the content was written by or on behalf of L'Oréal. NAD was concerned that L'Oréal's websites (Makeup.com, Skincare.com and Hair.com) did not sufficiently disclose the company's connection with the websites in a clear and conspicuous manner. A consumer who read an article recommending products on one of these websites might weigh the recommendation differently if they are aware that the content was written by or on behalf of L'Oréal. Consumers should easily understand whether the content they are viewing is an advertisement or editorial content. References to L'Oréal generally appeared at the bottom of the respective webpages, too far from the website logos and content. L'Oréal immediately responded to NAD's inquiry and explained that the full L'Oréal branding was meant to appear, and in fact traditionally did appear, at the top of each webpage, integrated with the website name/logo. L'Oréal explained that during revisions to the websites, the full disclosure was inadvertently dropped on some pages. Also, L'Oréal undertook a thorough review of the three websites to ensure clear branding. NAD appreciated L'Oréal's immediate modifications to its websites to enhance and make it clearer that the content is written by or on behalf of L'Oréal. L'Oréal USA appreciated NAD's thorough and thoughtful review of this matter.

Read the press release

Talyoni Professional, LLC

Cannabis Sativa Cosmetic & Wellness Products

Case #6359 (April 2020)

NAD determined that Talyoni Professional, LLC ("Talyoni") was unable to support the claims that its hair care products contained cannabidiol ("CBD") oil. Zotos International, Inc. ("Zotos"), maker of Joico and other hair care products, challenged Talyoni's packaging and online advertising for its Cannabis Sativa cosmetic and wellness products. Specifically, independent testing of Talyoni Repair and Strengthen Shampoo and Eco Natural Oil Moisture Lock-In Conditioner cited by Zotos showed that there is no CBD in either product.

In support of its claims, Talyoni provided NAD with a fact sheet and certificate of analysis for the cannabidiol ("CBD") oil ingredient used in its products, obtained from its supplier, Blue Bird Botanicals. An advertiser cannot rely on ingredient tests alone to support claims about its finished product. This is especially true when the claim at issue is an objective assertion about the composition of the final product. While the information provided by Blue Bird Botanicals may provide a reasonable basis that Blue Bird Botanicals' CBD oil contains CBD, without more, it was insufficient to demonstrate that Talyoni and Ecoco products contain CBD.

NAD also recommended that Talyoni discontinue the claims, "The Talyoni Labs Cannabis Sativa collection is a comprehensive approach to personal care featuring the time-honored therapeutic benefits of CBD Oil."; "A lush, refreshing, CBD-infused shampoo that smooths hair and hydrates

with shea butter, olive & flaxseed oils."; "Deeply nourishes, repairs and strengthens with CBD, olive and flaxseed oils."

Talyoni agreed to comply with NAD's recommendations.

Read the press release

Elysium Health, Inc.

Basis Dietary Supplement

Case #6339 (January 2020)

Elysium Health, Inc. ("Elysium") permanently discontinued many claims including, in relevant part, that Taking Basis provides noticeable physical health and anti-aging benefits without the need for diet and exercise. NAD, which initiated the inquiry, did not review the claims and will treat the claims as though NAD recommended their discontinuance and the advertiser agreed to comply.

NAD determined that Elysium reasonably demonstrated that NAD+ plays a key role in cellular metabolism and mitochondrial health, and that NAD+ levels decrease with age. Basis is comprised of two ingredients: (1) nicotinamide riboside ("NR"), a compound that is a natural precursor of nicotinamide adenine dinucleotide ("NAD+"); and (2) pterostilbene, an antioxidant in the polyphenol class. Many of the claims, challenged by NAD, were made in social media or recommendation widget advertisements that quoted independent editorial articles or headlines, usually accompanied by a graphic and link to the article. Other challenged advertising referenced the specific biochemical mechanisms by which it argued Basis is effective. Elysium submitted many in vitro studies and animal studies, human trials, including bioavailability studies including a clinical trial conducted on Basis, medical literature reviews, and expert reports that reasonably demonstrated that NAD+ plays a key role in cellular metabolism and mitochondrial health, and that NAD+ levels decrease with age. Also, Elysium produced competent and reliable scientific evidence that demonstrated that a daily serving of its Basis dietary supplement raised whole blood NAD+ levels in people 40-60 years old. However, NAD was concerned about claims that consumers would have increased lifespan, health-span, or any noticeable benefits (e.g., improved sleep) from Basis supplementation. Nothing prevents Elysium from making truthful, narrowly tailored claims describing cellular metabolism and the role that NR and pterostilbene supplementation can play in the cellular metabolism of aging. Elysium should make clear that any noticeable aging-related benefits of taking Basis or the ingredients in Basis has not been shown in humans.

Elysium Health agreed to comply with NAD's recommendations.

Read the press release

Vital Proteins LLC

Vital Proteins Collagen Peptide Products

Case #6337 (January 2020)

NAD opened a monitoring case against Vital Proteins for its Vital Proteins Collagen Peptide Products. The claims, featured in an Instagram post, were as follows: "Perfect for on-the-go, each pack contains 10 g of collagen for healthy hair, skin, nails, bones, joints and gut" and the implied claim that 10 g of collagen consumed as a drink provides consumers meaningful anti-aging benefits in the form of stronger and healthier hair, skin, bones, joints, and digestion.

Although the advertiser provided numerous human clinical studies in support of the challenged claims, all but two were conducted on collagen peptides that were not the same as the peptides found in the actual product which were of bovine origin. The advertiser did not provide reliable evidence that the collagen from other animal sources were the same or substantially similar to what is found in the product such that the results from the studies could be extrapolated to

support the claims at issue. NAD determined that the studies in support of the specified benefits were not reliable because of methodological flaws including the failure to test the actual product, failure to study the target population, failure to test the daily dose of collagen peptides, lack of statistically significant results. The advertiser also relied on animal studies which are not sufficient to support claims for products directed to humans.

NAD recommended that the claims be discontinued. The advertiser agreed to comply with NAD's recommendations.

Read the press release

Zero Gravity

Perfectio™
Case #6325 (December 2019)

NAD opened a monitoring case against Zero Gravity for claims for its Perfectio™ medical device. Among the claims it challenged were (1) "The safest and most effective, advanced Anti-aging product today"; (2) "Perfectio™ is easy to use and you can achieve younger, firmer skin in no time at all"; (3) Results [from the Princeton clinical trial] proved that within a period of one week, visible improvement was reported by 91% of subjects. (The research team defined improvement as: reduction of fine lines and wrinkles, enhancement of clarity, smoothness and radiance); (4) [LED facial technology] is based on the science of stimulating collagen production naturally filling and erasing fine lines and wrinkles; (5) Before and after photographs; (6) Testimonials, including "I have used it twice a week and since them have noticed a dramatic improvement in the appearance of my skin. My pores seem to be smaller; there is less discoloration caused by my melasma, and there is [a] reduction in my fine lines. Overall, I am pleased with the results"; (7) The implied claim that Perfectio+ provides anti-aging results that are akin to cosmetic procedures.

Despite repeated efforts by NAD, the advertiser failed to provide a substantive response to NAD's request for support for the challenged claims or participate in any way in the self-regulatory process. Consequently, NAD is referred this matter to the appropriate regulatory agencies for possible law enforcement action.

Read the press release

Verizon Media/Division of Verizon Communications, Inc.

Inkey List Retinol Serum
Case #6313 (October 2019)

As part of its routine monitoring program, NAD requested substantiation for statements about Inkey List Retinol Serum made in a lifestyle article on AOL.com by Verizon Media, a subsidiary of Verizon Communications, Inc. ("Verizon Media"), an online publisher. The claims were made in an article promoting certain anti-aging products (including Inkey List Retinol Serum) in an AOL.com Lifestyle article entitled "Say goodbye to wrinkles with these 10+ miracle products," and included "Wrinkles, be gone!"; "If you're looking to hide those wrinkles and cover up those fine lines, we've got you covered. From $11.00 gems to splurge-worthy serum, here are the miracle products you need for ageless skin!" The Inkey List Retinol Serum – "Powerful retinol is released slowly to erase fine lines and wrinkles."

Verizon Media argued that NAD does not have jurisdiction over the challenged claims appearing on AOL.com identified as part of this inquiry because it does not constitute national advertising. The advertiser explained that the product reviews were strictly editorial in nature. The statements were not paid for, controlled by, or placed by the retailers whose products were recommended. The editorial and business staff were comprised of different people. The content in the article was derived solely from the editorial staff with no input from the business staff. The recommendations

were based on the product's reviews and general reputation, as well as the editorial staff members' personal experiences. None of the statements was paid for, controlled or placed by Verizon Media. Additionally, the links displayed in the advertising were added after the content was complete.

NAD administratively closed the matter because it agreed that the content identified in its opening letter was not "national advertising." NAD explained that the line between advertising and editorial content is not always clear. Consumers may think they are looking at an article which is, in fact, an advertisement and this misimpression impacts how they interact with the advertised product or advertising. Consumers' trust is eroded when then purchase a product featured in what they think is an article but is, in fact, an advertisement. NAD's primary focus was whether the content was motivated by commercial considerations—i.e., the revenue from affiliate links—and input from Verizon Media such that the content would be considered an advertisement, not editorial content, requiring substantiation for the referenced product claims.

NAD administratively closed the matter because it determined that the material at issue was not national advertising because it was not a paid commercial message. Based on guidance from the BuzzFeed case, Verizon Media explained that its editorial and business staff were comprised of different people. The content in the article was derived solely from the editorial staff with no input from the business staff. The recommendations were based on the product's reviews and general reputation, as well as the editorial staff members' personal experiences. Additionally, none of the statements was paid for, controlled or placed by Verizon Media. As for the affiliate links, the editors chose the affiliate links which were displayed in the advertising after the content was complete. While the editorial staff may have been aware that Verizon Media has deals with retailers, the staff was not privy to the monetization details (e.g., commission rates) so they are unaware as to which links would be more profitable to promote as compared to others. Consequently, the editorial staff would not have an incentive to promote one product over another. Verizon Media further assured that product recommendations were not changed after the fact based on the availability of affiliate link revenue. NAD determined that the content at issue here is not an advertisement because it is not a paid commercial message. Here, NAD concluded that Verizon Media separated editorial and business considerations such that the content in the article was not driven by revenue from affiliate links but solely the editorial staff's opinions about the products.

Guthy-Renker, LLC

Crepe Erase® Anti-Aging Body Care Treatment System

Case #6928 (July 2019) // NARB Case #259 (December 2019)

NAD initiated a monitoring case concerning video and internet advertising for Guthy-Renker, LLC's Crepe Erase® Anti-Aging Body Care Treatment System. The following are representative of the claims NAD challenged: (1) "Crepe Erase is the leading anti-aging body care system clinically shown to reverse crepey-looking skin"' (2) "After 1 Use** - 82% of users reported that skin was instantly smoother." (** Based on a 50-person consumer use survey. Individual results will vary.); (3) "Crepe Erase is enriched with TruFirm Complex to treat and improve the visible signs of aging while helping to promote healthy collagen and elastin. Contains 3 powerful phytonutrients – apple, dill and sage, clinically shown to combat weakened, crepey skin, revealing a smoother, tighter, more youthful-looking texture."; (4) Before and after photographs; (5) Doctor Recommended Claim: "The real secret to Crepe Erase is TruFirm that targets the dermal enzymes that break down collagen & elastin. TruFirm promotes your skin's natural elasticity giving it that youthful looking snap back. Crepe Erase is the only system out there that I recommend to my patients to reverse those signs of skin aging"; (6) Celebrity Endorsement: "I started using Crepe Erase and saw improvement immediately. I've been using it for two years now and I really don't see any crepey skin." -- Dorothy Hamill.

The claims and before and after photographs appeared in infomercials for Crepe Erase. NAD determined that the claims and images showing significantly reduced crepey skin reasonably convey that the product reverses (i.e., substantially reduces or eliminates) crepey skin. NAD determined that the advertiser's 8-week clinical study, the IRSI study, was sufficiently reliable to

support certain performance claims but did not demonstrate the dramatic improvements depicted in the commercial.

NAD recommended that the claim that "Crepe Erase is the leading anti-aging body care system clinically shown to reverse crepey-looking skin" be discontinued. As for the claim "prevent accelerated aging for visibly plumper, firmer, younger looking skin," NAD recommended that the "prevent accelerated aging" portion of the claim be discontinued. NAD determined that the advertiser provided a reasonable basis for the claims that skin crepiness "Improvement is immediately visible!" and "After 1 Use** -82% of users reported that skin was instantly smoother - ** Based on a 50-person consumer use survey." NAD determined that the claim "[i]ntense hydration clinically shown to keep your skin moisturized all day in just one application" was supported. NAD determined that the claims "Results … improve with continued use," "After 4 Weeks† -- 90% of users showed improvement in skin firmness on arms" and "After 8 Weeks‡ -- 95% of users experienced a lifted appearance of skin" claims" were supported. However, NAD recommended that the quantified claims be modified to reflect the percentage of subjects showing improvements from the cutometer readings to avoid overstating how many consumers experience the stated results. NAD also recommended that the advertiser discontinue or modify the claim Crepe Erase System's ability to "transform your dry, crepey winter skin into softer, smoother, younger-looking skin all year around" to remove the reference to "winter."

NAD concluded that the ingredient studies were not a good fit for the claims that Crepe Erase "Contains 3 powerful phytonutrients – apple, dill and sage, clinically shown to combat weakened, crepey skin, revealing a smoother, tighter, more youthful-looking texture" and recommended that the claim be modified to avoid linking the benefit to these ingredients. NAD recommended that the before and after photographs be modified to reflect the results consumers can reasonably expect to achieve when using the product as directed.

NAD determined that a "#1" sales claim was supported. However, in an effort to ensure that the claim does not convey a misleading message, NAD recommended that the claim be modified to refer to "#1 selling" as part of the main claim. NAD also cautioned the advertiser to continue monitoring sales data to ensure the accuracy of the challenged claims.

NAD further recommended that the challenged doctor testimonial be discontinued or modified to make clear that Dr. Ordon's recommendation is based solely on his assessment of Crepe Erase's efficacy. Lastly, NAD recommended that the advertiser discontinue the celebrity testimonial. However, nothing in the decision precludes the advertiser from using a testimonial which reflects the results of the studies which demonstrated improvements in crepey skin with continued use.

The advertiser agreed to modify the #1 sales claims but appealed all of the other adverse findings to the NARB.

NARB — (#259 — 12.09.2019) — The NARB reversed all of appealed adverse findings but recommended that Guthy-Renker label before-and-after photo comparisons illustrating the performance of Crepe Erase with a clear and prominent disclosure of the time of use of the product (e.g., "after 30 days"; "after three months"). The advertiser agreed to comply with NARB's recommendation.

Read the press release

Unilever United States, Inc.

Suave Essentials Body Wash and Body Lotion

Case #6228 (December 2018)

L Brands challenged the following express claims by Unilever for its Suave Essentials Body Wash and Body Lotion Express Claims: (1) Consumers find the entire line of Suave Essentials Body Washes to have "fragrances as beautiful as" the fragrances in the entire line of Bath & Body Works Body Washes; (2) Certain Suave Essentials Body Lotion products have the "same great fragrance as" specified Bath & Body Works Body Lotions variants.

NAD determined that "fragrances as beautiful as" the fragrances in the entire line of Bath & Body Works Body Washes is puffery as it boasted of the high quality of Suave fragrances in relation to a competing brand. While the word "beautiful," in certain contexts, can convey an objectively provable message, it is generally the type of descriptive language considered to be puffery. Additionally, by not referencing specific fragrance comparisons, the claim "as beautiful as B&BW" further avoids conveying any messages regarding consumers' opinions regarding relative fragrance preference (which if measured would need to be measured by comparing individual scent varietals.)

Unilever permanently discontinued claims that certain Suave Essentials Body Lotion products have the "same great fragrance as" specified Bath & Body Works Body Lotions variants. NAD did not review the claims on their merits based on Unilever's voluntarily discontinuance.

Read the press release

BuzzFeed, Inc. Shopping Guides

St. Ives Renewing Collagen & Elastin Moisturizer

Case #6210 (September 2018)

NAD challenged claims that the moisturizer is "A paraben-free facial moisturizer infused with collagen to hydrate your face and soften the appearance of wrinkles" which appeared one of BuzzFeed's "shopping guides" entitled "35 Skincare Products That Actually Do What They Say They Will." Links to purchase each product appeared with the product description. The issue was whether BuzzFeed's comments about the St. Ives product was "advertising" because it included affiliate links to purchase the product and earned revenue from those affiliate links.

BuzzFeed argued that the matter should be administratively closed because the shopping guides did not constitute national advertising. BuzzFeed explained its relationship with retailers ("affiliate links") at the top of each shopping guide page ("We hope you love the products we recommend! Just so you know, BuzzFeed may collect a share of sales or other compensation from the links on this page. Oh, and FYI—prices are accurate and items in stock as of time of publication.").

NAD administratively closed the BuzzFeed case because it determined that the statements were not "national advertising." NAD found that the "shopping guide" content regarding St. Ives Renewing Collagen & Elastin Moisturizer is not a "paid commercial message" and is not national advertising. It noted that the "affiliate link" itself is not placed in "paid-for advertising." BuzzFeed also separated the content creation from the "economic or commercial motivation" that arises from the placement of the link. The editorial staff chose the product without the input of Verizon Media or the BuzzFeed business staff (and the influence of any potential for affiliate link revenue). By separating the function of writing content from any economic benefit that could arise from affiliate links, the content could not be considered advertising.

Unilever United States, Inc.

Native Advertising

Case #6209 (September 2018)

NAD inquired about advertising for Unilever products featured in a Buzzfeed article. Unilever informed NAD that the claims referenced in NAD's inquiry were not paid for, disseminated by, approved by, or controlled by Unilever. Unilever did not sponsor the article in which the claims appeared and has not reposted, linked to, endorsed or otherwise promoted the article. As a result, NAD determined that the statements at issue in its inquiry were not Unilever advertising pursuant to NAD Policy & Procedure §1.1 and administratively closed the matter §2.2(B)(1)(a) and (f). Specifically, NAD noted that when challenged statements about a product or service are made by a third party with no material connection to the company purveying that product or service, those

statements are, by definition, not that company's advertising. Accordingly, NAD administratively closed this matter pursuant to NAD/NARB Procedures §2.2(B)(1)(a) and (f).

NAD administratively closed the BuzzFeed case because it determined that the statements were not "national advertising." NAD found that the "shopping guide" content regarding St. Ives Renewing Collagen & Elastin Moisturizer is not a "paid commercial message" and is not national advertising. It noted that the "affiliate link" itself is not placed in "paid-for advertising." BuzzFeed also separated the content creation from the "economic or commercial motivation" that arises from the placement of the link. The editorial staff chose the product without the input of Verizon Media or the BuzzFeed business staff (and the influence of any potential for affiliate link revenue). By separating the function of writing content from any economic benefit that could arise from affiliate links, the content could not be considered advertising.

Too Faced Cosmetics, LLC

Better Than Sex Mascara

Case #6131 (October 2017) // NARB Case #229 (March 2018)

As an initial matter, the advertiser represented in writing that it elected to permanently discontinue the online HSN videos, which made the following challenged claims: "In a recent study of 40 lashes after 3 coats of Better Than Sex Mascara there was a 1,944% improvement in the appearance."; "1,944% increase in the appearance of lash volume" "*as observed in a study after applying three coats."; "This has got a claim on it that I have never in my life in my career heard any other mascara say... This is a study of 40 women after 3 coats of Better Than Sex, that is the percentage, 1944% improvement in the appearance."; "1944% improvement in the appearance of your lashes, that's crazy, I've never seen that number, that statistic."; and "that is the truth, it is 1944% it's crazy but it's true." The advertiser also advised NAD in writing that it agreed to permanently discontinue all references to the increased volume claim being based on a "clinical study" (i.e., "results observed in a clinical study" and "Clinical study results"). In reliance on the advertiser's representation that the claims above have been permanently discontinued, NAD did not review the 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.

Too Faced Cosmetics, LLC was unable to support advertising claims that its Better Than Sex original and waterproof mascara resulted in 1,944% more volume. Challenger Benefit Cosmetics, LLC alleged that Too Faced falsely claims on its product packaging, website, YouTube channel, and in an online Home Shopping Network (HSN) video, that using BTS Mascaras will result in "1,944% more volume." NAD was unable to review and critique the methodology and results of the tests used by Too Faced to support the claim because the in vitro testing was designated "confidential." Also, NAD was troubled by the advertiser's test methodology and use of a micrometer. NAD was not convinced a micrometer was an accepted and recognized tool to measure eye lash volume. Moreover, Too Faced relied on in vitro lab tests rather than evaluating the mascaras on the human eye and its attendant lashes. Thus, NAD concluded that the testing was insufficiently reliable to support the challenged claim and recommended the claim be discontinued.

NAD also recommended that Too Faced Cosmetics, LLC discontinue its "before" and "after" images showing the use of its Better Than Sex mascaras resulting in dramatically transformed lashes that appear lengthier, well-defined, and much more voluminous. "Before" and" after" images are performance claims that must be supported, accurate and representative of the level of product efficacy that a reasonable consumer can expect to achieve. Too Faced's testing did not demonstrate the performance consumers could typically expect to achieve. Also, the consumer use study did not reliably establish that the "before" and "after" images are depictions of typical consumer results. An affidavit from the company's president attesting to the truthfulness and accuracy of the "before" and "after" photographs was not "proof" of product performance. NAD determined that the images conveyed a message that consumers using the product will achieve similar eyelash volume when they apply the product according to its use instructions, which was not supported.

Too Faced Cosmetics appealed NAD's decision to the NARB.

NARB — (#229 — 03.30.18) — The NARB recommended that Too Faced discontinue claims that BTS mascara results in a 1,944% volume increase. The panel also recommended that Too Faced discontinue the challenged "before" and "after" images on BTS mascara packaging. Too Faced agreed to comply with NARB's recommendations.

Benefit Cosmetics LLC

they're Real! Mascara
Case #6108 (August 2017)

NAD determined that Benefit Cosmetics LLC was unable to support the message that its they're Real! Mascara was the best-selling prestige mascara in the U.S. Too Faced Cosmetics, maker of competing Better Than Sex (BTS) mascara, challenged express claims made in online and point of sale advertising by Benefit for its mascara products. Benefit's #1 best-selling claims conveyed the message that they're Real! is currently the best-selling prestige mascara on the market, and the "#1 best-selling Prestige Mascara in the U.S. for 3 years" claim conveyed the message that the mascara has been a best-seller in the U.S. for the prior three years. Benefit has been aware that its #1 best-selling claims were false through most of 2016 and certainly by mid-January 2017 when data for the full 2016 calendar year became available. NAD recommended that the advertiser discontinue its claims that they're Real! is the "#1 best-selling Prestige Mascara in the U.S." and the "#1 best-selling Prestige Mascara in the U.S. for 3 years" because the claims conveyed the unsupported message that the advertiser's product was currently the best-selling prestige mascara in the United States. The disclosure that its #1 best-selling claims are not current was insufficient to render its #1 best-selling claims truthful and not misleading.

Benefit Cosmetics agreed to comply with the NAD's recommendations.

NeoStrata Company, Inc.

Exuviance ®Retexturing Treatment and Body Tone Firming Concentrate
Case #6061 (March 2017)

The advertiser submitted an independent, double-blind, placebo-controlled study in support of the claims for Body Tone Firming Concentrate ("Concentrate") and Exuviance® Retexturing Treatment ("Treatment"). NAD took issue with many aspects of the study for the Concentrate, specifically the lack of statistically significant results for the objective instrumental (cutometer) measurement and the lack of statistically significant differences between the test and control products. The statistically significant result at the 16-week highlighted timepoint was for smoother and more hydrated skin, not crepiness and skin laxity referenced in the advertisement. The advertiser also submitted no reliable evidence demonstrating that the highlighted ingredient, pure caffeine, reduces crepiness. For these reasons, NAD recommended that NeoStrata discontinue the claim that the Concentrate helps to reduce crepiness along with the pure caffeine claim. However, NAD determined that the before and after photographs were supported.

As for the before and photographs of the Exuviance® Retexturing Treatment ("Treatment"), the advertiser referred to an in-house study of three subjects to demonstrate the immediate smoothing effect of Exuviance Retexturing Treatment. NAD determined that this study was not sufficiently reliable to support the depicted visuals and recommended that NeoStrata discontinue the use of the before and after photos.

NAD also recommended that the claim "The Antiaging Body Care Super Duo that restores youthful texture & firmness while reducing crepe-like appearance" be discontinued based on its findings as to the performance claims concerning the Exuviance Body Tone Firming Concentrate and the lack of supporting evidence relating to visual performance claims for Exuviance Retexturing Treatment.

As to the claim "look younger all over," NAD recommended that NeoStrata modify the claim to remove the words "all over" because the studies were only conducted upon the thighs and buttocks.

Lastly, NAD was concerned that the photo of a young model would mislead consumers to believe that this is an attainable result from use of the NeoStrata products. However, NAD found this image to aspirational in nature because the before and after photographs did not exaggerate product performance.

The advertiser agreed to comply with NAD's recommendations.

Coty, Inc.

Sally Hansen® Miracle Gel™

Case #6044 (January 2017) // NARB Case #217 (May 2017)

MiracleGel was advertised as an at-home alternative to a salon grade gel manicure without the use of UV light. NAD found that these advertisements reasonably conveyed the message that consumers would be able to achieve the same results and benefits using MiracleGel that are achievable when getting a salon gel manicure. The advertiser also argued that the word "gel" is not associated with specific characteristics/attributes and refers instead to the way the product looks or feels. NAD found this unconvincing because in the nail industry, the word "gel" is associated with the specific attributes like color, shine, and durability.

The advertiser argued that the claims "up to 14 days" are divorced from "chipping" claims. However, to make an "up to" claim, the maximum level of performance must be obtainable by an "appreciable number" of consumers under circumstances normally and expectably encountered by consumers. NAD reviewed the claim in its entirety and determined that consumes would think that the Miracle Gel is just as chip-resistant as a salon gel manicure. In the advertiser's study, after 7 days of wear, the average person's chipping score was a 5 on a scale from 1(worst)-8(best). Only 30% of the participants rated that the chipping and wear of the polish was acceptable at day 7. NAD determined that consumers would have either touched up the manicure or removed the polish by day 8.

NAD recommended that the advertiser discontinue certain claims including the "up to 14 days" claim. However, NAD recommended that the advertiser modify their claims to suggest that MiracleGel provides a MORE chip resistant option than a regular nail polish.

The advertiser appealed NAD's findings to the National Advertising Review Board.

NARB — (#217 — 05.17.17) —The NARB panel recommended that Coty discontinue claims that Miracle Gel is a "no light gel" or "gel without the light" in the context of advertising that (a) claims Miracle Gel provides color or shine for up to 14 days or any similar time period, (b) makes more limited claims that Miracle Gel "can" or "may" provide color or shine for up to 14 days or any similar time period, and/or (c) otherwise reasonably implies that Miracle Gel provides benefits similar to benefits achieved with a salon gel manicure.

The panel also recommended that Coty discontinue claims that Miracle Gel provides color and shine for up to 14 days or any similar time period. However, this decision does not preclude Coty from making a more limited truthful claim that Miracle Gel "can" or "may" (or similar terms) provide up to a specified number of days of color and shine as long as the claim is made in a context that does not reasonably imply that consumers will receive long lasting color/shine or other benefits similar to what is achieved with a salon gel manicure. Because the panel found that Coty's consumer test did not provide a reasonable basis to support the "up to 14 days of color and shine" claim, the panel did not need to consider whether Revlon's tests provided more convincing results.

The advertiser agreed to comply with the NARB's decision.

Unilever United States, Inc.

Suave Essentials Body Wash

Case #6041 (December 2016) // NARB Case #218 (November 2017)

L Brands, Inc., owner of Bath and Body Works, challenged certain consumer preference and product packaging claims by Unilever United States, Inc. in connection with its Suave Essentials body wash products. Unilever represented that the original product label claims that were challenged were permanently removed, but a significant percentage of products bearing these claims were still available in retail at the time the challenge was initiated. Therefore, NAD declined to administratively close the case as to the now discontinued packaging claims. NAD also declined to close the complaint as to the discontinued version of a YouTube video because the claims were "live" at the time L Brands initiated this challenge.

Unilever's television commercial conveyed the message that the claims made in the advertisement applied to the entire line of L Brands, Inc. products. L Brands alleged that reasonable viewers of Unilever's television commercial promoting its Essentials body would take away a message that consumers generally prefer the fragrances of the entire line of Suave Essentials body washes to the fragrances of the entire line of Bath & Body Works bath and shower gels. While the basis of comparison is communicated clearly in the last few seconds of the commercial, several elements contribute to a net impression that the advertiser is comparing its line of products against the line of Bath & Body Works bath and shower gels. The video advertisement conveyed the message that the claim applied to each party's line of body wash products.

Survey evidence submitted by Unilever to support claims was insufficiently reliable to support the challenged claims and NAD recommended that Unilever discontinue the "Let Your Senses Decide" commercial. In order to substantiate a line claim, an advertiser must produce evidence demonstrating that all of the products in the line will perform as promised. As such, the consumer preference survey needed to support the claim as to the entire line of Bath & Body Works and Suave Essentials products. The survey improperly excluded a large portion of Bath & Body Works target demographic. Also, it was unclear as to whether the methodology sufficiently cleansed the testers' olfactory palates and ensured reliable scent comparisons, given the number of scents that were to be evaluated by the testers. Because the record was unclear as to several additional aspects of the survey, silent as to the setting in which the survey took place (for example, mall intercept vs. in house) or where, geographically, the respondents hailed from and whether the test population was geographically diverse, and devoid of raw data and statistical analysis, NAD did not have sufficient information to determine whether the survey was reliable. Thus, the survey was insufficiently reliable to support the preference claims.

NAD recommended that Unilever discontinue its parity claims that appeared on Suave's product packaging, i.e. claims that a particular Suave body wash had a "Fragrance As Appealing As [Bath & Body Works variant]." Unilever relied on the same consumer preference survey to support its claims that certain Suave fragrance variants were at parity with certain Bath & Body Works fragrances. Given the survey's flaws, NAD did not find the survey sufficiently reliable to support these parity claims. ASTM guidance recommends a minimum of 300 respondents to substantiate a parity claim, yet the survey sample size was 200 completes per pair. Also, NAD also questioned the statistical method used to calculate parity.

Unilever appealed all of NAD's findings and recommendations to the NARB.

NARB — (#218 — 11.08.17) — The NARB upheld NAD's decision in its entirety. The advertiser agreed to comply with the NARB's decision.

Mane Choice, LLC

Manetabolism Plus, Laid Back Effortless Growth Stimulant Edge Control & The Multi-Vitamin Scalp Nourishing Oil

Case #6040 (December 2016)

Mane Choice provided a reasonable basis for its claim that its Manetabolism Plus product was "Physician Formulated" and "Improves dietary nutrition and helps to support the overall health in the body." Because Mane Choice is a physician and nurse team that reviewed medical literature when deciding the types and amounts of vitamins to include in Manetabolism Plus, NAD determined that it provided a reasonable basis for its claim "Physician Formulated." NAD cautioned the advertiser, however, avoid using this claim in any context that implies a greater level of scientific precision in formulating Manetabolism Plus than is actually the case. Also, Manetabolism supplements contain a variety of vitamins, including vitamin A and several forms of vitamin B. These are common dietary ingredients in multivitamins to help support human health, especially where deficiencies in diet occur. Therefore, NAD determined that Mane Choice had a reasonable basis for its claim "Improves Dietary Nutrition and Helps to Support the Overall Health in the Body."

NAD determined that Mane Choice's health-related performance claim that Manetabolism Plus will grow longer thicker hair, build stronger and healthier nails and skin, provide energy and boost the immune system were not supported by competent and reliable evidence. Competent and reliable scientific evidence is generally a methodologically sound, placebo-controlled, human clinical trial on the product or the ingredients in the product. Results should be statistically significant to the 95% confidence level and the record should contain evidence that the results are noticeable and meaningful to consumers. Further, advertising claims should be tailored to accurately reflect the study results. Mane Choice did not support any evidentiary support for the claims. Thus, NAD recommended a number of claims be discontinued.

Mane Choice agreed to comply with the NAD's recommendations.

Intraceuticals LLC

Atoxelene Skin Care Products

Case #5953 (May 2016)

Intraceuticals LLC (Intraceuticals) failed to provide a reasonable basis for its claim that its Atoxelene Skin Care Products instantly reduced visible signs of premature aging. Intraceuticals relied on two small scale trials on the Atoxelene Line Wand and produced testing on ingredients in the product (both in vivo and in vitro) to support the claims. The most reliable testing on anti-aging cosmetic products is testing that (1) quantitatively measures wrinkle reduction, skin tone or age-related skin changes using industry standard methodologies, as well as (2) qualitatively measures changes in skin condition to insure that any improvement is perceptible and consumer relevant.

NAD had several concerns about the reliability of the studies submitted by Intraceuticals. The informal summaries of product testing, on a small test population, without analysis of the representativeness of the population tested, did not provide NAD with sufficient detail to assess the reliability of the test results, and as a result, were insufficient to support the strong efficacy claims and recommended they be discontinued.

While NAD appreciated that in vitro studies were performed on each ingredient to demonstrate its mechanism of action, the tests had little or no validity in ascertaining the impact of a product or substance when used by humans. The in vivo testing on each ingredient was not supported by the marketing summaries provided as they failed to sufficiently describe details of the test methodology, including the amount or concentration of the ingredients used, the population tested, as well as when and where the tests were performed. Also, the summaries did not include

the results for each of the test subjects so that NAD could not determine if results varied among test subjects, nor did Intraceuticals provide a statistical analysis of the test results.

The advertiser agreed to comply with NAD's recommendations.

Vogue International, LLC

Proganix Line of Hair Care Products
Case #5864 (July 2015)

NAD recommended that Vogue International discontinue its use of a formula with specific exotic ingredients which add up to a claimed benefit, and otherwise modify its advertising and product packaging to avoid conveying the message that specific exotic ingredients are responsible for the product benefits. The focus on the natural ingredients and the benefits they provide conveyed the message that the specified ingredients provided the claimed benefit. While the ingredients may provide some benefits for hair texture or color retention, Vogue did not provide any support linking specific ingredients in its product (or the amount of each ingredient in the product) to any benefits.

NAD found that Vogue International's advertising claims for its Proganix line of hair care products were permissible puffery. Procter and Gamble Company (P&G) challenged the labeling claims "science + nature = performance" and "salon performance." NAD determined that these claims were not objectively provable and, thus, did not require support.

NAD further determined that Vogue International could not support the claim that its hair care products offered "High performance extracts up to 200x more potent than their raw natural state." Although the "200x claim" was made in a context in which other exotic and natural ingredients were prominently named and featured on the label, Vogue's only support for the claim was based on the concentration of aloe vera in its products. Also, use of the word "potent" conveyed a message broader than "concentration," and implied efficacy. Vogue presented evidence of the general benefits of Aloe Vera, specifically its hydrating effect on the skin, as well as the concentration of Aloe Vera in its product, but did not provide any support related to the efficacy of Aloe Vera in its product. Therefore, NAD recommended that Vogue discontinue the claim.

P&G also challenged the claim "Zero SLS/SLES" and an implied claim that Proganix products have no added sulfates based on the claim "Zero SLS/SLES." The advertiser represented that all of its products had been re-formulated, prior to the date of the challenge, to remove all sulfate-based surfactants including ALS. NAD administratively closed its inquiry into these claims.

Vogue agreed to comply with NAD's recommendations.

Institute For Vibrant Living

Alleviate
Case #5852 (June 2015)

NAD recommended that the claim "Erase wrinkles and age lines" be discontinued because the evidence in the record was insufficient to support an objectively provable claim that consumers would experience a visible elimination (or even a reduction) of wrinkles when vitamin C and hyaluronic at the levels present in Alleviate and taken in the form of an oral supplement.

The advertiser agreed to comply with NAD's recommendations.

Vogue International, Inc.

OGX Shampoos and Conditioners

Case #5844 (May 2015)

The product names of Vogue International, Inc.'s hair care products expressly claimed that the listed "exotic" ingredient provided the stated hair benefits of the products. Vogue's OGX line of products consists of more than 70 shampoos, conditioners, and other hair care products. Competitor Unilever United States, Inc. alleged that the name of each collection and the way it was featured on product packaging conveyed the unsupported message that the featured exotic ingredient played a significant role in providing the hair care benefit touted on product packaging. When a product name makes an express claim which conveys a message that is not supported, extrinsic evidence of consumer confusion is not required to recommend a product name change. Here, the product names made express claims that the exotic ingredient listed in the name provided the benefit (Renewing Argan Oil, Nourishing Coconut Milk, Anti-Breakage Keratin Oil). NAD recommended that Vogue modify its product names and product packaging to make it clear that the product ingredients, taken together, provide the claimed benefits.

NAD also recommended that Vogue International discontinue claims that its Weightless Hydration Coconut Water Shampoo had "Zero SLS/SLES" or otherwise implying that the shampoo contained sulfate-free surfactants. Sodium Lauryl Sulfate and Sodium Lauryl Ether Sulfate are two common shampoo ingredients. A "free of" is not appropriate if "the product, package or service contains or uses substances that pose the same or similar environmental risks as the substance that is not present." Ammonium Lauryl Sulfate, which was found in the shampoo, is a sulfate-based surfactant like SLS and SLES. Vogue failed to demonstrate that it was different from or lacked the undesirable attributes associated with other sulfates which consumers seek to avoid when choosing products with sulfate-free surfactants.

Vogue agreed to comply with NAD's recommendations.

The Procter & Gamble Company

Olay® Ultra Moisture Beauty Bar

Case #5830 (April 2015)

The Procter & Gamble Company ("P&G") properly discontinued advertising claims for its Olay® Ultra Moisture Beauty Bar. Unilever United States, Inc. maker of Dove white beauty bar, challenged claims made in print advertisements, social media, and in online videos that the Olay Bar was both preferred over—and better for the skin than—the Dove Bar. P&G permanently discontinued video and claims likening the use of Dove White Bar to a "bad habit" from its Facebook page, YouTube video, Twitter, Tumblr page and other digital platforms, as well as its claim characterizing the Dove Bar as "regular soap."

NAD determined that P&G's advertising regarding consumer preference for its Olay® Ultra Moisture Beauty Bar over Unilever United States, Inc.'s Dove white beauty bar conveyed an unsupported superior performance message. NAD recommended that P&G discontinue its claim that, "Even Dove bar users prefer Olay Ultra Moisture bar versus Dove white bar." However, to the extent that P&G wishes to make a preference claim with respect to women generally, that its claim, "More women prefer Olay Ultra Moisture versus the leading white bar" be modified to limit the claim, "More women prefer Olay Ultra Moisture versus the leading white bar" to "among those who expressed a preference."

P&G agreed to comply with NAD's recommendations.

StriVectin Operating Company, Inc.

StriVectin® Intensive Illuminating Serum

Case #5826 (April 2015)

StriVectin properly revised a print advertisement for its skin care product. As part of its routine monitoring efforts, NAD inquired about the advertisement for StriVectin® Intensive Illuminating Serum, which featured the claim "Brightening That's Light Years Ahead." The advertisement includes a description of the serum and the benefits it conferred on the skin, including the following quantified performance claims: "86% saw brighter skin*"; "86% saw improved skin texture*"; "81% saw more even skin tone.*" The disclaimer, which appeared sideways (along the fold in the magazine) in the lower left hand edge of the page in very small grey type against a non-contrasting grey background, states "Based on consumer evaluation at 8 weeks." StriVectin submitted a revised print advertisement with a disclosure that, it argued, is clearer, more conspicuous and appears directly below the quantified performance claims it is qualifying. NAD found the revised disclosure was clear, conspicuous, and in close proximity to the quantified performance claims it is qualifying.

StriVectin agreed to comply with NAD's recommendations.

Philosophy, Inc.

Time in a Bottle Age-Defying Serum

Case #5765 (September 2014) // NARB Case #198 (February 2015)

NAD asked Philosophy to provide support for claims for its Time in a Bottle Age-defying Serum made in print advertising and on its product packaging. Philosophy submitted a six-month independent, blinded clinical study of the serum, the purpose of which was to determine "changes to facial skin appearance and hydration as a function of time and product use." NAD determined that the self-assessment portion of the study was insufficiently reliable to support the challenged claim in the print advertisement ("Women told us their skin looked 730 days younger*, that's 2 years on your side with our age-defying serum.") NAD concluded that the question upon which the challenged claim was based —"Skin appears __ years younger"— was inherently arbitrary because there is no evidence in the record as to consumer understanding of what it means to look two years (or any number of years) younger. NAD also determined that this question was not appropriately positioned in the overall questionnaire pursuant to the ASTM Standard Guide for Sensory Claim Substantiation, an industry standardized test, and that the numerous anti-aging related questions that precede and follow it could improperly influence the answers to this question. As for the claims and visuals on the product packaging, NAD recommended that they be discontinued because of certain flaws in the advertiser's study, including not taking into account environmental factor, basing the claims and visuals on skin imaging analysis conducted on a small subset of the study's participants, and failing to use trained graders to conduct the visual assessments. NAD also recommended that the advertiser discontinue the testimonial "Lines have disappeared and...I go makeup free" be discontinued based on the lack of reliable evidence supporting an elimination of lines.

Philosophy was disappointed that the NAD did not accept the comprehensive support that it provided to support its advertising claims and appealed all but one of NAD's findings (namely, NAD's recommendation that the "Lines have disappeared and...I go makeup free" testimonial be discontinued) to the NARB.

NARB — (#198 — 02.24.15) — The NARB panel recommended the following: (1) that Philosophy either (a) discontinue the challenged claim "Women told us their skin looked 730 days younger*, that's 2 years on your side with our age-defying serum," or (b) modify the body of the claim to identify the degree of support for the opinions expressed (e.g., "60% of women told us ...."); (2) that Philosophy delete the word "all" in the challenged "defy the appearance of all major signs of aging" claim; (3) that Philosophy discontinue challenged claims that Time in a Bottle

helps skin appear radiant, poreless, even, wrinkle-free, smooth and firm. However, this does not preclude Philosophy from making truthful claims based on study findings showing improvement in appearance with respect to specific skin attributes; (4) that Philosophy discontinue the challenged claim that in clinical testing 76% showed improvements in signs of aging not yet visible on the surface after 4 weeks. However, this does not preclude Philosophy from making truthful claims based on study findings showing improvement in complexion health; (5) that Philosophy discontinue the challenged claim that in clinical testing 95% showed significant reduction in visible signs of aging after 8 weeks. However, this does not preclude Philosophy from making truthful claims based on study findings showing improvement in appearance with respect to specific skin attributes; (6) that Philosophy discontinue the challenged claim that in clinical testing 76% showed improvements in signs of aging not yet visible on the surface after 4 weeks. However, this does not preclude Philosophy from making truthful claims based on study findings showing improvement in complexion health; and (7) that Philosophy discontinue the challenged claim that in clinical testing 95% showed significant reduction in visible signs of aging after 8 weeks. However, this does not preclude Philosophy from making truthful claims based on study findings showing improvement in overall skin appearance. Philosophy agreed to comply with the NARB's decision.

The Procter & Gamble Company

Olay Sensitive Body Wash

Case #5755 (September 2014)

NAD advised The Procter & Gamble Company (P&G) to discontinue and/or modify advertising for its Olay Sensitive Skin Body Wash to avoid conveying unsupported messages. Unilever United States, Inc., manufacturer of Dove body washes, alleged that P&G falsely disparaged Dove Sensitive Skin Body Wash as "harsh" and drying and that, as a result, consumers prefer P&G's Olay Sensitive Skin Body Wash. NAD recommended that P&G discontinue the claim "So say goodbye to harsher body wash and hello to gentler, moisturizing Olay Sensitive Body Wash" and avoid conveying the unsupported message that Dove Sensitive Skin Body Wash was "harsh." Even if the evidence in the record demonstrated that Dove Sensitive Skin Body Wash was more drying than a water control, that did not provide a reasonable basis for a claim that Dove Sensitive Skin is "harsh" or significantly "harsher" than Olay Sensitive Skin Body wash. NAD also referred to its determination in a prior case concerning advertising for Dove Deep Moisture Body Wash (which was affirmed on appeal by the NARB) in which it recommended similar "harshness" claims made about competing body washes be discontinued—consumers would understand the term "harsh" to mean that competing body washes are "abrasive and/or will cause noticeable damage to the skin," an unsupported message.

NAD further recommended that P&G modify its claim that "Dove Sensitive Skin Body Wash dries out your skin over time" to more accurately reflect its study's results which demonstrate that Dove was more drying than water over time. Lastly, NAD recommended that P&G modify its advertising to avoid conveying the unsupported messages that consumers who use Dove Sensitive Skin Body Wash will have noticeably drier skin with continued use and that consumers will perceive the drying effect of the Dove Sensitive Skin Body Wash upon contact.

P&G agreed to comply with NAD's recommendations.

The Procter & Gamble Company

Olay Ultra Moisture Body Wash

Case #5749 (August 2014)

Unilever United States, Inc., maker of Dove Deep Moisture Body Wash, challenged advertising claims by The Procter & Gamble Company (P&G) for its Olay Ultra Moisture Body Wash. P&G's advertising claims, which appeared in print, digital, and social media, expressly stated that Olay left skin smoother and more moisturized than Dove and virtually all of the moisturizers in Dove "go

down the drain." Unilever contended that the challenged advertisements falsely disparage Dove Deep Moisture Body Wash by portraying it as "shocking" that "virtually all of the moisturizers" in Dove wash down the drain when this was inevitable property of all body washes, including Olay Ultra Moisture Body Wash. NAD determined that P&G provided a reasonable basis for its claims that Olay Ultra Moisture Body Wash leaves a meaningful greater amount of moisturizer on the skin after showering that Dove Deep Moisture; that over time Olay leaves skin more moisturized than Dove; that Olay's lather carries moisture down onto the skin in the shower; and that Olay moisturizers are designed to penetrate the surface layers of the skin. P&G submitted results from a Leg Controlled Application Test (LCAT) the accepted clinical method for in vivo testing cleansing products to support those claims. However, the evidence was insufficient to provide a reasonable basis for its superior smoothness claims and NAD recommended that those claims be discontinued.

NAD further recommended that P&G discontinue claims that Olay Ultra Moisture Body Wash provides "lotion-like" lather, releases a moisturizing lotion and avoid the implication that its product acts as the functional equivalent or obviates the need for moisturizing lotion.

Finally, NAD recommended P&G discontinue its use of the testimonial from Deb Fix, who called herself a "Moisturologist" and expressly claimed that Olay Ultra Moisture Body Wash delivered so much moisture to her skin that it could be substituted for a body lotion, even on older skin in cold, dry weather.

P&G agreed to comply with NAD's recommendations.

B'iota Botanicals

Advanced Shampoo & Serum for Thinning and Damaged Hair
Case #5702 (March 2014)

NAD recommended that B'iota Botanicals modify and/or discontinue certain performance claims related to its shampoo products. B'IOTA claimed that its herbal shampoo and serum could reduce the amount of hair loss (thinning) and help hair to grow faster, thicker, and fuller. B'IOTA relied on the results of a single, independently-conducted study to support its claims. NAD concluded that the study was reliable and well-conducted and that the results achieved by the study population illustrated the typical product performance for consumers experiencing thinning hair due to changes in hair follicle growth physiology, and provided a reasonable basis for claims that the products were "herbal-based," "dermatologist tested," and clinically proven to help address issues with "thinning" hair. However, NAD recommended that any claims which promote the products' ability to help hair grow "thicker" and "fuller" clearly indicate that this result is achieved through an increase in hair density. B'IOTA was also required to provide a reasonable basis for several performance claims about the subjective results experienced by its test subjects. The advertising must clearly indicate the type of damage which B'IOTA products address – damage to hair follicles.

NAD recommended that the advertiser discontinue any claims which promote the ability of the B'IOTA products to produce results that are visible to consumers prior to 6 months of usage. The advertiser's support for such claims is based on the self-assessment questions, administered at the conclusion of the 6 month study interval, asking whether subjects noticed a decrease in hair loss; noticed the growth of new hairs; noticed an increase of hair thickness; whether the subjects' hair grows faster; and whether the treatment reinforced the subjects' hairs. NAD also recommended that the advertiser discontinue its use of testimonials referring to visible results achieved prior to six-months of use. Lastly, as to the claim "A lot less hair on the floor and in the shower. I do see a difference," NAD recommended that the advertiser verify that the claim accurately reflects the results of the study (i.e. reduced hair loss was observed after 6 months of usage) or discontinue the claim.

B'iota agreed to comply with NAD's recommendations.

Ontel Products Corporation

Pink Armor Nail Gel
Case #5701 (March 2014)

NAD recommended that Ontel Products Corporation discontinue advertisements for its Pink Armor Nail Gel featuring "before" and "after" photographs and a visual simulation based on a lack of reliable supporting evidence. The "before" photographs featured short and visibly damaged or diseased fingernails, while the "after" photographs depicted perfectly manicured, shiny, noticeably longer and pink fingernails after four weeks of using Pink Armor. Ontel argued that the consumers featured used the product twice a week, the photos were shot after four to six weeks of product use, the consumers were not compensated, and their testimonials were based on their personal experience using the product. However, there was no product testing submitted to support the claims. Endorsements and testimonials cannot replace reliable evidence as support for advertising claims, and consumer endorsements do not constitute competent and reliable scientific evidence. Even assuming that keratin strengthens nails, there was no evidence that keratin works systemically as simulated in the advertisements. Therefore, Ontel was required to discontinue the photographs and simulation.

NAD determined that the claims "Rock Hard Finish" and "[W]ith just one coat, once a week, [i]t's like getting a professional nail treatment at home manicure at home!" constituted permissible advertiser puffing because reasonable consumers would not expect their nails to be as hard as a rock or that they could get a professional manicure simply by using Pink Armor Nail Gel. However, NAD recommended that the remaining unsupported performance claims be discontinued.

Ontel agreed to comply with NAD's recommendations.

The Procter & Gamble Company

Pantene Pro-V Antioxidant Shampoo Formulas
Case #5699 (March 2014)

NAD was pleased that The Procter & Gamble Company would include proper disclosures in its future advertising for its Pantene Pro-V antioxidant shampoo formulas. The advertising stated that the shampoo was "[c]linically proven: healthier hair with every wash*" "*Shampoo and conditioner system vs. non-conditioning shampoo." NAD expressed concern that consumers could be confused by the disclosure, which referred to the shampoo and conditioner system, given that the advertisement referred only to the shampoos. P&G stated that its future advertising will show both the Pro-V Antioxidant shampoo and conditioners when using the challenged disclaimer in conjunction with discussion of results for the product "system." Given that the challenged claim was qualified by a reference to the shampoo and conditioner system, NAD appreciates the advertiser's assurance that its future advertising will show both the Pro-V Antioxidant shampoo and conditioners, an action NAD deemed necessary and proper.

The Procter & Gamble Company thanked the NAD for its review of this matter and stated that it would take NAD's comments into account for future advertising.

Murad, Inc.

Murad® Rapid Age Spot and Pigment Lightening Serum
Case #5678 (January 2014)

NAD requested Murad provide substantiation for its claims that its Murad® Rapid Age Spot and Pigment Lightening Serum was "[c]linically proven to fade spots by 33% in just one week" and was an "environmental shield." Murad permanently discontinued the challenged "[c]linically proven" claim prior to the commencement of NAD's inquiry. NAD determined that consumers were unlikely

to understand that the number "2" which appears on top of the product packaging next to "Treat/Repair" refers to Rapid Age Spot and Pigment Lightening Serum as step two in the three-step Environmental Shield Day Regimen. NAD recommended that Murad modify its advertising to make clear that "Environmental Shield" is a line of products and that the Rapid Age Spot and Pigment Lightening Serum is a part of the three-step Environmental Shield Day Regimen to avoid conveying the unsupported message that the Rapid Age Spot and Pigment Lightening Serum product itself provides a protective barrier against environmental harm to the skin.

Murad agreed to comply with NAD's recommendations.

Dermstore, LLC

SmartLash Eyelash Enhancer
Case #5650 (November 2013)

NAD recommended that DermStore discontinue or modify its claim that its eyelash enhancer product would create "up to a 68% increase in the appearance of lash length." DermStore commissioned an independent study of its SmartLash Eyelash Enhancer, which consisted of objective and subjective evaluations of the product by the study's participants. The objective assessments were inapplicable to support the claim that product users would experience a 68 percent increase in the subjective appearance of their eyelashes. The participants also completed a questionnaire, and the claim was based on the responses taken from day 56 to one question (Please rate how satisfied you are with the fullness and length of your eyelashes") NAD recommended that the claim be modified to reflect the wording of the questionnaire upon which it was based as well as the timepoint at which this satisfaction in lash appearance was observed. As for the "dermatologist recommended" claim, given that it was premised solely on the recommendation of one dermatologist based on her own personal experience with the product, NAD recommended that this claim also be discontinued.

DermStore agreed to comply with NAD's recommendations.

The Procter & Gamble Company

Pro-X Advanced Cleansing System
Case #5648 (October 2013)

NAD recommended that The Procter & Gamble Company ("P&G") discontinue its advertising claims that its Olay Pro-X Advanced Cleansing System is "as effective as" its competitor's. L'Oreal USA Inc. challenged advertising by P&G for its Olay Pro-X Advanced Cleansing System that stated that P&G's product was just as effective as L'Oréal's Clarisonic Skin Cleansing System. Each product employed different underlying technology and were offered at different price points. NAD concluded that consumers could reasonably interpret the advertiser's "as effective as" claims to mean that the Olay Pro-X brush is cleanses as effectively as the Clarisonic brush, as opposed to each party's brush and cleanser. However, consumers were likely to use either brush with any number of different cleansers. Thus, NAD determined that a more consumer relevant comparison would incorporate a test of each brush using the same cleanser, or a test of both brushes with a variety of the same cleansers. The evidence did not support the claim that the brushes were comparatively effective. NAD recommended that P&G discontinue its more general "as effective as" claims, as well as its claim that its Olay Pro-X brush is "6X better than basic cleansing." However, NAD concluded that the advertiser's claim that its product "sets your skin up for supersonic anti-aging moisturization" constituted mere puffery.

P&G agreed to comply with NAD's recommendations.

The Procter & Gamble Company

COVERGIRL Clump Crusher Mascara

Case #5635 (September 2013)

NAD determined that The Proctor & Gamble Company ("P&G") provided a reasonable basis for its express claims "200% More Volume," and "The new curved brush crushes clumps as it builds volume" for its COVER GIRL Clump Crusher Mascara. P&G relied on the results of its proprietary laboratory imaging test showing that the average percent increase in the thickness of lashes following application of the mascara was 241%. The design of the mascara brush was engineered with tight bristle spacing to help ensure that noticeable clumps do not form on the lash array and technical testing showed that usage of the mascara increased lash volume. Therefore, it was literally truthful that the brush is the tool by which such volume is built.

NAD was concerned that the advertising implied that consumers would get lashes like those depicted in the advertisement and that the lashes depicted were achieved solely by using Clump Crusher mascara. P&G argued that the use of lash inserts in mascara advertising was common in the cosmetics industry and that it includes a disclosure in the advertisements to clarify that the lashes had been stylized with lash inserts. In the case of the print advertisement at issue, due to a clerical error, such disclosure was not as prominent as it should have been. P&G agreed that it would correct the error in the next run of the advertisement. NAD found that the photograph in the challenged print advertisement was a product demonstration because it appeared in the context of an advertisement that contained express quantified performance claims and that it was not accurate because the model's eyelashes had been artificially enhanced by the addition of false lashes. Consequently, NAD recommended that P&G discontinue the use of artificial lash enhancements in mascara advertisements that make quantified performance claims. NAD noted, in the alternative, that if P&G wants to show consumers how the product looks when used in conjunction with artificial lash inserts then it should clearly make that part of the main message.

The advertiser agreed to comply with the NAD's recommendations.

L'Oréal U.S.A., Inc.

Maybelline® Volum' Express® The Rocket™ Mascara and L'Oréal Paris Telescopic® Shocking Extensions™ Mascara

Case #5628 (September 2013) // NARB Case #189 (January 2014)

NAD determined that L'Oréal U.S.A., Inc. provided a reasonable basis for its express claims for its Maybelline® Volum' Express® The Rocket™ Mascara. L'Oréal explained that Maybelline Rocket represented a new generation of volumizing mascara that used lightweight ingredients to add volume to the eyelashes, while maintaining a smooth, even look. L'Oréal Telescopic was a new mascara containing fibers that adhere to the eyelash enhancing the appearance of length. In support of the claim "8X Bigger," L'Oréal relied on the results of its proprietary laboratory imaging test showing that the average lash volume increase following application of Rocket mascara was 948%. The methodology of the test was sound and the results provided a reasonable basis for the claim. NAD determined that the claim "Our Patented Supersonic Jumbo Brush with Micro Bristles" was truthful and accurate because Rocket's patented mascara brush had a greater surface area than the typical mascara brush and it was comprised of soft, flexible bristles that were very fine. There was also sufficient support for L'Oréal's qualitative statements regarding the performance of Rocket mascara based on results of an in-home use test among regular users of washable mascara.

NAD found that the claim "Ready for a shock? L'Oréal Introduces Liquid Lash Extensions" made by L'Oréal U.S.A., Inc. would likely be understood by consumers as puffery and that L'Oréal provided a reasonable basis for the express claim "Length + Impact Without Extensions. Now surround lashes base to tip for the high-impact look of extensions from a mascara," as well as for the claim "Incredible design: The lash-hugging brush is contoured with 200 bristles to intensify every lash."

Lastly, NAD recommended that photographs used in L'Oréal U.S.A., Inc.'s advertising for its mascara were product demonstrations because they appeared in the context of advertisements that contained express and quantified performance claims. NAD recommended that L'Oréal discontinue the use of artificial lash enhancements in the Rocket advertisement. If L'Oréal wanted to show consumers how the product looks when used in conjunction with artificial lash inserts then it should clearly make that part of the main message.

L'Oréal appealed NAD's findings and recommendations regarding the photograph, and its recommendation, in footnote 27, mandating the content of hypothetical future advertising to the NARB.

NARB – (#189 – 01.23.14) – The NARB panel recommended that L'Oréal modify the challenged advertisement for Rocket mascara by making a clearer and more conspicuous disclosure that the model's eyelashes are enhanced with lash inserts. The disclaimer's statement that the model's lashes are "styled with lash inserts" should be changed to more clearly convey that the model's eyelashes have been enhanced by adding lash inserts.

L'Oréal agreed to comply with the NARB findings.

Fiore RX, LLC

Antifungal Nail Lacquer
Case #5600 (June 2014)

In response to an inquiry from NAD, Fiore modified or discontinued certain claims that reference the antifungal effects of its product on nails, as well as claims that reference the Food and Drug Administration (FDA). NAD further recommended that the company discontinue additional claims, including claims that one of its ingredients – Propolis – has "been proven effective against bacteria, viruses and fungi."

As part of its ongoing monitoring practice, NAD requested that Fiore provide substantiation for a wide range of claims. The advertiser notified NAD in writing that it was willing to permanently discontinue all but four of the claims at issue, action NAD deemed necessary and appropriate given the absence of support. Given the advertiser's voluntary discontinuance of claims that Fiore Rx nail polish protects and prevents nail fungus, the primary issues for NAD's review were whether the remaining claims implied that Fiore Rx provided an unsupported anti-fungal or other health benefit, and whether the advertiser's "naturally derived" claims were truthful, accurate and not misleading.

In the absence of any evidence that the anti-fungal and anti-bacterial ingredients contained in its nail lacquer provide any benefit to the nails, and that its nail polish provided a benefit to nails that impacted the appearance of the nails when the nail polish was removed, NAD recommended that the advertiser discontinue the claim "Beautiful On … Beautiful Off…." NAD also recommended that the advertiser discontinue its use of the term "pharmaceutical grade" product or modify its advertising to limit its "pharmaceutical grade" claim to only FDA-approved ingredient, undecylenic acid.

NAD further recommended that the advertiser discontinue the claim that propolis, an ingredient in the product, has been proven effective as an antibacterial, antiviral and antifungal."

Fiore agreed to comply with NAD's recommendations.

Unilever United States, Inc.

Dove® Deep Moisture Body Wash
Case #5599 (June 2013) // NARB Case #188 (November 2013)

NAD determined that Unilever United States, Inc.'s ("Unilever's") evidence was insufficient to support its unqualified comparative "harshness" claims and recommended that they be

discontinued. In addition, NAD determined that while consumers may not literally believe that body wash is as harsh on skin as barbed wire, such imagery nonetheless communicates an unsupported and disparaging message that competing products can seriously damage the skin. Therefore, NAD recommended that the advertiser discontinue its use of the barbed wire visuals in the challenged advertising.

NAD determined that one message reasonably conveyed by the advertiser's reenactments was that competitor body washes are so harsh that they actually strip the top layers of the skin itself – a message which was not supported. Further, with regard to the underlying product demonstration (on which the reenactments were based), NAD determined that the test results were not sufficiently reliable to demonstrate real-life surfactant damage created by the body washes tested, and that the conditions under which it was conducted did not accurately reflect how body wash is used in real life. Consequently, NAD recommended that the reenactments of the product demonstration—the "Put Your Body Wash To The Test" and "Not So Pretty Truth" videos (including all related versions of these videos)—be discontinued.

NAD concluded that the advertiser did not reasonably establish that its Dove Deep Moisture product provided the best combination of gentle cleansing and skin conditioning benefits in the body wash market and recommended that the advertiser discontinue its comparative "proven best care" claims.

The advertiser stated that it would appeal NAD's decision to the National Advertising Review Board ("NARB").

NARB – (#188 – 11.13.13) – The NARB affirmed NAD's decision in its entirety.

Gurwitch Products, LLC

Laura Mercier Tinted Moisturizer

Case #5591 (May 2013)

NAD determined that the claim that Laura Mercier Tinted Moisturizer is "[t]he #1 selling tinted moisturizer" was supported based on NPD Group, Inc. sales data 2011 and 2012 for prestige retail stores. However, given that consumers could reasonably interpret "prestige retail" to mean luxury department stores when, in fact, the retailers included in the NPD data include those offering products at lower price points (including cosmetics), NAD recommended that the disclosure be modified to make clear that the NPD data is based on sales data from "better" department stores and online retailers where Laura Mercier is sold. NAD further recommended that the disclosure in the print advertisements be modified to be more conspicuous (larger) and in immediate proximity to the "#1" claim.

The advertiser stated that it would take NAD's recommendations into consideration.

Alde Associates, LLC

daniPro Nail Polish

Case #5565 (March 2013)

NAD recommended that an advertiser discontinue its unsupported claims that its daniPro nail polish is an "antifungal" or a "topical antifungal," "keeps nails looking healthy," and is "natural and organic." NAD determined the advertiser had a reasonable basis for its claim that its daniPro nail polish contains undecylenic acid.

However, to avoid the potential for consumer confusion, NAD recommended that the advertiser clearly and conspicuously disclose, in close proximity to this ingredient claim, that the product is not effective in preventing or treating fungus of the nails. Further, NAD determined that the advertiser had a reasonable basis for its claim that daniPro nail polish is "doctor-formulated."

Lastly, NAD recommended that the advertiser discontinue its use of testimonials that attest to the product's effectiveness as an antifungal.

The advertiser agreed to comply with NAD's recommendations.

DERMAdoctor, Inc.

Photodynamic Therapy Laser Lotion

Case #5549 (January 2013)

NAD recommended that the advertiser discontinue its unsupported claims "With Photodynamic Therapy you get the same anti-aging red light treatment without the hassle of cumbersome light gadgets, costly doctor visits or post-procedure downtime" and "It is the new reality in light therapy." NAD also recommended that the advertiser avoid conveying the message that consumers can achieve the same or similar anti-aging benefits from using the product as they would from doctor-administered light therapy treatments in future advertising.

As for the claim "Simply apply this lotion for all day anti-aging benefits, including restoring radiance, minimizing the appearance of fine lines and wrinkles, evening out skin tone and improving elasticity," NAD recommended that "restoring radiance" portion of the claim be modified to more accurately indicate that skin is more radiant (not that the radiance is "restored") to better reflect the results of the clinical study. Lastly, as to the claim "Photodynamic Therapy is a red light treatment, daily moisturizer and broad spectrum SPF 30 all-in-one," NAD recommended that the "Photodynamic Therapy is a red light treatment" portion of the claim be discontinued. However, NAD concluded that the advertiser's descriptors of its product as a "daily moisturizer" and a "broad spectrum SPF 30" were substantiated.

DERMAdoctor agreed to comply with NAD's recommendations.

ORIGINS NATURAL RESOURCES INC.

Plantscription Anti-Aging Serum and Plantscription Anti-Aging Eye Treatment

Case #5502 (August 2012) // NARB Case #181 (January 2013)

NAD recommended that the claims "Nature's Plantscription rivals an anti-wrinkle prescription" and "88% of the visible wrinkle-reducing power of a prescription" be discontinued. However, NAD concluded that the claim "0% irritation" was supported. Nothing in the record precludes the advertiser from making monadic performance claims of a visible reduction in various signs of aging at the four-week time point and beyond (all but the redness parameter were statistically significant at all time points) that accurately reflect the study's results. NAD further recommended that the advertiser discontinue the use of the terms such as "repair" which communicate a far broader performance benefit than the evidence in the record supports and that the advertiser's references to anogeissus be discontinued.

As to the express claims for the advertiser's eye treatment product, NAD determined that the performance claims as to the visible improvements in the four major signs of aging assessed were supported, however, NAD recommended the advertiser to discontinue the use of the term "repair" which communicates a far broader performance benefit than the evidence in the record supports. NAD recommended that the advertiser modify its advertising to minimize the references to surgical procedures so as to avoid conveying the unsupported message that the product performs as well as surgical or other medical procedures. Lastly, NAD recommended that the advertiser modify the eye treatment advertisement to avoid any potential overstatement of the extent to which its products are, in fact, natural, though the advertiser may promote that certain ingredients in its products are natural and that they do not contain parabens.

The advertiser appealed all of NAD's adverse findings to the NARB.

NARB – (#181 – 01.29.13) – The NARB panel upheld NAD's recommendation that "Nature's Plantscription rivals an anti-wrinkle prescription" and "88% of the visible wrinkle-reducing power of a prescription" be discontinued, but overturned the remaining adverse findings.

Origins agreed to comply with the NARB's decision.

L'OREAL USA

Visible Lift® Smooth Absolute Foundation

Case #5458 (May 2012)

NAD recommended that the advertiser qualify its "See up to 10 years disappear...in a stroke" by specifying the three parameters for which the claim is supported (skin tone evenness, appearance of fine lines and skin smoothness). Concerning the claim "The Hydra- Collagen Complex formula replumps the skin from within while the High-Precision brush instantly smoothes and fills wrinkles for a dewy, youthful finish," NAD recommended that the claim be modified to remove any references to "replumping," while noting that "High-Precision brush instantly smoothes and fills wrinkles for a dewy, youthful finish" portion of the claim was supported. Lastly, NAD concluded that the advertisement did not convey a "line claim" but, rather, that the language effectively limited the "10 years younger" claim to the introduction of the new foundation product, "Smooth Absolute Instant Age-Reversing Foundation."

The advertiser agreed to comply with NAD's recommendations.

Good Health Naturally, LLC

Serranol Supplements

Case #5441 (March 2012)

NAD determined that the claims ("Anti-aging: reduces breast cysts and fibrosis by removal of the fiber build-up"; "Reduces fibromyalgia by reduction of fiber build-up"; and "Reduces formation of scars and wrinkles") should be discontinued because 1) there are no studies on Serranol; and 2) an in vitro study on the ability of an ingredient (ecklonia cava extract or "ECE") to inhibit cell activity that degrades skin firmness, strength, suppleness and elasticity (MMP inhibitors) showed that MMP was inhibited, but there was no correlation between the concentrations of the ECE used in the study and the amount of ECE in Serranol.

Given that the advertiser did not submit an advertiser's statement, NAD referred this matter to the Federal Trade Commission pursuant to Section 2.10 of the NAD/NARB Procedures.

Irwin Naturals

Doctor Developed Clear Pure Complexion

Case #5435 (March 2012)

NAD determined that the advertiser provided a reasonable basis for clearly qualified claims indicating that Clear Pure Complexion contains certain ingredients shown to improve the health and appearance of acne-prone skin. In particular, NAD recommended that the advertiser expressly qualify its claims to communicate to consumers that the ingredient zinc is effective in the manner described in the advertising; that vitamin A may be helpful in reducing acne in vitamin A deficient patients; and that vitamin B6 may be helpful in treating acne in vitamin B6 deficient patients.

With regard to the Pro-Nutraceutical Complex, NAD believed that the body of evidence upon which the advertiser relied, could, when considered collectively, provide a reasonable basis for the general claim that the Pro-Nutraceutical Complex contains ingredients that have been historically

used in traditional medicine to "target internal factors that influence problematic skin." Thus, NAD recommended that the advertiser expressly qualify its claims in a way that communicates to consumers that the ingredients in the Pro-Nutraceutical Complex have been shown in historical or traditional use to "target internal factors that influence problematic skin."

Lastly, NAD determined that the advertiser's evidence was insufficient to provide a reasonable basis for the claim that "the formula has been scientifically-developed to target the vital organs and systems of the body that directly affect skin health." Thus, NAD recommended that the advertiser discontinue use of the phrase "scientifically-developed."

The advertiser agreed to comply with NAD's recommendations.

Neutrogena Corporation

Neutrogena Rapid Wrinkle Repair Moisturizer (Night)

Case #5407 (December 2011)

NAD recommended that the advertiser discontinue the claims ("Most anti-wrinkle creams disappear long before the wrinkles. Until now.) and modify the claim "In fact, it's clinically proven to smooth wrinkles in just one week" to avoid conveying the unsupported message that wrinkles are substantially reduced or eliminated in one week and to specify the parameters for which the greatest improvements were seen (photodamage and fine lines). NAD determined that the claim "It has Accelerated Retinol SA, which is the fastest retinol formula available" was supported.

The advertiser agreed to comply with NAD's recommendations.

The Procter & Gamble Company

CoverGirl NatureLuxe Mousse Mascara

Case #5400 (December 2011)

NAD inquired about, among other things, an advertisement featuring a model looking up to highlight her long eyelashes and, among other things, the claim "2X more volume" and the disclaimer beneath the photograph stating "lashes enhanced in post-production."

The advertiser advised NAD it had permanently discontinued all of the challenged claims and the photograph in its advertisement. NAD was particularly troubled by the photograph of the model – which serves clearly to demonstrate (i.e., let consumers see for themselves) the length and volume they can achieve when they apply the advertised mascara to their eyelashes. This picture is accompanied by a disclosure that the model's eyelashes had been enhanced post production. Given that product demonstrations in advertisements must be truthful and accurate and cannot be enhanced, NAD appreciated the advertiser's offer to permanently discontinue the use of this advertisement, an action NAD deemed necessary and proper under the circumstances.

Biologic Solutions, Inc.

Stem Cell Therapy Cream

Case #5368 (August 2011) // NARB Case #177 (August 2012)

Given the absence of any product testing in the record, NAD recommended that the claims "Today Medical History is being made. Researchers have discovered a new miracle treatment that reverses the look of aging skin. Working on the cellular level to make you look years younger than your age, for life!" and the "before" and "after" photographs" be discontinued. NAD further recommended that the remaining claims be significantly modified to identify only the ingredients tested and to make clear that emerging evidence indicates that these ingredients may help reduce some

signs of aging (crow's feet and furrow wrinkles, smoother skin) NAD also recommended that all of the advertiser's unsupported quantified performance claims (Decrease wrinkle appearance 56% and increase collagen production by 84% [in a way L'Oreal can't, Chanel can't, even Botox can't]; Decrease wrinkle appearance 56% in 30 days; Increase production of new skin cells by 57%; Increase natural collagen production by 80%; Increase elastin synthesis by 61%; Look up to 15 years younger starting the very first day) be discontinued and that the advertiser limit its efficacy claims to potential (and non-quantified) anti-aging benefits (e.g., laxity, sagging, elasticity and smoothness) of certain ingredients, not the actual product. Lastly, NAD recommended that the "Dermatologist Recommended" claim, which was based on the testimonial of one dermatologist, be discontinued.

NARB – (#177 – 08.21.12) – The NARB panel recommended that Biologic discontinue the challenged claims, including use of the challenged "before" and "after" photographs. The panel also recommended that Biologic not make the same claims with respect to the ingredients in Stem Cell Therapy without additional substantiation that provides a reasonable basis for the claims.

Biologic agreed to comply with NARB's recommendations.

Maybelline New York, Inc.

Instant Age Rewind® Eraser Treatment Makeup
Case #5241 (November 2010)

NAD determined that the claims "Erase fine lines!*"; "Erase crow's feet!*"; "Erase age spots!*" are not misleading and that the reasonable takeaway is that the product improves the appearance of skin, not that it literally "erases" imperfections. Further, NAD determined that the claim "*Doesn't just cover; after 8 weeks of use reduces imperfections without makeup on" was supported. In the absence of extrinsic evidence demonstrating that the product name "Instant Age Rewind – The Eraser Treatment Makeup" confuses consumers, NAD did not find a basis to require a name change.

With regard to the claim, ""Go Beyond covering lines.* With an exclusively designed applicator, The Eraser instantly micro-covers and micro-erases for ultimate flawless perfection," NAD concluded that use of the term "exclusive" in connection with the patented applicator design is appropriate and that "micro-covers" and "micro-erases" references were supported.

NAD also determined that the claims "ultimate flawless perfection" and "It's a New Age in Anti-Aging" were puffery in the context of this advertisement.

NAD recommended that the advertiser delete the disclaimer that the photograph in the advertisement is a "dramatization of actual product results" and determined that the advertiser may continue to the use the photograph in conjunction with a disclaimer clarifying the results which consumers can expect to achieve (i.e., the reduction of age-related imperfections).

With respect to the claim, "BELOW THE SURFACE: Our super-concentrated formula, with Goji Berry, helps increase skin elasticity," NAD determined that the reference to increased skin elasticity was supported but recommended that the reference to goji berry be discontinued based on the evidence in the record. NAD determined that the claims "Active Formula + Micro-Corrector Applicator – Erase Instantly. More Completely" and "Micro-Corrector Applicator fills and smoothes like no finger or sponge can" were supported.

The advertiser agreed to comply with NAD's recommendations.

Coty Inc.

Sally Hansen Complete Manicure

Case #5201 (August 2010)

NAD recommended that Coty discontinue its advertising claim "9 out of 10 Salon professionals preferred our formula to the leading salon brand" because its surveys were not sufficiently reliable to provide a basis for the claim. NAD also determined at least one reasonable interpretation of the unqualified "9 out of 10" preference claim was that the advertiser's nail polish was actually available in, preferred by and used by a significant number of salon professionals in a salon setting, a message not supported by the evidence in the record. Lastly, NAD determined that the advertiser had provided a reasonable basis for its monadic claim "All 5 Steps of a Salon Manicure in 1 Bottle."

The advertiser agreed to comply with NAD's recommendations.

Origins Natural Resources Inc.

Brighter by Nature™ Skin Tone Correcting Serum & Youthtopia™ Age-Correcting Serum

Case #5173 (May 2010)

NAD recommended that Origins refrain from comparing its products to cosmetic procedures such as laser or chemical treatments in combination with express, quantified claims about product performance or modify the claim(s) to include the disclosure "results not equal to medical procedures" as part of the claim itself. NAD also recommended that the advertiser modify the reference "skin clarity" to more clearly explain the meaning of the term to consumers.

NAD further recommended that the advertiser clearly and conspicuously disclose the limited population tested (Asian women) and the fact that a 42 percent visible reduction in dark spots and discolorations was achieved after eight weeks of product use.

NAD recommended that the advertiser modify the claim "This clinically proven plant serum with Japanese Basil Leaf, Cucumber and naturally-derived Vitamin C helps zap the appearance of dark spots and create more even skin tone now and in the future" to indicate that the benefits could be achieved with continued use to make clearer the reference to "in the future."

With regard to the claims for the advertiser's Youthtopia serum, NAD determined that the claim "75% agreed their skin felt firmer" was supported but recommended that the claim "73% saw younger-looking skin with fewer lines" be modified to separately list the percentages for the attributes as distinct (e.g., "73% saw younger-looking skin" and "73% agreed that Youthtopia helped reduce the appearance of lines and wrinkles").

NAD further recommended that the advertiser clearly and conspicuously disclose that the results were based on ratings made by users after four weeks of use. NAD also recommended that the advertiser avoid conveying the unsupported message that the ingredients Rhodiola rosea and Amalaki had been proven to provide the promised benefits. NAD recommended that the advertiser discontinue the references to "rapidly," "visibly" and "repair" based on the results of the study.

Lastly, NAD recommended that the claim "So what you see and feel is a tighter, tauter complexion that appears significantly younger" and "appears significantly younger" be modified to eliminate the references to "significantly" based on the evidence in the record.

Origins agreed to comply with NAD's recommendations.