

NAD INVESTIGATIONS: LATEST CASES  
RECENT HIGHLIGHTS

Advertisers cooperate with the National Advertising Division (NAD) of the Council of Better Business Bureaus, Inc., to resolve challenges to their national advertising. You should be aware of the latest NAD cases because of the helpful ad compliance information found in these decisions. This article contains representative examples of NAD cases in these two categories:

I. IMPLIED CLAIMS—It's not always what your ads say that can attract NAD scrutiny: It's also just as important to know what implied claims may be found in your advertising. Accordingly, you should carefully review your advertising to find any implied claims that consumers may take away from your advertising. Keep in mind that your competitors will carefully study your advertising for any possible advertising compliance "flaws." Here's a recent case in point:

S.C. Johnson & Sons, Inc. NAD recommended that S.C. Johnson & Sons, Inc.—the maker of Oust Air Sanitizer—should modify claims suggesting that Lysol, a competing product, is ineffective on odors in the air. Reckitt Benckiser, Inc., the maker of Lysol brand disinfectant products, challenged TV advertising for Oust. The challenged advertising shows a woman describing the odors in the bathroom used by her children and the statement:

"The boy's bathroom definitely has that public bathroom aroma. Lysol was more for the surfaces. Even if you wash, the smell lingers, so I tried Oust."

NAD found that the commercial implies that Lysol won't have an effect on odors in the air. NAD's decision said that,

"What Lysol in fact does, is to kill bacteria on the surface—bacteria that is often the source of the odors being described in the commercial."

NAD's conclusion:

While the advertiser can accurately advertise the respective abilities of Oust to kill odor-causing bacteria in the air and Lysol to kill odor causing bacteria on surfaces, since bacteria on the surface is often the source for odors, it is not accurate to claim, directly or by implication, that Lysol will not remove odors in the air.

NAD recommended that the commercial should be discontinued or modified so as to avoid conveying this unsupported message.

In its advertiser's statement, S.C. Johnson said the company disagrees with NAD finding that the "challenged commercial went so far as to claim that Lysol had no effect on odors. That was certainly not our intent. . . . Nevertheless, SC Johnson supports the industry self-regulatory process and will take the NAD's concerns into consideration in future advertising."

(S.C. Johnson & Sons, Inc., NAD Release, December 13, 2006.)

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February 5, 2007  
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II. GENERAL EFFICACY CLAIM—Here is a recent case involving this type of claim:

DermaDoctor. NAD found that DermaDoctor provided a reasonable basis to back up a general efficacy claim, as well as a claim as to pore size appearance. DermaDoctor is the maker of Picture Poreflect Pore Minimizing Solution.

NAD sought substantiation for these claims that appeared in print advertising:

- "Clinically proven to reduce pore size"
- "100% of women who used Picture Poreflect experienced an immediate reduction in pore size"
- "Picture Poreflect helps pores appear smaller—removes excess skin oils, crops out blackheads and smoothes out edges"
- "Picture Poreflect was shown to reduce pore size up to 42%"

At the start of NAD's inquiry, DermaDoctor modified certain ad claims. At the time of its response, the company's advertising featured this claim: "In an independent clinical study, the appearance of pore size was immediately reduced by 29% and after eight weeks, there was continued improvement up to 42%"

NAD said that it appreciated the advertiser's representation that three of the claims were discontinued.

To support its claims, the advertiser relied on a body of literature as to the efficacy of certain active ingredients for facial cleansing and reduction of pore size. Additionally, the advertiser showed NAD a clinical study evidencing the advertised product's efficacy at diminishing pore size.

NAD found that, based on the evidence produced, the advertiser provided a reasonable basis for claims as to the efficacy of the product generally and that it works to "remove excess skin oils" and "smoothes out [pore] edges." NAD also found that the advertiser provided a reasonable basis for the following claim:

"In an independent clinical study, the appearance of pore size was immediately reduced by 29% and after eight weeks, there was continued improvement up to 42%."

(DermaDoctor, NAD Release, December 15, 2006.)

LAWYER'S REFERENCE SERVICE

S.C. Johnson & Sons, Inc., NAD Release, December 13, 2006.

DermaDoctor, NAD Release, December 15, 2006.

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