



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



Environmental Digest

About NAD: The National Advertising Division is an investigative unit of the U.S. advertising industry's self-regulatory process. It is administered by the Council of Better Business Bureaus. NAD seeks to ensure that claims made in national advertising are truthful, accurate and not misleading. NAD requires that objective product performance claims made in advertising be supported by competent and reliable evidence.

NAD cases can be initiated through staff monitoring of advertising claims or through "challenges" to advertising claims filed by competitors, consumers, or public interest groups.

Between 1988 and 2012, NAD issued more than 40 decisions involving a wide range of environmental, "green marketing" claims, often requiring that the claims be modified or discontinued. Excerpts from several recent NAD cases follow; 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 the government.

Fair Trade USA, Decided on Appeal to the National Advertising Review Board, Panel # 174 (8.14.12)

TRANSFAIR USA, Fair Trade Certification, Case #5337 (06.03.11)
AVON PRODUCTS, Inc., mark. Personal Care Products, Case #5338 (06.03.11)

A National Advertising Review Board (NARB) panel has recommended that Fair Trade USA – formerly TransFair – require users of the organization’s “Fair Trade Certified” seal for composite products to provide additional information to consumers.

NARB is the appellate unit of the advertising industry’s system of self-regulation. It is administered by the Council of Better Business Bureaus.

By way of background, Dr. Bronner’s Magic Soaps, manufacturer of personal care and cosmetic products, argued before the National Advertising Division (NAD) that the use of the Fair Trade USA “Fair Trade Certified” ingredient seal for composite products falsely implied that fair-trade sourced ingredients constituted a substantial part of the product.

NAD determined that use of the “Fair Trade Certified” ingredient seal on the front panel of product packaging – in a context that included a statement of fair trade sourced ingredients on the front panel and identification of fair trade sourced ingredients in the ingredients panel – accurately conveyed the degree to which fair trade sourced ingredients are included in the product.

Dr. Bronner appealed NAD’s determination to the NARB.

NARB, in its decision, said it “recognizes there are a number of organizations that provide fair trade certifications and applauds their work in promoting fair trade. While it is not the panel’s role to determine acceptable thresholds or standards used by certifying organizations, it is the panel’s role to recommend changes it believes are necessary to ensure that fair trade certification seals convey an accurate message to consumers. The fact that there are no generally accepted or legally required thresholds for the amount of fair trade sourced ingredients in composite products ... makes it even more important that consumers receive an accurate message as to the fair trade content in products displaying the seal.”

Specifically, the panel found that the placement of the “Fair Trade Certified” ingredient seal on the front of a package conveyed a message of significance to consumers.

The “identification of fair trade sourced ingredients on the ingredients panel, which normally appears on the back or side of the packaging, is not enough to overcome or qualify the implied message of significance conveyed on the front of the package,” the panel stated.

“Putting an asterisk after each fair trade sourced ingredient does not show the relative proportion of fair trade sourced ingredients in the product and does not provide enough information for consumers to determine whether fair trade sourced ingredients represent a significant percentage of the product’s ingredients, which is the message reasonably conveyed by use of the ‘Fair Trade Certified’ ingredient seal on the front of the package.”

Further, the panel recommended that Fair Trade USA qualify the seal’s message by indicating the relative percentage by weight of ingredients that are fair trade sourced in order to convey an accurate message to consumers.

PACTIV CORPORATION

Alternative Packaging Products, Plastic Packaging

Case # 5472 (6.15.12)

NAD that because consumers cannot typically verify for themselves the truth and accuracy of environmental claims in advertising, advertising self-regulation serves an important role in ensuring that environmental claims are truthful, non-misleading and adequately substantiated.

The challenged advertising appeared in Pactiv’s marketing communications materials and claimed that Pactiv’s products are recyclable and/or beneficial to the environment on the basis of recyclability or recycled content.

The advertiser asserted that the challenged claims had been discontinued prior to NAD’s compliance inquiry, and the case was administratively closed.

NAD noted in its decision, however, that in evaluating the messages conveyed by environmental marketing claims and the sufficiency of the supporting evidence, NAD has accorded great weight to the Federal Trade Commission Green Guides.

NAD recommended that the advertiser follow FTC guidelines in developing future marketing communications concerning the recyclability and/or recycled content for its products.

CHIPOTLE MEXICAN GRILL

Chipotle Restaurants

Case # 5450 (4.18.12)

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

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

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

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

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

NAD, in its decision, noted that it "appreciates the challenges faced by advertisers who wish to communicate information to consumers about sustainability measures taken by a company. NAD recognizes the positive role that advertising can play in raising consciousness about sustainability and informing consumers of the activities and commitments made by the company. Nevertheless, because images and terms suggestive of sustainability can give rise to so many different meanings and expectations on the part of consumers, such claims can be difficult to substantiate."

NAD recognized that there is a distinction between, on one hand, an advertisement that claims the advertiser possesses green attributes or sustainable practices, and, on the other hand, an advertisement that communicates a goal of sustainability or a more aspirational message. NAD noted however, that even if the advertisement's message of sustainability is merely aspirational, the advertising claim still requires substantiation.

The advertiser explained that its website, other marketing materials and its filings before the Securities and Exchange Commission include in-depth information about the company's Food with Integrity programs, including indications of how much meat is "naturally-raised" – using Chipotle's definition of "naturally-raised," (a more stringent definition than the one established by the U.S. Department of Agriculture), how much produce is organic or locally sourced, and how much dairy comes from pasture-raised cows.

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

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

Ecologic, LLC
Eco-One Plastics Additive
Case #5388 (10.14.11)

NAD recommended that Ecologic LLC modify certain claims for the company's for Eco-One additive, a product designed to improve the degradability of plastic goods. Claims at issue:

- "Eco-One is 100% organic and non-starch based."
- "proven methane off-gassing, which allows it to be re-captured for energy."
- "Over 90% of plastics end up in landfills"
- "Eco-One is accepted by major national brands"
- "Products made with Eco-One are scientifically proven and have been analyzed by independent tests, each one validating Eco-One claims."I

In this case, NAD considered whether technical evidence related to biodegradation under certain controlled conditions is meaningful when products treated with the advertiser's additive are typically disposed of in landfills that do not meet such controlled conditions.

NAD also examined the results of a research study on consumer perceptions on biodegradability.

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

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

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

FP INTERNATIONAL
Biodegradable SUPER 8 Loosefill Environmentally Friendly Packaging
Case #5256 (12.03.10)

NAD recommended that

FP International, the maker of "Biodegradable Super 8 Loosefill" packing material, omit the word "biodegradable" from the product's name and modify or discontinue certain comparative advertising claims. NAD determined that the advertiser could support a carefully qualified "green family" claim.

Claims at issue:

- *"Biodegradable Super 8 Loosefill Environmentally Friendly Packaging"*
- *Super 8 Loosefill Packaging "will decompose completely within 9 to 60 months in the presence of microorganisms, whether it is sent to a landfill or ends up as litter in the soil."*
- *"Made from 100% recycled polystyrene that is biodegradable."*
- *"These eco friendly packaging products will biodegrade in aerobic (with air) and anaerobic(without air) conditions."*

NAD also examined comparative claims and claims related to general environmental benefits. NAD concluded that there was insufficient evidence to support an unqualified biodegradable claim or the advertiser's more limited claim that Super 8 Loosefill would biodegrade completely in a landfill within 9 to 60 months.

NAD recommended that the advertiser discontinue the use of the term "Biodegradable" in conjunction with the name of the product and discontinue the claim that the product biodegrades in a landfill within 9 to 60 months.

NAD recommended that the advertiser discontinue certain comparative claims including the claim that starch loosefill "uses crops which may increase food prices and decrease food supply" and that its own loosefill product "emits 83% less greenhouse gas emissions than starch in its production."

NAD determined that the advertiser provided a reasonable basis for certain qualified environmental benefit claims regarding its product, including the product's recyclability, reusability, comparatively light weight and other factors contributing to more favorable environmental impact or sustainability. As a result, NAD determined that the "Green Family" claim was adequately substantiated, if used in a context that clearly and conspicuously disclosed that the product attributes form the basis for the claim.

THE SHERWIN-WILLIAMS COMPANY

Harmony® Paint

Case #5257 (11.30.10)

NAD recommended that The Sherwin-Williams Company, maker of the "Harmony" line of paints, modify or discontinue advertising claims that the "Harmony" paint line is completely free of volatile organic compounds (VOCs).

Claims at issue:

- *"No-VOC formula."*
- *"Zero-VOC formula."*
- *"Formulated without silica and without VOCs for better indoor air quality."*

NAD also reviewed the implied claim that the full line of Sherwin-Williams Harmony paints, including base paint and paint containing color, contain no VOCs.

The evidence in the record, NAD noted, “demonstrates that not all of the paint colors in the Harmony line perform as promised when Sherwin-Williams’ Deep Base is mixed with conventional colorants.”

NAD recommended that the claim be discontinued or modified to clearly convey to consumers that there are exceptions to the line claim by clearly and conspicuously disclosing that the addition of conventional colorants to Harmony Deep Base paint may result in higher levels of VOCs for some colors.

Frito-Lay North America, Inc.
SunChips Snacks

Case #5237 (10.19.10)

NAD determined that Frito-Lay North America, Inc. took necessary and proper action in discontinuing a “solar power” advertising claim made for SunChips snacks.

Claims at issue:

- *“My chips are made with SOLAR POWER.”*
- *“In California, SunChips snacks are made with the help of the sun.*
Solar collectors at one of our plants in Modesto, California capture solar energy to help make SunChips snacks.”

At the outset of NAD’s inquiry, the advertiser said it had permanently discontinued the claim “My chips are made with solar power,” and, during the course of the inquiry, represented that it would permanently discontinue the remaining claim at issue – “In California, SunChips snacks are made with the help of the sun.”

NAD noted in its decision that it found the company’s action necessary and proper “because a consumer could reasonably take away the message that all SunChips were made in factories that were one hundred percent solar-powered, a claim that is not accurate.”

NAD lauded the advertiser’s effort to manufacture some portion of its nationally distributed SunChips snacks in an energy-conscious manner, but determined that, when viewing the claim in the context of the entire advertisement – which featured a shining sunny wheat field, blue skies and a sunkissed woman – the disclosure “Solar collectors at one of our plants in Modesto, California capture solar energy to help make SunChips snacks,” contradicted rather than cured the inaccurate message.

S.C. JOHNSON & SON, INC.
Ziploc Evolve

Case #5225 (09.27.10)

NAD cautioned that the claim “made with wind energy” should clearly disclose whether Ziploc “Evolve” plastic bags are made wholly, or only in part, by wind energy.

Claims at issue:

- *“Introducing Ziploc Evolve. The new ultra light bag that’s better for the environment.”*
- *“Made with 25% less plastic”*
- *“Made with wind energy”**

**Made with a combination of renewable energy and energy from traditional sources.* Following its review, NAD determined that the advertiser substantiated claims that Ziploc Evolve is “made with 25% less plastic” and, in the context advertised, that the product is “better for the environment.”

However, to avoid confusion and to provide consumers with clearer information, NAD recommended that the claim “made with wind energy” be modified to either communicate that the product is made in part with wind energy or communicate that the product is manufactured using a combination of wind energy and traditional energy sources.

Seventh Generation Household Cleaning & Laundry Products

Household cleaning products

Case # 5206 (8.24.10)

NAD noted that advertisers must exercise caution when making comparative safety claims to avoid overstating potential product benefits or dangers.

Claims at issue:

- *Seventh Generation Household Cleaning Products do not contain “hazardous” chemicals.*
- *Seventh Generation Detergents are [100%] natural.*
- *Products that compete with Seventh Generation Household Cleaning Products: are not safe are not as safe as Seventh Generation Household Cleaning Products require consumers to hold their breath during use, and are leading to a rapid increase in childhood illnesses such as autism, ADHD, asthma, allergies, cancer and diabetes.*

NAD findings: NAD recommended that the advertiser discontinue comparative safety claims, as well as claims that its products do not contain any hazardous chemicals. NAD noted that nothing in the decision prevents the advertiser from promoting its efforts to minimize the inclusion of hazardous chemicals and its disclosure of all ingredients in its household cleaning products.

NAD determined that the use of “natural” on the listed products should be qualified to explain that included surfactants are plant-derived or plant-based. However, NAD determined that the reference to “naturally” – in the context of the advertising at issue – be discontinued and that the advertiser avoid conveying the unsupported message that its product is all natural.

**Elanco Animal Health Division
Comfortis Chewable Tablets**

Case #5134 (1.08.10)

NAD noted that unqualified general claims of environmental benefit are difficult to interpret, and depending on their context, convey a wide range of meanings to consumers.

Claim at issue: *Comfortis is “Environmentally Friendly.”*

NAD findings: NAD noted that while the advertiser has a right to promote the fact that the active ingredient in its product won the 1999 EPA Presidential Green Chemistry Challenge Award, the mere existence of the award is insufficient to support the advertiser’s general description of its product as “environmentally friendly.” NAD recommended that the advertiser discontinue the claim.

**Heartland Sweeteners
Ideal**

Case #5125 (12.14.09)

Because the Ideal product contains sucralose, an artificial sweetener, NAD recommended that the advertiser discontinue its “natural”, “natural sweetener”, “more than 99% natural” claims as well as its claim that Ideal is different from the other no calorie sweeteners on the market.

Claim at issue: *“What makes Ideal different than the other no calorie sweeteners on the market currently? ...*

NAD findings: NAD acknowledged that the advertiser, seeking to capitalize on consumer demand for natural ingredients, intended to distinguish its product on the basis of a particular ingredient, Xylitol. NAD noted, however, that the advertiser was selling the sweetening product *as a whole*. NAD noted that the majority of product’s sweetness – according to the only objectively provable testing in the record – derived from an artificial ingredient. NAD recommended that the advertiser discontinue claims distinguishing its product from other sugar substitutes on the market on the grounds that it is a natural sweetening product.

Heartland appealed certain of NAD’s findings to the National Advertising Review Board (NARB), which upheld NAD’s decision.

MasterNet Ltd.
Plastic Netting Products
Case #5092 (10.02.09)

NAD recommended that MasterNet Ltd. discontinue certain environmental claims for its plastic netting packing products. NAD found, however, that the company could support a “more environmentally friendly” claim in a limited context.

Claim at issue: Masternet’s netting products are “biodegradable.”

NAD findings: In support of its claims, the advertiser submitted a “Certificate of the Biodegradability of Plastic Products Made by MasterNet Ltd.” and an Ecological Assessment for a component of MasterNet’s plastic products. NAD determined that the Certificate and the testing upon which it appears to be based do not support a finding that the plastics meet the standard for biodegradable as set forth by the Federal Trade Commission’s (FTC) Green Guides or what a reasonable consumer would expect regarding the degradation of the product.

Clorox
Green Works Natural Cleaning Wipes
Case #5099 (9.25.09)

NAD noted its appreciation that Clorox discontinued a biodegradability claim for the Green Works Natural Cleaning Wipes and recommended the company discontinue advertising claims that suggest the product disinfects.

Claims at issue:

- *“99% natural and biodegradable.”*
- *“[C]leans with the power of Clorox.”*

NAD findings: NAD noted that for most products that enter the solid waste stream, “customary disposal” typically means disposal in a landfill. Although the advertiser presented evidence in support of its biodegradability claim, Clorox asserted that it would permanently discontinue the claim as it transitions to new packaging. NAD noted its appreciation for the voluntary action taken by Clorox to discontinue claims that the product is biodegradable, in favor of a compostability claim that is consistent with the reliable supporting evidence.

NAD recommended that the advertiser discontinue the claim “Cleans with the Power of Clorox” so as to avoid conveying the message that Green Works, a natural product that does not disinfect, has disinfectant capability.

Solo Cup Company
Bare Disposable Dinnerware
Case #5036 (6.19.09)

NAD determined that the Solo Cup Company took necessary and appropriate steps in discontinuing certain "green" advertising claims for the company's Bare Disposable Plates.

Claim at issue: *"Made from bamboo and other renewable resources!"*

NAD findings: The advertiser informed NAD that it would modify all future Bare Plate advertising to remove any reference to bamboo content until the product formulation or manufacturing processes were modified so that the bamboo fibers are more readily identifiable – a course of action that NAD deemed necessary and proper given the evidence presented in the record.

Apple, Inc.
Apple Notebook Computers
Case #5013 (6.3.09)

NAD recommended that Apple Inc. modify advertising for the company's Mac Book laptop computers to clarify the basis for its comparative advertising claim and avoid overstatement.

Claim at issue: *"World's Greenest Family of Notebooks."*

NAD findings: NAD reviewed supporting evidence provided by the advertiser, including the Electronic Product Environmental Assessment Tool (EPEAT) rating on which Apple relied as support for its "world's greenest family of notebooks" claim. NAD determined that EPEAT is a recognized industry methodology to identify the "green" characteristics of a computer product.

Southern Diversified Products, LLC
Mythic Paints
Case #5009 (4.29.09)

NAD noted that it strives to harmonize its review of advertising with applicable regulatory schemes, guidelines and standard industry practices in the marketplace.

Claim at issue: *"Safe for People, Safe for Pets, and Safe for Earth"*

NAD findings: NAD determined that the advertiser's evidence, which demonstrated the absence of hazardous substances and toxins, provided a reasonable basis for its slogan: "Safe for People, Safe for Pets and Safe for Earth"

However, NAD determined that the advertiser exaggerated the health risks posed by competitive products, and recommended that the advertiser discontinue or modify its comparative safety claims.

Dispoz-O
Enviroware tableware products
Case #4990 (3.27.09)

NAD recommended that Dispoz-O discontinue certain environmental claims for its Enviroware plastic tableware.

Claim at issue: *"Enviroware cutlery, straws, hinged containers, plates, bowls and trays are 100% biodegradable and come with a certificate of biodegradability."*

NAD findings: NAD determined that the advertiser did not establish, by means of competent and reliable scientific evidence that its products will completely break down and return to nature within a reasonable short period of time after customary disposal. NAD found that a "certification" of a product or additive as biodegradable by a supplier is not a substitute for competent and reliable scientific evidence.

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- Electronic Retailing Self-Regulation Program
- National Advertising Division
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