

# Cosmetics and Personal Care Products Advertising Digest



## National Advertising Division

112 Madison Avenue

3rd Floor

New York, NY

10016

**About NAD:** The National Advertising Division of the Council of Better Business Bureaus is an investigative arm of the U.S. advertising industry's self-regulatory process. 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 1987 and 2013, NAD issued nearly 50 decisions involving a wide range of cosmetics 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.

**NEW NORDIC U.S.A., INC.**  
**Skin Care™ Collagen Filler**  
Case #5901 (11.09.15)

**Claims at issue:**

- “Reduces formation of wrinkles.”
- “For fine and supple skin.”
- “New Nordic introduces Skin Care™ - a new supplement designed to activate your skin's cells to generate more anti-wrinkle collagen and help your skin stay healthy and youthful looking. The ingredients will better reach the deepest layers of your skin where no antiaging cosmetic serum reaches.”
- “Collagen Filler with Proven Ingredients.”
- “Promotes health skin.”
- “Helps reduce the formation of new wrinkles.”
- “Promotes the skin's own formation of collagen.”

*Testimonial:*

Diana is 29 years old and works as a sales assistant in Copenhagen. “I have always loved the outdoors and staying in the sun, even without protection. But unfortunately, my skin started showing signs of wrinkles already in my 20s, particularly on my forehead, which frustrated me a lot. So much so that I chose to get bangs. . . Now, I have used the tablets for six months and they really work for me. I am ready to get rid of my bangs and show my forehead again. I don't feel like stopping the tablets because I feel my skin looks better, tighter, and healthier.”

**NAD findings:** Given the absence of any competent and reliable scientific evidence to support the challenged product performance claims and testimonial, NAD recommended that they be discontinued.

**VOGUE INTERNATIONAL, LLC**  
**Proganix Line of Hair Care Products**  
Case # 5864 (07.13.15)

In deciding whether a commercial message is puffery or makes an objective claim requiring substantiation, NAD evaluates whether the language in the claim is vague and fanciful and is not objectively measurable or whether it refers to specific attributes that are measurable.

**Claims at issue:**

- “Performance Naturals (*noun*): 1. High performance extracts up to 200x more potent than their raw natural state.”
- “Breakthrough technology performance naturals. A revolutionary extraction process producing Concentrates up to 200x more potent than their raw organic state.”
- Various ingredient/function claims touting specific natural ingredients (such as Vitamin E, Ceramide, Soy Protein, Caffeine, Acai Berry, Agave Nectar, Cherry Blossoms, Coconut Water, etc.) as the driving force behind product performance, including “(High performance) Vitamin E + Ceramide = strength (elasticity) + repair split ends.”
- “Nature + Science = Salon Performance”
- “Nature + Science + Salon Performance. We combined the best of what nature and science have to offer in one powerful collection of products. The result is a set of unique formulas that unleash each ingredient's full potential, making them up to 200x more potent than their raw natural states.”
- “Zero SLS”
- “Sodium Lauryl Sulfate-Free”

*Implied Claims:*

- The natural ingredients in Proganix render the formula 200x more powerful in delivering the claimed benefit.
- The performance of each Proganix formulation is attributable to named natural extracts.
- Proganix products are sulfate-free.

**NAD findings:** NAD recommended that the advertiser 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. Additionally, NAD determined that the claims, “science + nature = performance” and “salon performance” were permissible puffery. Finally, NAD recommended that the advertiser discontinue the unsupported claim, “High performance extracts up to 200x more potent than their raw natural state.”

**TYRATECH, INC.**

**Vamousse Lice Treatment and Vamousse Lice Prevention Products**

Case # 5854 (06.17.15)

The nature and extent of product performance claims should be directly analogous to the precision and specificity of the data used to substantiate them.

**Claims at issue:**

- “Vamousse is proven to kill 100% of lice and eggs, in just 15 minutes.”
- “Results in 15 minutes!”
- “Vamousse is proven to kill 100% of resistant head lice.”
- “Vamousse starts killing head lice and eggs the moment it’s applied, and will kill 100% of lice and their eggs in just 15 minutes!”
- “Vamousse kills lice and eggs with 1 application.”
- “Vamousse is non-toxic and pesticide free, and safe for children 2 years and older.”
- Vamousse is scientifically proven to be 100% effective against ‘Super Lice.’”
- “Pesticide Free”
- “[Vamousse Lice Prevention Shampoo] is an effective yet safe shampoo that uses non-toxic, natural ingredients to prevent infestation by killing lice before they lay eggs.”
- “Protects family members from lice infestation.”

*Implied Claims:*

- Vamousse is better at treating lice than other treatments.
- Vamousse, unlike other treatments, kills resistant lice.
- FDA-approved lice treatments are unsafe.
- Vamousse is actually superior to FDA-approved lice treatments, including the challenger’s prescription product.
- Vamousse Lice Prevention shampoo can prevent a head lice infestation.

**NAD findings:** NAD determined that the advertiser’s *in vitro* tests were insufficient to support its claims regarding the efficacy of its lice treatment product when used to treat head lice infestations on humans and recommended that the advertiser discontinue its claims that Vamousse “Kills 100% of lice and eggs in 15 minutes,” “Kills lice and eggs in one application,” “starts killing head lice and eggs the moment it’s applied,” provides “Results in 15 minutes,” “Kills Resistant Lice” or is “proven to kill 100%

of resistant head lice." However, NAD found that the advertiser provided a reasonable basis for its "pesticide free" and "No Synthetic Pesticides" claims. It also determined that its use of the term "pesticide," in the context in which it appeared in the challenged advertising, did not reasonably convey a comparative safety message. Lastly, NAD determined that the *in vitro* testing on the advertiser's Vamousse Protection Shampoo product was insufficient to support its claims that the product can "protect your child" or "prevent [or protect against] infestation by killing lice before they lay eggs," and recommended that those claims be discontinued.

**VOGUE INTERNATIONAL, INC.**  
**OGX Shampoos and Conditioners**  
Case # 5844 (05.08.15)

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.

**Claims at issue:**

- "Renewing Argan Oil of Morocco" and other product names.
- "A unique, precious blend of Argan oil of Morocco which instantly penetrates the hair shaft restoring shine and softness while strengthening and creating soft, seductive, silky perfection."
- "Why you want it ... this exotic blend of Argan oil of Morocco penetrates, moisturizes, renews and creates softness and strength while protecting your hair from harmful styling heat and UV damage as it gives you smooth, sexy tresses."
- "A high performance blend with Vitamin B7 biotin, infuses nutrients into every strand while collagen and hydrolyzed wheat protein create the appearance of thicker, fuller, healthier looking hair."
- "Organix products contain exotic active ingredients and are sulfate free to not dry out your hair."
- "OGX products use a unique blend of sulfate free surfactants. Our formulas do not contain lauryl or laureth sulfates" and "Zero SLS/SLES."
- "Unique blend of sulfate-free surfactants for renewed softness."

*Implied Claims:*

- The featured ingredients are present in the product at a level that provides a performance benefit for hair.
- The absence of sulfates in OGX products provides a material benefit for hair.

- OGX products, including shampoos and conditioners, do not contain any sulfates.

**NAD findings:** Having determined that the product name makes an unsupported express claim that the exotic ingredient provides the touted benefit, NAD recommended that the advertiser modify its product names and product packaging to make it clear that the product ingredients taken together provide the claimed benefits, rather than the result of the inclusion of one single exotic ingredient (e.g., Renewing Shampoo with Argan Oil, Nourishing Shampoo with Coconut Milk, Anti-Breakage Shampoo with Keratin Oil.) NAD also recommended that the advertiser discontinue claims that the Weightless Hydration Coconut Water Shampoo has “Zero SLS/SLES” or otherwise implying that the shampoo contains sulfate-free surfactants.

### **LIFES2GOOD, INC.**

#### **Viviscal**

*Case #5794 (12.22.14)*

Advertising for any product – including dietary supplements – must be truthful, not misleading and substantiated.

#### **Claims at issue:**

- “Discover the clinically proven answer to thicker, fuller hair”
- “91% of women noticed thicker hair”
- “Promotes Existing Hair Growth”
- “Viviscal is grounded in over 20 years of continuous research and development. The efficacy of Viviscal vitamins for hair growth is supported by 7 clinical studies.”
- “Viviscal hair vitamins promote existing hair growth and help to reduce hair shedding.”

**NAD findings:** NAD determined that the advertiser substantiated the establishment claims, “discover the clinically proven answer to thicker, fuller hair,” “Viviscal is grounded in over 20 years of continuous research and development. The efficacy of Viviscal vitamins for hair growth is supported by 7 clinical studies.” NAD further determined that the claims Viviscal “promotes existing hair growth” and “helps to reduce hair shedding” were substantiated. Finally, NAD recommended that the advertiser discontinue its claim, “91% of women noticed thicker hair.”

### **PHILOSOPHY, INC.**

#### **Time in a Bottle Age-Defying Serum**

*Case #5765 (09.15.14)*

In reviewing advertising claims, NAD must determine whether there is a “good fit” between the evidence provided in support and the scope and nature of the claims at issue.

“Before” and “after” photographs are product performance claims and, therefore, they must be supported by reliable evidence, and be accurate and representative of the level of product efficacy that a reasonable consumer can expect to achieve when using the product as directed.

**Claims at issue:**

- “Women told us their skin looked 730 days younger\*, that’s 2 years on your side with our age-defying serum.”
  - \*In an 8 week study of 56 women, 60% indicated their skin looked at least 2 years younger after 60 days.
- “Transform your skin inside and out at any age\*”
- “Defy the appearance of all major signs of aging, and help your skin appear:
  - Radiant
  - Poreless
  - Even
  - Wrinkle-free
  - Smooth
  - Firm
- “Inside: aging not yet visible on the surface\*” (along with the before and after photographs)
- “Out: visible aging on the surface\*” (along with the before and after photographs)
- “82% showed improvement in signs of aging not yet visible on the surface after 4 weeks.”
- “95% showed significant reduction in visible signs of aging after 8 weeks.” clinical study, 120 women ages 25-55, once daily use. Measurement of aging
  - not yet visible on the surface using cross-polarized light to reveal sub-surface signs of aging in the epidermal layer.

*Testimonial:*

- “Lines have disappeared and...I go makeup free.”

**NAD findings:** Based on the lack of supporting evidence in the record, NAD recommended that all of the challenged claims and accompanying visuals be discontinued. The advertiser appealed all of NAD’s adverse findings (except the testimonial, which it agreed to discontinue) to the NARB.

**NARB findings:** The NARB recommended that Philosophy either (a) discontinue the challenged claim “Women told us their skin looked 730 days younger\*, that’s 2 years on our 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 ...”). The panel also recommended that Philosophy delete the word “all” in the challenged “defy the appearance of all major signs of aging” claim. The panel further recommended that Philosophy discontinue challenged claims that Time in a Bottle helps skin appear radiant, poreless, even, wrinkle-free, smooth and firm. However, the panel noted that this does not preclude Philosophy from making truthful claims based on study findings showing improvement in appearance with respect to specific skin attributes. The panel also recommended 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, the panel noted that this does not preclude Philosophy from making truthful claims based on study findings showing improvement in complexion health. Finally, the panel recommended that Philosophy discontinue the challenged claim that in clinical testing 95% showed significant reduction in visible signs of aging after 8 weeks. However, the panel noted it does preclude Philosophy from making truthful claims based on study findings showing improvement in overall skin appearance.

#### **NARB Compliance Review Findings (01.19.16):**

NARB greatly appreciates the advertiser’s efforts in ensuring the expeditious removal of the challenged claims and video from the Sephora website and that claims for Time in a Bottle Age-Defying Serum on third-party websites comply with NARB’s decision. NARB also appreciates the modification of the claim “helping [skin] appear more: radiant, poreless, even, wrinkle-free, smooth and firm” to “At last time is on your side. Transform your skin inside and out at any age by targeting the key signs of aging and help improve: radiance • pores • evenness • lines & wrinkles • smoothness • firmness,” a claim which accurately reflects NARB’s decision and the underlying evidence. However, NARB disagrees that the claim “in 8 weeks: 88% showed a dramatic reduction in the appearance of facial lines and wrinkles” reflects the findings of the study in the underlying proceeding. While it is literally true that 88 percent of subjects showed an improvement in facial lines/wrinkles after eight weeks, the mean percent improvement was 5.22 percent. While this result is statistically significant, it falls well short of a “dramatic” improvement that consumers will not only readily notice but also consider that lines and wrinkles are vastly less pronounced than they were prior to product use. Accordingly, NARB recommends that the claim “in 8 weeks: 88% showed a dramatic reduction in the appearance of facial lines and wrinkles” be modified to more accurately reflect the findings of Philosophy’s study, namely that 88 percent of subjects experienced an improvement in the appearance of lines and wrinkles.

The advertiser agreed to undertake the recommended modifications.

#### **B’IOTA BOTANICALS**

##### **Advanced Shampoo & Serum for Thinning and Damaged Hair**

*Case # 5702 (03.31.14)*

It is well-established that an advertiser is responsible for all reasonable interpretations of its claims, not simply the messages it intended to convey.



It is well-established that advertisers may not make claims either through consumer testimonials or expert endorsements that could not be substantiated if made directly by the advertiser.

**Claims at issue:**

- “B’IOTA BOTANICALS Shampoo and Advanced Herbal Serum are herbal-based, dermatologist tested products that have been clinically tested and shown to reduce hair fall due to damage and help hair to grow faster, thicker and fuller.”
- “An independent clinical trial conducted by The University of Pavia, in Italy, shows that our proprietary combination of ingredients found in herbal complex BIOXSINE is a proven solution that brings new hope to those who have weak, damaged and thinning hair.”
- “Additionally, more than 83% of study participants using B’IOTA BOTANICALS Shampoo alone said they noticed their hair grew faster and more densely than before!”
- “B’IOTA BOTANICALS – BIXSINE Series is unlike anything you’ve ever tried. Made with an innovative herbal formula, called herbal complex BIOXSINE, our shampoos and serums for thinning & damaged hair help to maintain and encourage stronger, thicker, faster-growing and more resilient hair. How? By getting to the root of your problem.”
- “It is completely natural for hair to thin over time. B’IOTA BOTANICALS not only addresses this ‘normal thinning,’ but also thinning due to damage from over-treating, sun, age, and so on.”
- “[W]ith continued use over the next 3-to-6 months you will begin to see the longer term benefits of our products; stronger, thicker, fuller and faster growing hair!”

*Testimonials:*

- “I never really had a problem with my hair until I was about 18 . . . I noticed it was getting thinner and thinner. [W]hen I was 23 it was so thin I would only wear it slicked back with a head band.
- I’ve tried just about EVERY thickening formula out there and with limited results. After only a little over a week of using both your shampoo and serum, I have to say [I]’m in love.”
- “I immediately noticed results. I have been religiously using the shampoo for about two months now and people are noticing my hair again, but now because it is shinier and thicker.”
- “A lot less hair on the floor and in the shower. I do see a difference.”

- “Most people we speak with who try our products say they notice that the hair fall that they are experiencing begins to slow, if not stop, altogether within the first 45-to-60 days of use.”

**NAD findings:** With regard to the advertiser's establishment and performance claims, NAD determined that the advertiser provided a reasonable basis for claims that B'IOTA products are “herbal-based,” “dermatologist tested,” and that the products are clinically proven to help address issues with “thinning” hair, including, for example, “Our formulas are clinically shown to dramatically help with thinning hair, allowing for thicker, fuller, stronger and faster growing hair.” However, NAD recommended that the advertiser modify its advertising to ensure that any claims which promote the products' ability to help hair grow “thicker” and fuller” clearly indicate that that this result is achieved through an increase in hair density (as opposed to an increase in hair shaft thickness). In addition, NAD recommended that the advertiser discontinue the unsupported claim “Thinning hair in women usually means a reduction in volume as well as fewer physical hairs. So in addition to the lack of density, the diameter of each strand of hair also shrinks and thinner hair tends not to grow past a certain length. Regardless of the cause, for women this is a highly emotional problem. Fortunately, there is something that can be done to easily combat thinning hair and reduce loss of hair due to damage.” Further, NAD determined that the advertiser provided a reasonable basis for several performance claims about the subjective results experienced by its test subjects, including, for example “At the end of a 6-month study, more than 97% of study participants who used both the serum and the shampoo together said their hair grew faster, thicker, stronger and fuller. And, 92% of study participants using either B'IOTA BOTANICALS Shampoo or Advanced Serum noticed an increase in hair thickness, as well as faster-growing hair.” However, 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. With regard to certain performance claims about the ability of B'IOTA products to reduce hair fall due to damage, NAD recommended that the advertiser modify its advertising to clearly indicate the type of damage which B'IOTA products address – damage to hair follicles (e.g. “clinically tested and shown to reduce hair fall due to damaged hair follicles”). NAD noted the advertiser's representation that it will revise the claim “It is completely natural for hair to thin over time. B'IOTA BOTANICALS not only addresses this ‘normal thinning,’ but also thinning due to damage from over-treating, sun, age, and so on” to read “It is completely natural for hair to thin over time. B'IOTA BOTANICALS address issues with thinning hair,” a modification which NAD deems necessary and proper. Finally, NAD recommended that the advertiser discontinue its use of testimonials referring to visible results achieved prior to six-months of use. Also, with regard 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.

**MURAD, INC.**

**Murad® Rapid Age Spot and Pigment Lightening Serum**

Case # 5678 (01.15.14)

An advertiser is responsible for all reasonable interpretations of its claims, not simply the messages it intended to convey.

**Claims at issue:**

- “Clinically proven to fade spots by 33% in just one week.”
- Environmental Shield.

**NAD findings:** NAD administratively closed its inquiry with respect to the claim “Clinically proven to fade spots by 33% in just one week” in reliance on the advertiser’s representation that it had permanently discontinued the claim prior to the commencement of NAD’s inquiry. With respect to the remaining “Environmental Shield” claim, NAD recommended that the advertiser 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.

**DERMSTORE, LLC**

**SmartLash Eyelash Enhancer**

Case # 5650 (11.06.13)

As a general rule, advertising claims concerning recommendations by medical professionals such as “Doctor Recommended” carry a great deal of weight with consumers and, therefore, must be supported by highly reliable evidence, namely well-conducted physician surveys.

**Claims at issue:**

- “Up to a 68% increase in the appearance of lash length!”
- “Dermatologist Recommended.”

**NAD findings:** NAD recommended that the advertiser’s claim, “Up to a 68% increase in the appearance of lash length,” be either discontinued or modified to reflect the wording of the questionnaire upon which it is based as well as the timepoint at which this satisfaction in lash appearance was observed (namely, that up to 68 percent of the respondents were *satisfied* with the fullness and length of their eyelashes *after eight weeks of use*). Lastly, NAD recommended that the advertiser’s “dermatologist recommended” claim be discontinued.

**GURWITCH PRODUCTS, LLC**

**Laura Mercier Tinted Moisturizer**

Case # 5591 (5.24.13)

Disclosures should be clear, conspicuous and in close proximity to the qualifying claims.

### Claims at issue:

- “The #1 selling Tinted Moisturizer.\*”

\*Based on The NPD Group, Inc. U.S. volume sales in prestige retail YE 2012.

#### *Implied Claim:*

Laura Mercier is the top selling tinted moisturizer in the United States.

**NAD findings:** NAD determined that the claim that Laura Mercier Tinted Moisturizer is “[t]he #1 selling tinted moisturizer” was supported based on the NPD sales data 2011 and 2012 for NPD-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 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.

### **DERMAdoctor, Inc.**

#### **Photodynamic Therapy Laser Lotion**

Case # 5549 (1.23.13)

The nature and extent of claims made by an advertiser should mirror the precision and specificity of the data used to substantiate them.

### Claims at issue:

- “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.”
- “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.”
- “Photodynamic Therapy is a red light treatment, daily moisturizer and broad spectrum SPF 30 all-in-one.”
- “It is the new reality in light therapy.”

#### *Implied Claim:*

Consumers who use Photodynamic Therapy Laser Lotion will get the same results as red light anti-aging therapy skin treatments administered by a doctor.

**NAD findings:** 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.

**ORIGINS NATURAL RESOURCES INC.**

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

*Case # 5502 (8.28.12)*

Head-to-head clinical testing provides the most reliable support for comparative performance claims.

**Claims at issue:**

- “Nature’s Plantscription rivals an anti-wrinkle prescription”
- “88% of the visible wrinkle-reducing power of a prescription – 0% irritation”
- “Although it’s not a prescription, in just 4 weeks our raved-about anti-aging serum with Anogeissus noticeably reduces wrinkle length & depth”
- “Visibly helps repair the vertical fret lines between your eyes, the stubborn furrows across your forehead and the deepening frownies that frame your mouth.”
- “Experience our powerful, proven one-two punch in the fight against aging.”
- “Pair it with its new companion eye treatment and help visibly repair 4 major signs of aging.”
- “Clinically proven to help visibly repair 4 major signs of aging.”
- “So give your eyes this amazing new lift from nature and see a younger-looking you.”
- “Two dabs a day helps keep the surgeon away.”

*Implied Claims:*

- Plantscription Anti-aging Serum & Eye Treatment provides anti-aging benefits that are very similar to cosmetic surgery.
- Plantscription Anti-aging Serum and Eye Treatment are natural products.

**NAD findings:** 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 findings:** 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.

## **L’OREAL USA**

### **Visible Lift® Smooth Absolute Foundation**

*Case # 5458 (5.15.12)*

NAD has determined that “up to” claims require that the maximum level of performance claimed can be substantiated by showing that an appreciable number of consumers will obtain that level of performance under circumstances normally encountered by consumers.

#### **Claims at issue:**

- “See up to 10 years disappear...in a stroke.”
- “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.”

*Implied Claim:*

The Visible Lift collection will make you look 10 years younger instantly.

**NAD findings:** 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.”

### **NEUTROGENA CORPORATION**

#### **Neutrogena Rapid Wrinkle Repair Moisturizer (Night)**

Case # 5407 (12.22.11)

NAD has determined that claims must be evaluated in the context of the entire advertisement in which they appear.

#### **Claims at issue:**

- “Most anti-wrinkle creams disappear long before the wrinkles. Until now. Introducing Neutrogena Rapid Wrinkle Repair.”
- “It has Accelerated Retinol SA, which is the fastest retinol formula available.”
- “In fact, it’s clinically proven to smooth wrinkles *in just one week*.”

#### *Implied Claims:*

- Neutrogena Rapid Anti-Wrinkle Repair moisturizer is more effective than most competing anti-wrinkle creams.
- Neutrogena Rapid Wrinkle Repair moisturizer can make wrinkles disappear in just one week.

**NAD findings:** 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.

### **BIOLOGIC SOLUTIONS, INC.**

#### **Stem Cell Therapy Cream**

Case # 5368 (8.24.11)

NAD noted that as a general rule, product performance claims should be supported by reliable testing on the actual product. In addition, the nature and extent of performance claims dictates level of substantiation required to support them.

**Claims at issue:**

- Look and feel years Younger with Smooth, New Skin in Just Days!
- Stem Cell Therapy awakens your skin's stem cells so they generate many new skin cells like when you were younger. This naturally smoothes out lines and wrinkles and makes you look years younger.
- 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.
- Stem Cell Therapy is Dermatologist Recommended.

**NAD findings:** 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.

The advertiser appealed all of NAD's findings to the NARB, which affirmed NAD's decision in its entirety.

**MAYBELLINE NEW YORK, INC.**

**Instant Age Rewind® Eraser Treatment Makeup**

Case #5241 (11.10.10)

NAD noted that an advertiser is responsible for all reasonable interpretations of its claims, not simply the messages it intended to convey.



**Claims at issue:**

- "Erase fine lines!\*"
- "Erase crow's feet!\*"
- "Erase age spots!\*"
- "Active Formula + Micro-Corrector Applicator – Erase Instantly. More Completely.\*"
- "Instant Age Rewind – The Eraser Treatment Makeup."
- "Go beyond covering lines.\* With an exclusively designed applicator, The Eraser instantly micro-covers and micro-erases for ultimate flawless perfection."
- "It's a New Age in Anti-Aging."
- "Visual is a dramatization of actual product results."

**NAD findings:** 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 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 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.

**Dietary Supplements**

**LANG PHARMA NUTRITION, INC.**  
**CVS Hair Nourishing Supplement**  
Case # 5881 (09.02.15)

**Claims at issue:**

- "Compare to Viviscal"
- "Supports existing hair growth from within."

- “Scientifically formulated for beautiful hair.”
- “Scientifically formulated to support existing hair growth.”
- “By providing nutrients this unique supplement supports existing hair”
- “Drug-free nutrient formula for thinning hair.”
- “Hair Nourishing Supplement.”
- Comparison chart of the amounts of ingredients in each product.

**NAD findings:** NAD recommended that the advertiser discontinue its “compare to Viviscal” claim. NAD further recommended that the advertiser discontinue its unsupported claims that its CVS Hair Nourishing product is “*drug-free nutrient formula for thinning hair.*” (NAD noted that whether CVS Hair Supplements were “*drug-free*” itself was not at issue, only whether the product could treat “*thinning hair.*”). NAD also recommended that the advertiser discontinue its claim that its CVS Hair Nourishing product is “*scientifically formulated to support existing hair growth.*” NAD recommended that the advertiser also discontinue its unqualified claim that its product “*supports existing hair growth from within,*” but determined that that the advertiser had provided a reasonable basis for a modified claim that the ingredients in its CVS Hair Nourishing Supplement “*supports existing hair growth from within.*” NAD determined that the advertiser had provided a reasonable basis for its claim “*by providing nutrients this unique supplement supports existing hair.*” NAD determined that the product name “*Hair Nourishing Supplement*” was expressly truthful and not likely to mislead consumers NAD determined that the advertiser’s claim “*scientifically formulated for beautiful hair*” was puffery and, as such, did not require substantiation. The advertiser advised NAD in writing that, instead of submitting substantiating evidence, it had elected to permanently discontinue “*scientifically formulated to support existing hair growth for women with thinning hair,*” “*by providing marine source collagen and chondroitin, as well as biotin and zinc, this unique supplement supports optimal conditions for growth of existing hair*” and also a chart comparing the amounts of nutrients in Viviscal and CVS Hair Nourishing Supplements. In reliance on the advertiser’s representation that these claims had 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.

**INSTITUTE FOR VIBRANT LIVING**

**Alleviate**

Case #5852 (06.10.15)

**Relevant claim at issue:**

- “Erase wrinkles and age lines.

**NAD findings:** 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.

**GOOD HEALTH NATURALLY, LLC**  
**Serranol Supplements**  
Case #5441 (3.27.12)

NAD noted that advertisers must be careful to not overstate the health benefits of their products.

**Relevant Claims at issue:**

- “Anti-aging: reduces breast cysts and fibrosis by removal of the fiber build-up.”
- “Reduces fibromyalgia by reduction of fiber build-up.”
- “Reduces formation of scars and wrinkles.”

**NAD Findings:** NAD determined that all the claims 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.

**IRWIN NATURALS**  
**Doctor Developed Clear Pure Complexion**  
Case # 5435 (3.12.12)

NAD noted that in the absence of testing on the product itself, claims must be clearly limited to the product’s ingredients and not suggest or imply that the product itself has been tested or shown to provide the claimed results.

**Claims at issue:**

- “Doctor developed powerful nutrition to promote healthy & vibrant skin.”
- “Advanced pro-nutraceutical complex targets internal factors that influence problematic skin.”
- “Clear Pure Complexion is a revolutionary skin-care product that addresses multiple internal factors that can lead to acne-prone skin. This formula has been scientifically-developed to target the vital organs and systems of the body that directly affect skin health.”
- “By promoting internal balance of the total body system, Clear Pure Complexion works from the inside-out to improve the health and appearance of your skin . . . so you look and feel your best again.”

Implied Claim:

Clear Pure Complexion treats and eliminates acne.

**NAD findings:** 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 recommends that the advertiser discontinue use of the phrase “scientifically-developed.”

### **Product Demonstrations**

**L’OREAL USA, INC.**

**Maybelline and L’Oréal mascara products**

*Case # 5560 (2.28.13)*

The Procter & Gamble Company challenged advertising by L’Oreal USA, Inc. for certain L’Oréal and Maybelline mascaras, specifically the disclosure “Lashes were enhanced in post-production” in connection with depictions of lash visuals and product performance claims relating to eyelash volume and length.

Pursuant to §2.2B(i)(d) of NAD’s procedures, NAD administratively closed the inquiry with regard to print and broadcast advertising which had been permanently discontinued prior to the commencement of this inquiry. As to the in-store advertising, featuring the same visuals as those in the print and broadcast advertisements and, in certain instances, containing product performance claims, NAD appreciated the advertiser voluntarily undertaking to permanently discontinue these advertisements, an action NAD deemed necessary and proper under the circumstances.

**THE PROCTER & GAMBLE COMPANY**  
**CoverGirl NatureLuxe Mousse Mascara**  
Case # 5400 (12.1.11)

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.

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- Electronic Retailing Self-Regulation Program
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For more information, please contact Rey Persaud, Marketing Coordinator  
She can be reached at 212.705.0113, or by email at [rpersaud@asrcbbb.org](mailto:rpersaud@asrcbbb.org).

