



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



Cosmetics Advertising Digest

About the National Advertising Division: NAD is an investigative unit of the advertising industry's system of self-regulation. 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.

NAD attorneys are experts in advertising claim substantiation and decisions are based on precedent. More than 90 percent of the advertisers who come before NAD comply with NAD's recommendations.

To encourage participation, NAD seeks to provide a user-friendly service. NAD's case manager works closely with parties to facilitate scheduling and the NAD assistant director, communications, provides one-on-one assistance with navigating the NAD process.

NAD's time to decision varies with the complexity of the case and needs of the parties. NAD recognizes that parties may occasionally seek deadline extensions; NAD works to ensure that reasonable extensions are granted after consultation with both parties.

Following are excerpts from cosmetics and personal care cases decided by NAD. Each case involves consideration of the claims made in the advertising and labeling and the supporting evidence provided by the advertiser.

TOO FACED COSMETICS, LLC**Better Than Sex Mascara**

Case #6131 (10.27.17)

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 National Advertising Review Board (NARB) which upheld NAD's findings (#229 – 3.30.18).

Benefit Cosmetics LLC
they're Real! Mascara
Case # 6108 (8.23.17)

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 (03.08.17)

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 (01.05.17)

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 consumers 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). The NARB panel (#217 – 5.17.17) 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 (12.31.16)

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 wash 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 National Advertising Review Board (NARB). 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 (12.21.16)

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 in its future advertising.

Joyus, Inc.

Dr. Brandt's Needles No More Wrinkle Relaxing Cream

Case #5956 (05.19.16)

Claims at issue:

- "Instant Wrinkle Relaxing Cream"
- "Botox in a bottle"
- "Younger looking skin in just 60 seconds"
- "Skin will feel and look smoother in 60 seconds."
- "84% of people see visible smoother skin in just one minute."
- "96% of people see visible smoother skin after 60 minutes."
- "100% of people report diminished lines and wrinkles after 4 weeks."

NAD did not review the challenged express claims on their merits because the advertiser advised NAD that it had permanently discontinued these claims. The voluntarily discontinued claims will be treated, for compliance purposes, as though NAD recommended their discontinuance and the advertiser agreed to comply.

Intracuticals LLC

Atoxelene Skin Care Products

Case #5953 (05.12.16)

Claims at issue:

- "A safe alternative to Botox."
- "A fast-acting, non-invasive alternative to Botox."

- “Atoxelene Line Wand contains a concentrated skin smoothing complex that targets the appearance of expression lines and wrinkles without loss of facial expression. Smooths and visibly reduces the way fine lines and wrinkles look without pain in a portable, take anywhere applicator.”
- The Atoxelene daily serum “prevents deeper wrinkles from forming.”
- “Instantly reduces the visible signs of premature skin aging. Results accumulate with continued use.”
- “Gets rid of wrinkles instantly -- and they actually stay gone.”
- “Expression lines appear smoother, firmer and visibly reduced, eye contour looks more defined and lips look plumped.”
- “Results are immediate.”
- “It isn't just a quick cosmetic fix, it is a full-on anti-aging treatment.”
- “It's not only effective, it's 100% reliable.”

NAD findings: NAD determined that the advertiser had failed to provide a reasonable basis for its claim that Atoxelene Skin Care Products “instantly reduce the visible signs of premature aging. Results accumulate with continued use” and Atoxelene Line Wand contains a concentrated skin smoothing complex that targets the appearance of expression lines and wrinkles without loss of facial expression. Smooths and visibly reduces the way fine lines and wrinkles look without pain in a portable, take anywhere applicator” and consequently recommended that the claims be discontinued.

The advertiser agreed to comply with NAD's recommendations.

Vogue International, LLC
Proganix Line of Hair Care Products
Case # 5864 (7.13.15)

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 appreciated the opportunity to participate in the self-regulatory process and agreed to take NAD's recommendations into account in future advertising.

**Institute For Vibrant Living
Alleviate**

Case #5852 (06.10.15)

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 (05.08.15)

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.

Despite disagreeing with NAD's conclusions, Vogue respected the self-regulatory process and agreed to comply with NAD's recommendations.

The Procter & Gamble Company
Olay® Ultra Moisture Beauty Bar
Case # 5830 (4.10.15)

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. The National Advertising Division 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 take NAD's other recommendations into account in future advertising.

StriVectin Operating Company, Inc.
StriVectin® Intensive Illuminating Serum
Case # 5826 (4.6.15)

StriVectin properly revised a print advertisement for its skin care product. As part of its routine monitoring efforts, the National Advertising Division (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 accepted the decision and appreciated NAD's comments and timely review, resulting in quick, efficient resolution of its inquiry.

Philosophy, Inc.
Time in a Bottle Age-Defying Serum
Case # 5765 (9.15.14)

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 National Advertising Review Board pursuant to Section 3.1 of the NAD/NARB Procedures.

The NARB (NARB # 198 – 2.24.15) 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.

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.

The Procter & Gamble Company

Olay Sensitive Body Wash

Case # 5755 (9.2.14)

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 take NAD’s recommendations into account in future advertising.

The Procter & Gamble Company

Olay Ultra Moisture Body Wash

Case # 5749 (8.6.14)

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 than 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'iotia Botanicals**Advanced Shampoo & Serum for Thinning and Damaged Hair****Case # 5702 (3.31.14)**

NAD recommended that B'iotia 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'iotia was pleased NAD found that its product claims were clinically proven and would take NAD's recommendations into account in its advertising moving forward.

Ontel Products Corporation

Pink Armor Nail Gel

Case # 5701 (3.27.14)

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 (3.14.14)

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 (1.15.14)

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 appreciated the opportunity to participate in the self-regulatory process and stated that it will take NAD’s suggestions into consideration in its future marketing materials for this product.

Dermstore, LLC
SmartLash Eyelash Enhancer

Case # 5650 (11.6.13)

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 supported the efforts of NAD and appreciated the opportunity to participate in the self-regulatory program, and had no plans to utilize the specific claims in future advertising.

The Procter & Gamble Company
Pro-X Advanced Cleansing System

Case # 5648 (10.25.13)

NAD recommended that 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’Oreal’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 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 (9.25.13)

NAD determined that The Procter & 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.

L'Oréal U.S.A., Inc.
Maybelline® Volum' Express® The Rocket™ Mascara and L'Oréal Paris Telescopic® Shocking Extensions™ Mascara
Case # 5628 (9.6.13)

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. The NARB (NARB # 189 – 1/23/14) 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 (6.24.14)

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 (6.3.13)

NAD determined that a body wash advertiser'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 the decision to the National Advertising Review Board. The NARB (NARB # 188 – 11.13.13) affirmed NAD's decision in its entirety.

Gurwitch Products, LLC
Laura Mercier Tinted Moisturizer
Case # 5591 (5.24.13)

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 (3.14.13)

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 stated that, in future advertising, it would take into consideration NAD's recommendations.

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.

DERMAdoctor, Inc.
Photodynamic Therapy Laser Lotion
Case # 5549 (1.23.13)

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 (8.28.12)

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.

Origins agreed to comply with the NARB's decision.

L'OREAL USA

Visible Lift® Smooth Absolute Foundation

Case # 5458 (5.15.12)

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 (3.27.12)

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.

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 (3.12.12)

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 (12.22.11)

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 (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.

BIOLOGIC SOLUTIONS, INC.

Stem Cell Therapy Cream

Case # 5368 (8.24.11)

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 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 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 (8.5.10)

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 (5.6.10)

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.

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

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

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

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