



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



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# Environmental Digest

**About the National Advertising Division:** 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 cases where the advertising at issue claimed a "green" or environmental benefit. Each case involves consideration of the claims made in the advertising and labeling and the supporting evidence provided by the advertiser.

**Olivet International, Inc.**  
**Pet Food Storage Containers**  
*Case #6149 (1.22.2018)*

Olivet supported modified claims that its pet food storage containers “contains a minimum of 25% recycled material.” Van Ness Plastic Molding Company, Inc., a competing manufacturer of plastic pet food storage containers, challenged Olivet’s label claims that its containers are “Made of recycled material.” Olivet informed NAD in writing that it had permanently discontinued the challenged claim. The “made of recycled material” claim was modified to state, “contains a minimum of 25% recycled material.” Olivet asserted that its 25% claim was supported because the lids, latches, and wheels of the containers are made from 100% post-consumer recycled plastic and make up 25% of finished products by weight. Confidential information provided to NAD regarding its recycling process, including a description of its sourcing, sorting, and processing procedures that was submitted to FDA, was sufficient to support the claim. Van Ness maintained that it was not reasonable that Olivet could obtain sufficient post-consumer waste, undertake the laborious process needed to sort and process comingled plastic, and create uniformly colored product parts from post-consumer waste in the quantity required without expending incredible and unlikely costs. NAD found that the information provided by Olivet regarding the post-consumer waste stream that it obtains from Walmart, together with information about its internal processes, addressed these concerns.

Olivet also supported modified claims that its pet food storage containers are “food safe.” Olivet informed NAD in writing that it had permanently discontinued the challenged claim. The claim “BPA free and food safe” was modified to state that the product is “food safe.” Olivet provided a no objection letter from FDA that addressed its capability to clean and produce recycled plastic material for use in the manufacture of food contact articles. The letter, as well as the confidential submission upon which the letter is based, describe the sourcing of food safe bulk icing buckets and lids, the lack of polymer additives used during the process, and other elements of Olivet’s recycling process

Olivet International, Inc. is pleased with NAD’s decision that our pet food container claims “contains a minimum of 25% recycled material” and “food safe” are substantiated.

**Kauai Coffee Company, LLC**  
**Certified 100% Compostable Pods**  
*Case #6078 (5.5.2017)*

Kauai Coffee provided a reasonable basis for its express claims that its coffee pods are “certified 100% compostable,” “compostable in industrial facilities,” that they “work in all K-Cup brewers” and “Don’t trash the Earth with your coffee. Brew & Renew.” Many of the claims at issue were featured in a print advertisement published in the American Association for Retired Persons’ (AARP) Bulletin. The 2016 confirmation letter from BPI notes that Kauai coffee pods “meet all of the requirements of ASTM D6400 or ASTM D6868: they will disintegrate and biodegrade swiftly and safely in a professionally managed composting facility and not leave behind any non-compostable residues.” This evidence showing that the Kauai coffee pods are 100% compostable in industrial composting facilities also provides a reasonable basis for the advertiser’s express claim “Don’t trash the Earth with your coffee. Brew & Renew.”

NAD recommended that Kauai Coffee discontinue its “100% Compostable” claim, or include the language “Compostable in industrial facilities. Check locally, as these do not exist in many communities. Not certified for backyard composting.” NAD determined that Kauai Coffee’s print advertisement does not clearly and prominently disclose that the pods are not suitable for home composting, nor does it indicate the limited availability of industrial composting programs (i.e. that industrial composting facilities do not exist in many communities).

NAD further recommended that the advertiser discontinue the claim “Don’t trash the Earth with your coffee. BREW & RENEW” along with the image of the trash can imprinted with a green/blue image of the earth and the “fact” that “Over 11 Billion K-CUPS go into America’s landfills each year” as these currently appear. There was no evidence in the record quantifying the actual reduction (or potential reduction) of solid waste from the use of Kauai compostable coffee pods. While the adoption and use of a compostable container could result in an environmental benefit if municipal (industrial) composting was available to a significant percent of consumers, NAD determined that, given the fact that industrial facilities do not currently exist in the majority of communities, the environmental benefits are significantly overstated.

NAD also recommended that the “Certified 100% Compostable Single-Serve Pods” on the Kauai coffee website be modified to clearly and conspicuously disclose, in immediate proximity, the qualifying language “Compostable in industrial facilities. Check locally, as these do not exist in many communities. Not certified for backyard composting.” The webpage ran afoul of the FTC’s Green Guides because it does not clearly and prominently disclose that the pods are not suitable for home composting, nor does it indicate the limited availability of industrial composting programs (i.e. that industrial composting facilities do not exist in most communities).

Lastly, NAD recommended that Kauai Coffee discontinue use of the phrase “Now you can enjoy the great taste and convenience of single-serve coffee without worrying about the environmental impact. Our certified 100% compostable pod is compatible with all K-cup brewers and is designed to go back to the land – not the landfill” as it currently appears. The phrase “now you can enjoy the great taste and convenience of single-serve coffee without worrying about the environmental impact” overstated the degree to which the Kauai coffee pods will make a “difference” by implying that

the pods are compostable in all types of compost piles including home composting, when that was not the case.

Kauai Coffee agreed to comply with NAD's recommendations.

### **Beech-Nut Nutrition Company**

#### **Beech-Nut Baby Foods**

*Case #6070 (4.4.2017)*

NAD recommended that Beech-Nut discontinue its unsupported claims that "glass is the ultimate in sustainability." Beech-Nut relied on a study conducted by its glass jar supplier to support the sustainability claim. However, the study did not evaluate the actual products which are the subject of the comparative advertising claim. Also, the jar supplier's statement that glass containers can be "reused repeatedly," are "infinitely recyclable," and "100 percent recyclable" supported specific claims regarding the recyclability or longevity of glass jars, but did not support Beech-Nut's claims regarding sustainability.

Beech-Nut agreed to comply with NAD's recommendations.

### **Nest Labs, Inc.**

#### **Learning Thermostat™**

*Case #6024 (11.11.2016)*

NAD determined that Nest did not reasonably convey an unqualified general environmental benefit message about its Learning Thermostat. Environmental benefits claims should be supported by competent and reliable scientific evidence. Nest Labs provided three studies to support its claims that the Learning Thermostat saved energy and money. Each study calculated energy savings based on comparisons of utility bills from before and after installation of the Learning Thermostat. NAD found that the methodology in calculating the overall kWh of energy saved was reasonable, the runtime data was robust and sufficiently represented its users' energy consumption, and the calculation provided a reasonable basis for the claim that the Learning Thermostats have saved 7.3 billion kilowatt-hours of energy.

NAD also determined that Nest provided a reasonable basis for its message that its Nest Learning Thermostat provides an energy efficient or energy saving benefit, and its express energy savings claims.

Nest agreed to comply with NAD's recommendations.

### **Epson America, Inc.**

#### **Epson EcoTank Supertank Printers**

*Case #6009 (10.11.16)*

Epson America, Inc. voluntarily discontinued advertising that its Epson EcoTank Supertank printers were "loaded and ready," "loaded and ready with up to two years

of ink in the box,” and its use of the phrase “loaded and ready” in its two YouTube videos. In order to confusion, NAD recommended that Epson clearly indicate that the ink is included in the box, rather than that “2 years of ink” had been pre-loaded into the ink tanks.

NAD determined that Epson provided a reasonable basis for the implied claim that there was a solid waste reduction environmental benefit associated with the high capacity refillable ink tank of its EcoTank Supertank printers, as compared to other inkjet printers which use disposable cartridges, and that this benefit is meaningful. The “EcoTank” name itself did not communicate a general environmental benefit.

While NAD determined that consumers could save money on ink by using the Epson EcoTank Supertank printer, it recommended that Epson discontinue the unqualified claims that EcoTank saves consumers “a small fortune” and “lots of money” on ink. Nothing precluded Epson from making the claim that consumers can “save money” on ink provided that the basis for the savings is clearly and conspicuously disclosed.

NAD determined that Epson’s Internet advertising claim that its EcoTank Supertank prints provided an “unbeatable combination of convenience and value,” in two YouTube videos was supported and that the videos adequately disclosed the basis for Epson’s value claim. Respect to claims on Epson.com that Epson EcoTank printers offered “an unbeatable combination of convenience and value,” and were “economical,” NAD recommended that the font size of the disclosures be increased to a size that is more easily visible.

Epson was pleased with NAD’s decision and agreed to comply with its recommendations.

## **Applegate Insulation Cellulose Insulation Products**

*Case #5961 (6.03.16)*

NAD recommended that Applegate Insulation discontinue its unsupported comparative performance claims that cellulose insulation provides superior energy savings over fiberglass insulation, resulting in consumers having reduced heating and cooling bills.

NAD further recommended that Applegate discontinue the unsupported claim that “Some studies have shown boron might lower the risk of some cancers and is a chemical commonly found in vegetables such as almonds, apples, rising, and pears, according to BoraxPioneer,” and the claim that “The fire retardant additives used to manufacture Applegate are non-toxic. One of the additives, boric acid, is six times less toxic to humans than table salt!” Nothing precluded Applegate from making an appropriately qualified truthful claim about the safety of its product, provided that it refrain from making categorical “non-toxic” claims.

NAD determined that Applegate provided a reasonable basis for its “R-value per inch claims,” noting that the evidence in the record supports a finding that Applegate’s cellulose insulation meets the exception to the FTC’s R-value rule and therefore, Applegate is not prohibited by that rule from making “R-value per inch” claims.

Lastly, NAD recommended that Applegate discontinue the unsupported claim that “Applegate Insulation quiets a home better than fiberglass by reducing air infiltration through wall cavities. Applegate Cellulose completely fills the intended space making it difficult for sound to pass,” and the graph depicting the superior acoustic performance of cellulose over fiberglass batts. Applegate failed to demonstrate any real world consumer relevance for its sound bucket demonstration.

Applegate agreed to take the NAD’s recommendations into account for current and future advertising materials.

**LEI Electronics Inc.**  
**Eco Alkalines Batteries**

Case #5927 (2.05.16)

NAD appreciated LEI’s voluntary permanent discontinuance of a challenged Internet commercial that appeared both on its website and YouTube channel that contained claims regarding recycled content. The voluntarily discontinued claims will be treated, for compliance purposes, as though NAD recommended their discontinuance and the advertiser agreed to comply.

LEI did not provide a reasonable basis for its unqualified recyclability claim about its batteries, but did support a recyclability claim regarding its product packaging. The FTC Green Guides state that a product or package is recyclable if it “can be collected, separated, or otherwise recovered from the waste stream through an established recycling program for reuse or use in manufacturing or assembling another item.” In cases concerning recyclability claims, advertisers have presented evidence that included end of life studies and/or testing conducted by material recovery facilities that analyzed the product’s actual recyclability. LEI did not provide any evidence to support the claims that the batteries were recyclable, or that battery recycling facilities were available to at least 60 percent of consumers where the products are sold in the U.S. The product packaging was made of paper and PET plastic. Paper and PET plastic recycling is widely available in the United States.

NAD appreciated LEI’s commitment to qualifying and clarifying its recycled content claims and recommended that, in doing so, LEI follow the FTC Green Guides. In trying to honor the FTC Green Guides, LEI agreed to change the term “recyclable” to “recoverable” on product packaging and other applications, and clarify the availability, cost, and effort to the consumer for recycling spent alkaline batteries. However, LEI stated that it will continue to use the phrase “Eco-Responsible Batteries” as it forms part of the Eco Alkalines registered trademark.

NAD also recommended that LEI modify its advertising to avoid the implication that its Eco Alkalines are made with or provide renewable energy, and to expressly disclose that the “Alternative Energy” image on its website banner refers to LEI’s support of carbon offset projects through Carbonfund.org.

NAD further recommended that Lei discontinue its unsupported degradability claims, non-toxic claims, carbon neutral claims, general environmental benefits claims, comparative environmental claims, and comparative performance claims. The FTC Green Guides observes that “third-party certification does not eliminate a marketer’s obligation to ensure that it has substantiation for all claims reasonably communicated by the certification.” An advertiser must still have competent and reliable scientific evidence in order to substantiate environmental claims in its advertising. Thus, NAD determined that the Carbonfund.org and CarboNZero certifications, by themselves, were insufficient to substantiate the advertiser’s carbon neutral or carbon offset claims. LEI refused to discontinue its claim that its EcoAlkalines batteries are carbon neutral.

LEI thanked NAD for inclusion and its consideration in this self-regulatory process, but was disappointed with some of the decisions and stated that it would not comply with some of NAD’s findings. Consequently, NAD referred this case to the attention of the appropriate government agency for possible enforcement action.

**Comcast Cable Communications, LLC**  
**Xfinity Cable Television Service**

*Case #5926 (02.05.16)*

Comcast’s “save energy” claim was supported, but NAD recommended that Comcast avoid the potential for consumer confusion by making it clear that the claim refers to the savings that consumers can achieve by virtue of the programmable thermostat that is provided as part of the Xfinity home service.

**New WinCup Holdings, Inc.**  
**Vio Cups**

*Case #5902 (11.09.15)*

New WinCup Holdings, Inc. provided a reasonable basis for its narrowly tailored biodegradability claims. A competitor in the single-use foodservice products market Dart Container Corporation challenged WinCup’s advertising for its Vio Cups as the first biodegradable expandable polystyrene foam cup. The claims at issue identified the specific types of landfills simulated by the laboratory test conditions, and expressly stated the actual test duration/extent of degradation shown in the results of ASTM D5511 testing. ASTM D5511 was the proper level of substantiation for the biodegradability claims. However, WinCup should further qualify its biodegradable claim by stating the percentage of consumers or communities that have access to landfills where the Vio material will biodegrade, or WinCup may use language which accurately indicates to consumers the limited availability of such landfills.

NAD also determined that WinCup's biodegradability claims must be clearly and prominently qualified. NAD appreciated that WinCup made the comprehensive change of adding an asterisk following the word "biodegradable" throughout the [www.wincup.com](http://www.wincup.com) website. However, NAD determined that the qualification, which appears at the very bottom of WinCup's website home page, is not conspicuous or in close proximity to the biodegradability claims it is qualifying and recommended that the advertiser modify its website advertising by moving the disclosure in close proximity to the triggering claims.

NAD further appreciated that WinCup removed its Facebook post which included a "biodegradable" claim without any qualifying language. This was necessary to meet FTC regulations requiring that biodegradability claims be qualified where the product will not decompose within one year after customary disposal. Further, unless WinCup is capable of properly qualifying its biodegradability claims on Twitter, NAD recommended that it refrain from making biodegradability claims on this platform. With regard to WinCup's Vio video on YouTube, NAD recommended that the qualification in the description box be moved in immediate proximity to the heading "Vio™ Biodegradable\* Foam Cups," and that the font size be increased to a size that is more easily visible. With regard to the Vio video itself, NAD determined that the qualifications for WinCup's biodegradability claims were sufficiently clear and prominent.

NAD recommended that the following claims be discontinued: (1) "99% of all plastic foodservice disposables end up in a landfill\*\* And that is exactly where Vio makes a difference" and (2) "It all comes together with Vio™, the breakthrough biodegradable\* foam cup. Vio™ tells customers, 'IT'S OK TO THROW ME AWAY,' so you won't have to modify your waste stream one bit in order to do good."

Lastly, NAD recommended that an advertisement be modified to remove the claim "Did you know 99% of plastic foodservice disposables end up in a landfill? And that is exactly where Vio makes a difference. You don't have to modify your waste stream one bit to complete the eco-friendly story," and accompanying imagery.

New WinCup Holdings, Inc. agreed to comply with NAD's recommendations.

**Gobble, Inc.**  
**Gobble Meal Delivery Service**  
Case #5896 (11.16.15)

Gobble, Inc. voluntarily discontinued claims that its meal delivery service used eco-friendly materials. FTC guidelines require that biodegradability claims be qualified where the product will not decompose within one year after customary disposal. Gobble stated that, although it had a good faith belief that its claims were true when it made them, it permanently discontinued the claims given its understanding of NAD's concerns and the FTC Green Guides. NAD did not review these claims on their merits.

**Energizer Holdings, Inc.**

## **EcoAdvanced Recycled Batteries**

Case #5893 (10.19.15)

Energizer Holdings, Inc. provided a reasonable basis for its expressly quantified claims that its EcoAdvanced batteries were made with 4% recycled batteries (by weight). NAD requested substantiation for website and print advertising for Energizer's recycled batteries. Energizer provided a detailed description of the proprietary process by which EcoAdvanced batteries are manufactured using one of the key active ingredients from recycled batteries, and the environmental claim validation conducted by Underwriters Laboratories which confirmed that the batteries are made with 4% recycled batteries by weight (which is 10% of a key active ingredient). Also, an Internet search did not find any evidence to contradict the claim that Energizer was the world's first battery manufacturer to produce and market alkaline batteries composed of recycled batteries. With regard to Energizer's claim that EcoAdvanced batteries are "The world's first long-lasting battery made with recycled batteries," NAD recommended that the claim should be qualified by the recycled content amount of 4%.

Energizer Holdings, Inc. also provided sufficient support of its claim that its EcoAdvanced batteries produced less impact on the environment. A study on the life-cycle assessment of alkaline batteries submitted by Energizer noted that battery recycling could be beneficial in the right circumstances, and that in terms of energy, carbon, the ecosystem, and human health, "the main benefit from recycling stems from the recovery of zinc, manganese, and steel." The results of the study showed that the use of recycled material in EcoAdvanced batteries resulted in a 5% reduction in global warming potential, an 8% reduction in acidification, less eutrophication, and less energy demand. These reductions constituted meaningful reductions in environmental impact. NAD also acknowledged the general proposition that less consumer waste would be generated by a longer lasting battery. With regard to Energizer's print advertising, NAD recommended that the qualifying language regarding the percentage, by weight, of recycled content in the EcoAdvanced batteries (4%) appear in immediate proximity to the triggering claim that the batteries contain recycled content (that EcoAdvanced "Isn't 100% New").

Lastly, Energizer Holdings, Inc. provided a reasonable basis for claims that its EcoAdvanced batteries produce less impact on the environment. The advertising implied that Energizer's technological breakthrough was significant and that the ultimate benefit this technology will have on the environment was meaningful.

Energizer, out of deference to NAD and respect for the self-regulatory process, agreed to comply with NAD's recommendations.

## **Vogue International, Inc. OGX Shampoos and Conditioners**

Case #5844 (5.08.15)

The National Advertising Division recommended that Vogue International, Inc. 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 agreed to comply with NAD's recommendations.

**MicroGreen Polymers, Inc.**  
**InCycle Food Service Products**  
*Case #5836 (4.22.15)*

The issue before NAD in this case was whether the advertiser reasonably established that its foam product would be treated as recyclable polyethylene terephthalate (PET) under real world recycling circumstances. Following its review of the evidence in the record, NAD determined that the advertiser did not provide a reasonable basis for its unqualified recyclability claims because it did not show that that a “substantial majority” of consumers have access to recycling facilities for its InCycle cups.

**Claims at Issue:**

- “Made from recycled water bottles.”
- “I used to be a water bottle.”
- “They can be recycled again and again.”
- Several depictions of eco-friendly objects such as the earth, trees, and Möbus loop.

**NAD Findings:** Pursuant to the FTC Green Guides, an unqualified recyclability claim is appropriate when recycling facilities are available to a substantial majority (60% or greater) of consumers or communities. In this case the advertiser provided a 2012 Moore Recycling Associates Report showing that PET, its product's material, was recyclable in 60% of U.S. communities. However, the issue before NAD was whether the advertiser reasonably established that its product would be treated as PET under real world recycling circumstances. A study in the record stated that InCycle cups were unable to be sorted like standard PET products. Thus, NAD determined the advertiser failed to provide a reasonable basis for the unqualified recyclability claims.

**Berry Plastics Corporation**

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## **Versatile Polypropylene Cups**

Case #5835 (4.22.15)

NAD found that Berry Plastics Corporation could support properly qualified comparative superiority claims for the company's Versalite polypropylene cups. In reaching its decision, NAD determined that the advertiser reasonably established that its Versalite cups would be treated as "non-bottle rigid polypropylene" in the real-world recycling stream where the Versalite items are marketed or sold – a threshold requirement for making unqualified recyclability claims under the Federal Trade Commission (FTC) Green Guides.

### **Claims at Issue:**

- Versatile cups are "[e]asy to recycle. More than 61% of Americans have access to recycle polypropylene, including many communities accepting #5 plastics curbside."
- "The Versatile cup is fully recyclable, which may help to lower your company's overall carbon footprint."
- "A disposable cup that is fully recyclable."
- Versatile is "environmentally responsible."
- "Versatile is the ENVIRONMENTALLY RESPONSIBLE alternative to today's to-go cups."
- "Berry Plastics has created a technology that blends superior performance with environmental responsibility . . ."

**NAD Findings:** The advertiser provided test results demonstrating that recycling centers could properly identify and separate the product. Accordingly, NAD determined that the advertiser's unqualified recyclability claims had a reasonable basis. It found that the advertiser demonstrated that the cups were, "easy to recycle." NAD noted that the claim that, "More than 61% of Americans have access to recycle polypropylene, including many communities accepting #5 plastics curbside," was factually accurate.

### **Nurture, Inc.**

## **Happy Baby and Happy Family Infant and Toddler Food Products**

Case #5710 (5.7.14)

NAD reviewed advertising claims that promoted "Happy" brand baby and toddler food products as made without genetically modified ingredients and determined that the advertiser could support the claim that its products "meet the standard for non-GMO claims." However, NAD determined that claims at the company website implied that food containing genetically modified ingredients are unhealthy or dangerous to children. NAD recommended that claims that tied the advertiser's "no GMOs" claim to health or safety superiority be discontinued.

**Claim at Issue:**

- “No GMOs”

**NAD Findings:** NAD determined the advertiser substantiated the claim that its products, “meet the standard for non-GMO claims.” The advertiser explained that several of its products were certified organic and subjected to Non-GMO Project Verification. Products unable to be verified by the Non-GMO Project were tested by an outside lab.

NAD found that as long as an advertiser followed the current marketplace and industry practice of what the industry considered to be GMO free, then the “no GMOs” claim was substantiated. NAD added that, “Until such time as science is capable of substantiating that there is a zero level of bioengineered material in a product, claims such as ‘No GMOs’ or ‘non-GMO’ accurately convey information regarding the manner in which a product has been produced (i.e. without the use of genetically engineering) and not that the products are actually GMO free.”

**U.S. GreenFiber, LLC**  
**GreenFiber Insulation**

*Case #5619 (08.06.13)*

NAD referred misleading advertising claims filed by Johns Manville Corporation against GreenFiber, LLC to the Federal Trade Commission. Johns Manville argued that GreenFiber's product name, its “green” imagery, and the “environmentally friendly” claims found on its product packaging, point-of-sale material, and website, conveyed an unqualified message of general environmental benefit misled consumers. GreenFiber declined to participate in the NAD proceeding, arguing that the challenge was moot and frivolous. GreenFiber had already committed to modifying seven of the nine express claims that were challenged by Johns Manville, and alleged that the remaining two express claims were in accord with guidance from the FTC. While NAD appreciated the advertiser's representation that it would discontinue or modify some of the challenged claims, NAD noted that the advertiser declined to participate in the self-regulatory proceeding and intended to continue disseminating two of the challenged claims. NAD was disappointed that the advertiser declined to participate in this self-regulatory process.

**GREENPAN INC.**  
**Thermolon Ceramic Coated Cookware**

*Case #5519 (10.31.12)*

NAD was presented with the issue of whether GreenPan's literally truthful claims about the composition of its product—its pans do not contain the chemicals PFOA or PTFE—were presented in a context which conveyed an unsubstantiated implied better for the environment or superior safety claims.

Claims at Issue:

- PFOA-free and PTFE-free claims,
- non-stick performance claims,
- eco-friendly claims,
- energy savings
- recyclable claims
- natural claims.

NAD Findings: NAD concluded that the juxtaposition of GreenPan's PFOA-free claims with broad "eco-friendly" claims, as well as the juxtaposition of PTFE-free claims and broad health and safety claims, conveyed an unsupported implied superiority message. NAD noted that most PTFE non stick coatings are no longer made with PFOA. Accordingly, it recommended that the advertiser modify or discontinue these claims to avoid conveying the unsubstantiated message that its product is broadly better for the environment, healthier, or safer than non stick pans that use PTFE.

NAD stated GreenPan could continue to describe the composition of its products as "PFOA-free" and "PTFE-free," as long as the claim was not made in a way that could suggest to consumers that the product is superior to PTFE coatings.

NAD also recommended the discontinuance of the advertiser's broad "eco-friendly" and energy savings claims. It noted that the claims conveyed the message that each pan provided this benefit, and could not be supported by evidence that GreenPan's global manufacturing process emitted less CO<sup>2</sup> emissions than competing PFOA processes. Likewise, the advertiser's evidence regarding energy savings was not consumer relevant or meaningful.

Further, NAD recommended modification of the "please recycle" claim to avoid the message that the GreenPan cookware was recyclable, not just the product's packaging.

NAD found that the characterization of GreenPan as "ceramic" was appropriate but NAD recommended discontinuance of the "natural," "mineral," and "mineral based" claims because the product in its final form was chemically altered.

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

**TRANSFAIR USA, Fair Trade Certification, Case #5337 (06.03.11)**

**AVON PRODUCTS, Inc., mark. Personal Care Products, Case #5338 (06.03.11)**

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

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

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

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

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

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

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

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

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

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

**PACTIV CORPORATION**  
**Alternative Packaging Products, Plastic Packaging**  
Case # 5472 (6.15.12)

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

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

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

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

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

## **CHIPOTLE MEXICAN GRILL**

### **Chipotle Restaurants**

*Case # 5450 (4.18.12)*

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

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

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

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

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

NAD, in its decision, noted that it "appreciates the challenges faced by advertisers who wish to communicate information to consumers about sustainability measures taken by a company. NAD recognizes the positive role that advertising can play in raising consciousness about sustainability and informing consumers of the activities and commitments made by the company. Nevertheless, because images and terms

suggestive of sustainability can give rise to so many different meanings and expectations on the part of consumers, such claims can be difficult to substantiate."

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

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

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

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

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

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

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

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

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

**LALA-USA, Inc.**

**La Crème Real Dairy Creamer**

Case #5359 (08.08.11)

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

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

**FP INTERNATIONAL**

**Biodegradable SUPER 8 Loosefill Environmentally Friendly Packaging**

Case #5256 (12.03.10)

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

Claims at issue:

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

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

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

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

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

## **THE SHERWIN-WILLIAMS COMPANY**

### **Harmony® Paint**

*Case #5257 (11.30.10)*

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

Claims at issue:

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

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

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

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

## **Frito-Lay North America, Inc.**

### **SunChips Snacks**

*Case #5237 (10.19.10)*

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

Claims at issue:

- *“My chips are made with SOLAR POWER.”*

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

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

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

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

### **S.C. JOHNSON & SON, INC.**

#### **Ziploc Evolve**

Case #5225 (09.27.10)

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

Claims at issue:

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

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

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

### **Seventh Generation Household Cleaning & Laundry**

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## Products

### Household cleaning products

Case # 5206 (8.24.10)

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

#### Claims at issue:

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

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

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

## Elanco Animal Health Division

### Comfortis Chewable Tablets

Case #5134 (1.08.10)

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

**Claim at issue:** *Comfortis is "Environmentally Friendly."*

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

## Heartland Sweeteners

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## **Ideal**

Case #5125 (12.14.09)

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

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

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

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

## **MasterNet Ltd.**

### **Plastic Netting Products**

Case #5092 (10.02.09)

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

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

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

## **Clorox**

### **Green Works Natural Cleaning Wipes**

Case #5099 (9.25.09)

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

**Claims at issue:**

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

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

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

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

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

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

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

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

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

**Claim at issue:** “World’s Greenest Family of Notebooks.”

**NAD findings:** NAD reviewed supporting evidence provided by the advertiser, including the Electronic Product Environmental Assessment Tool (EPEAT) rating on

which Apple relied as support for its "world's greenest family of notebooks" claim. NAD determined that EPEAT is a recognized industry methodology to identify the "green" characteristics of a computer product.

### **Southern Diversified Products, LLC**

#### **Mythic Paints**

Case #5009 (4.29.09)

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

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

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

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

### **Dispoz-O**

#### **Envioware tableware products**

Case #4990 (3.27.09)

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

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

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

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