The National Advertising Division (NAD) of BBB National Programs provides independent self-regulation and dispute resolution services, guiding the truthfulness of advertising across the U.S. NAD reviews national advertising in all media and its decisions set consistent standards for advertising truth and accuracy, delivering meaningful protection to consumers and leveling the playing field for business.

NAD cases can be initiated through NAD’s independent monitoring of advertising claims or through “challenges” to advertising claims filed by competitors, consumers, or public interest groups. This digest includes excerpts from key digital advertising cases. Each case involves consideration of the claims made in the advertising and labeling and the supporting evidence provided by the advertiser.

Compliance with NAD decisions is voluntary. Nevertheless, NAD enjoys a high rate of compliance. Advertisers that either refuse to participate in the self-regulatory process or do not implement the NAD recommendations are referred to appropriate government agencies such as the Federal Trade Commission (FTC).

Disclosure of Material Connections in Testimonials and Endorsements (including Influencer Marketing)

4Patriots LLC

Long-Term Survival Food Kits
Case #7033 (January 2022)

This was a challenge brought by My Patriot Supply, a competing manufacturer or survival food kits. During the proceeding, the advertiser modified the challenged videos “#1 Food Kit is BACK!” and “Real Survival Food Reviews, from Real Customers” to add a disclosure that “sometimes [customers] receive a free product to test or as a thank you for submitting honest feedback.” However, NAD determined that the modified disclosures did not clearly and conspicuously disclose the material connection between the advertiser and the endorser of its product.

Therefore, NAD recommended that the advertiser further modify the paid endorsement disclosures on the challenged videos so that:

- The Real Survival Food Reviews video contains clear and conspicuous disclosures within the video itself;
- The disclosure for the Real Survival Food Reviews on the YouTube page appears without having to click “Show More”; and
- A disclosure appears immediately next to the #1 Food Kit is BACK! video on the advertiser’s website.

The advertiser agreed to comply with NAD’s recommendation.
Coldest Water, LLC

The Coldest Water Bottle
Case #7023 (October 2021)

The Coldest Water, LLC’s efforts to ensure that its influencers’ material connections were disclosed in TikTok videos were appropriate, according to the National Advertising Division (NAD). NAD challenged express and implied claims made by The Coldest Water for its The Coldest Water Bottle based on influencers’ numerous TikTok videos that did not feature any material connection disclosures with the company. The case was initially referred to the FTC due to Coldest Water’s failure to respond to NAD’s inquiry, but Coldest Water re-engaged with NAD. Coldest Water modified its advertising and provided additional information about its social media policies. Coldest Water agreed to discontinue claims about promoting the product on TikTok on its “How Can I Promote the Coldest Water” page. The voluntarily discontinued claims will be treated, for compliance purposes, as though NAD recommended their discontinuance and the Advertiser agreed to comply.

The Coldest Water agreed to comply with NAD’s recommendations.

Safe Catch, Inc.

Pouched and Canned Tuna
Case #6911 (July 2021)

National Fisheries Institute (NFI) pointed to social media posts by prominent food influencers talking about Safe Catch’s products and argued that such posts fail to disclose that there is a material connection between the influencers and Safe Catch (i.e., that the influencers are paid or otherwise incentivized to promote Safe Catch’s products). Safe Catch responded by explaining that it has investigated the influencer posts and found that they are organic posts about “clean” or “Whole 30” recipes and that Safe Catch has no affiliation with these influencers.

NAD noted that when a social media post expresses a personal opinion about how much a poster likes a product or how frequently the poster uses a product, consumers might not understand whether the post is a paid endorsement or is spontaneous, without any payment or other compensation being exchanged. Consumers are likely to weigh an opinion differently if it is a paid endorsement for a product. As a result, such payment is a connection that is material to consumers and should be disclosed.

After explaining that it has no affiliation with the influencers identified by NFI, Safe Catch confirmed that its policies require influencers to identify their posts as sponsored content using clear language. Further, the advertiser stated that it is committed to appropriately identifying material connections and monitoring product claims, and that it does so. NAD appreciated the advertiser’s confirmation that it does have an influencer policy in place to ensure that influencers are disclosing material connections with Safe Catch, that it monitors influencer posts for compliance with disclosures, and that it also ensures that they are not making any unsubstantiated product claims.

The Procter & Gamble Company

Bounty Paper Towels
Case #6403 (August 2020)

NAD was pleased that The Procter & Gamble Company (P&G) worked to ensure that its influencers’ material connection disclosures in TikTok videos were embedded in the videos and transferred to all platforms including Instagram. P&G used various influencers to promote its Bounty Paper towels in a series of catchy TikTok videos. All of the videos clearly and conspicuously included the hashtag #BountyPartner disclosing the material connection between the influencer and P&G. NAD
was concerned that, when shared to Instagram, the videos did not include the #BountyPartner hashtag. P&G explained that unlike other major social media platforms, TikTok allows users to share content across platforms without any contextualizing text or disclosures which creates a disclosure loophole. P&G was apprised of this problem prior to NAD’s inquiry and while the disclosures which appeared on TikTok were not embedded in the videos, P&G began requiring that influencers embed disclosures in their videos so that disclosures would transfer along with the video when shared across platforms. P&G also provided examples of the TikTok videos which now include embedded disclosures such that the content would transfer from TikTok to other platforms. P&G informed NAD that TikTok will only allow the posts to be edited if they are first removed and then reposted. For the social posts in question, P&G’s influencer contract terms expired so it would not be able to repost these TikTok videos and any attempt to edit the TikTok videos would result in their removal. In addition, P&G conducted an internal audit on all associated Bounty content for this campaign and will ensure that all new Bounty TikTok content has embedded disclosures.

P&G was pleased that NAD deemed sufficient its efforts to disclose its material connection with influencers.

### AT&T Services, Inc.

**AT&T's Wireless Network (“Best Network”)**  
Case #6401 (August 2020) // NARB Case #277 (January 2021)

The National Advertising Division declined to reopen a previous review of the reliability of AT&T Services, Inc.'s “best network” claim, but recommended that AT&T clearly and conspicuously disclose its material connection to the testing company on which the claim was based. AT&T’s claims that it has America’s “best network” are based on the 2018 and 2019 results of OneScore. OneScore is a ranking system of wireless networks created by Global Wireless Services (GWS). GWS also conducts the drive testing and consumer surveys used to generate OneScore results. Last year, NAD addressed AT&T’s “best network” claims in a challenge filed by T-Mobile, finding that GWS’s testing “provided a reasonable basis for AT&T’s qualified ‘best network’ claim.” NAD did not find that any “extraordinary circumstances” existed to warrant a second review in this case of the reliability of the substantiation at issue in the 2019 AT&T “Best Network” case.

In the current challenge, Verizon argued that AT&T and GWS have an exclusive and confidential relationship and that a lack of transparency from AT&T and GWS regarding the OneScore test’s methodology also made AT&T’s claims suspect. However, NAD concluded that the relationship between AT&T and GWS was not an extraordinary circumstance that required a second review. Because consumers need sufficient information about the relationship between AT&T and GWS to assess the credibility and the weight of the OneScore Ranking, NAD recommended AT&T disclose that relationship. The advertiser appealed NAD’s determination to the National Advertising Review Board (NARB).

NARB — (#277 — 01.28.21) – The NARB Panel recommended that (1) AT&T clearly and conspicuously disclose its material connection to GWS when making a “Best Network” claim based on GWS testing and (2) AT&T discontinue the claim that AT&T is “Building 5G on America’s Best Network,” or state in the body of the claim that the “Best Network” referred to is AT&T’s 4G network.

The advertiser agreed to comply with NARB’s recommendations.

### SimpliSafe, Inc.

**SimpliSafe Home Security**  
Case #6358 (April 2020)

Regarding the use of endorsements from publications with which SimpliSafe has an affiliate link relationship, NAD found that the editorial content was sufficiently independent to conclude that there was not a material connection requiring a disclosure. NAD also recommended that...
SimpliSafe clearly and conspicuously disclose the material connection between Chief Balog’s police department and SimpliSafe.

The advertiser agreed to comply with NAD’s recommendations.

**Choice Home Warranty**

**Home Warranty Service Plans**

Case #6341 (January 2020) // NARB Case #265 (June 2020)

NAD recommended that Choice Home Warranty (CHW) discontinue or modify older testimonials in which the customer was compensated to include clearly and conspicuously disclose the material connection between the customer and CHW. Also, NAD recommended that CHW discontinue testimonials claiming that consumers “saved thousands” or clearly and conspicuously disclose either 1) what a typical customer does save or 2) the material limitations on CHW’s coverage such that consumers understand the claim to mean that the customers in question experienced multiple, covered system or appliance breakdowns in order to attain the “thousands” in savings.

CHW agreed to comply with NAD’s recommendation as to testimonials and disclosure of compensation, noting that it no longer compensates for testimonials, and agreed to no longer disseminate older, compensated testimonials without disclosing the compensation. Commended by NAD but appealed the finding about the need to disclose the typical savings consumer would achieve to the NARB.

NARB — (#265 – 06.10.20) – The NARB determined that CHW’s “you can save thousands” and similar claims are misleading, both when made by the advertiser directly and when cited in a testimonial, because there was no evidence that this amount of savings represented a typical amount. NARB recommended that the claim be discontinued or modified to clearly and conspicuously disclose the limitations on the amounts covered.

The advertiser agreed to comply with NARB’s recommendation.

**Shell Oil Company**

**Shell V-Power NiTRO+ Premium Gasoline**

Case #6065 (March 2017)

NAD recommended that Shell Oil Company discontinue the use of a video in its advertising because the video did not disclose the material connection between the maker of the video and Shell. The YouTube channel, “Engineering Explained,” featured the host walking viewers through Shell’s claims for SVPN+ and the underlying testing. The host was not a Shell employee, Shell did not produce or have editorial rights over the video, and the video was not paid advertising. The host did not receive any fees or honorarium, but Shell covered his travel to its facilities as part of the featured event. However, NAD determined that this potentially significant financial connection between Shell and the host required disclosure, as it could impact the weight that consumers give to the statements made about the benefits of SVPN+.

Shell appealed the NAD’s recommendation to the NARB.

NARB (#221 – 11.14.17) – The NARB panel recommended that Shell modify the Fenske “Engineering Explained” video appearing on Shell’s website and in any Shell advertising to clearly and conspicuously disclose in the video itself any material connection – including payments made by Shell to Mr. Fenske for travel expenses or for other reasons – between Shell and Mr. Fenske.

The advertiser agreed to comply with the NARB decision.
**Kardashian, Kourtney, et. al.**

**FitTea**  
Case #6046 (January 2017)  
Kourtney Kardashian, Khloe Kardashian and Kylie Jenner agreed to modify their social media posts about FitTea to disclose that they were being paid to endorse the product. NAD raised concerns that the Kardashians failed to disclose in any way their material connection to FitTea, a connection that consumers would not expect when viewing their social media posts about the product. When a social media post expresses a personal opinion about how much a poster likes a product or how frequently the poster uses a product, consumers might not understand whether the post is a paid endorsement or the post is spontaneous, without any payment or other compensation being exchanged. Consumers are likely to weigh an opinion differently if it is a paid endorsement for a product. As a result, such a payment is a connection that is material to consumers and should be disclosed. NAD did not review this matter on its merits. The voluntarily modified advertising will be treated, for compliance purposes, as though NAD recommended its modification and the advertisers agreed to comply.

The advertiser declined to submit an Advertiser’s Statement after voluntarily modifying their advertising.

**Reckitt Benckiser LLC**

**Finish® Automatic Dishwasher Detergent**  
Case #6043 (January 2017) // NARB Case #216 (May 2017)  
To the extent that Reckitt Benckiser LLC provides incentives to dishwasher manufacturers for their recommendations or endorsements of its products, NAD determined that it should disclose this connection when it advertises that it is the “#1 World’s Recommended Brand.” The advertiser appealed NAD’s recommendation to the NARB.

NARB — (#216 — 05.05.2017) — The NARB panel recommended that Reckitt Benckiser clearly and conspicuously disclose to consumers the basis for dishwasher manufacturer recommendations that support its “#1 World’s Recommended Brand” claim. The panel stated its belief that it would be acceptable to disclose that these recommendations are part of co-marketing agreements with the dishwasher manufacturers as long as that accurately describes any connection between the detergent manufacturer and the dishwasher manufacturers that might materially affect the weight or credibility of the recommendations.

RB agreed to comply with NARB’s decision.

**Fit Products, LLC**

**FitTea**  
Case #6042 (December 2016)  
NAD appreciated Fit Products’ voluntary modifications to social media posts republished on Fit Products’ website. NAD will treat these modifications, for compliance purposes, as though NAD recommended their discontinuance and the advertiser agreed to comply.

NAD recommended that Fit Products, LLC discontinue posting customer testimonials that made the claims Fit Products agreed to permanently discontinue or that NAD recommended should be discontinued. NAD cautioned Fit Products that it should insure that its paid endorsers avoid conveying messages for which it lacked support. Finally, NAD advised Fit Products to separate its endorsements and testimonials from its product reviews as well as to prominently disclose that the reviews on its website are authentic user reviews and that Fit Products does not edit those reviews.

Fit Products agreed to comply with NAD’s recommendations.
BA Sports Nutrition, LLC

Body Armor SuperDrink
Case #6026 (November 2016)

NAD recommended that BA Sports Nutrition, LLC discontinue reposting or linking to content on its social media pages that conveys the message that BodyArmor is “all natural” or that falsely denigrates Gatorade as “junk.” When an advertiser reposts or links to third party content on its own social media pages, it is using that content as advertising and is thus responsible for the truthfulness and accuracy of the messages reasonably conveyed by the content it links to or re-posts.

BA Sports Nutrition agreed to comply with NAD’s recommendations.

SharkNinja Operating LLC

Shark Rocket DeluxePro
Case #5929 (February 2016)

Because there was a material connection between SharkNinja Operating LLC and a consumers in its advertising, NAD recommended that Shark clearly and conspicuously disclose the connection. The consumers in the commercial signed up for a product testing program in which they are provided with Shark vacuums and contacted weekly to discuss their experiences with the vacuum. The consumers are not told that they can keep the vacuum or that they will receive anything of value in exchange for a positive review. Some consumers are then asked if they would be willing to allow filming of a test with their vacuum, but are not told that they would appear in a television advertisement. NAD questioned whether the use of a product for free, even when it is borrowed, might materially affect the weight or credibility of an endorsement because a purchasing decision generally involves weighing costs and benefits of one product as compared to another. NAD was also concerned that the multiple interactions between the company and the consumer was a connection that a reasonable consumer would not reasonably anticipate when viewing an infomercial proclaiming “real people, real results.”

The advertiser agreed to comply with NAD’s recommendation.

eSalon

Custom Formulated Hair Color
Case #5645 (October 2013)

NAD recommended that eSalon discontinue its use of celebrity likeness on its website unless the celebrities actually endorsed the product. NAD was concerned about the use of photographs of celebrities in social media, including on eSalon’s Pinterest and Facebook pages, to promote eSalon. eSalon argued that the photographs were only used to feature the celebrity’s hair color choices. A television advertisement for a product that shows a prominent and well-recognized celebrity would be an endorsement by the celebrity even though the celebrity makes no verbal statement in the advertisement. Consumers could reasonably interpret the use of a celebrity likeness on the advertiser’s Facebook and Pinterest pages as an implied endorsement by the celebrity.

The advertiser agreed to comply with NAD’s recommendation.
**Nutrisystem (Pinterest)**

"Real Consumers. Real Success."
Case #5479 (June 2012)

NAD, following its review of "Real Consumers. Real Success." – a Pinterest board maintained by Nutrisystem, Inc. – determined that the weight-loss success stories “pinned” to such boards represent consumer testimonials and require the complete disclosure of material information. NAD noted its appreciation that Nutrisystem took immediate steps to provide such disclosures.

Nutrisystem’s “Real Consumers” pinboard featured photos of “real” NutriSystem customers and highlighted their weight-loss successes. The customer’s name, total weight loss and a link to the NutriSystem website appeared below each photo.

Claims at issue in NAD’s review included:

- “Christine B. lost 46lbs on Nutrisystem.”
- “Michael H. lost 125 lbs. on Nutrisystem.”
- “Lisa M. lost 115 lbs. on Nutrisystem.”
- “Christine H. lost 223 lbs. on Nutrisystem.”

Upon receipt of NAD’s inquiry, the company asserted that necessary disclosures were inadvertently omitted from Pinterest. The advertiser stated that the testimonials at issue had appeared on Pinterest for less than two months, and said the disclosures were added immediately upon receipt of NAD’s letter.

**Coastal Contact, Inc. (Facebook)**

Like-Gated Ad Campaign
Case #5387 (October 2011)

In a case of first impression, NAD determined that the display of the total number of “likes” on the Facebook page of Coastal Contacts, Inc., conveys a general social endorsement.

NAD determined that the display of Facebook “likes” on a company’s Facebook fan page can mean many things to consumers, including that consumers like the company, product or service, that the individual who “liked” the content entered a like-gated promotion contest or sweepstakes, or that the consumer wanted to share some content on the company’s page with their “friends.”

Because actual consumers “liked” the Coastal page, and those consumers who participated in the like-gated promotion received the benefit of the promotion, NAD determined that Coastal had the general social endorsement that the “likes” convey. NAD noted for the record, however, that the outcome of the case would have been quite different if the evidence in the record demonstrated that consumers who participated in the like-gated promotion could not or did not receive the benefit of the offer, or that the advertiser used misleading or artificial means to inflate the number of Facebook “likes.”

With respect to the statements made in press releases to the investor community, NAD recommended that Coastal clarify that the number of Facebook “fans” or “likes” noted in the press releases is based on the total number of “fans” or “likes” the Company has received from all of its Facebook pages globally.

NAD further recommended that Coastal Contacts, Inc., discontinue an “up to 70 percent” savings claims and modify advertising that promoted “free” products.
Native Advertising

**L’Oréal USA**

**Makeup.com, Skincare.com, and Hair.com websites**

*Case #6370 (May 2020)*

L’Oréal USA, Inc. modified its websites to make clear that the content was written by or on behalf of L’Oréal. NAD was concerned that L’Oréal’s websites (Makeup.com, Skincare.com and Hair.com) did not sufficiently disclose the company’s connection with the websites in a clear and conspicuous manner. A consumer who read an article recommending products on one of these websites might weigh the recommendation differently if they are aware that the content was written by or on behalf of L’Oréal. Consumers should easily understand whether the content they are viewing is an advertisement or editorial content. References to L’Oréal generally appeared at the bottom of the respective webpages, too far from the website logos and content. L’Oréal immediately responded to NAD’s inquiry and explained that the full L’Oréal branding was meant to appear, and in fact traditionally did appear, at the top of each webpage, integrated with the website name/logo. L’Oréal explained that during revisions to the websites, the full disclosure was inadvertently dropped on some pages. Also, L’Oréal undertook a thorough review of the three websites to ensure clear branding. NAD appreciated L’Oréal’s immediate modifications to its websites to enhance and make it clearer that the content is written by or on behalf of L’Oréal.

L’Oréal USA appreciated NAD’s thorough and thoughtful review of this matter.

**Verizon Media/Division of Verizon Communications, Inc.**

**Inkey List Retinol Serum**

*Case #6313 (October 2019)*

NAD declined to retain jurisdiction over a challenge to statements about Inkey List Retinol Serum made in a lifestyle article on AOL.com by Verizon Media, a subsidiary of Verizon Communications, Inc., because it was not a paid commercial message. An article entitled “Say goodbye to wrinkles with these 10+ miracle products” was published on AOL.com written by “AOL.com editors.” Many anti-aging products were featured some of which, like Inkey List Retinol Serum, made strong product performance claims. The article contained links to websites where the products could be purchased, and a disclaimer noted that the writers may receive a commission from purchased products. NAD was concerned about whether the article was a paid product placement in which case Verizon Media would need to provide support for the claims. Verizon Media explained that the content in the article was derived solely from the editorial staff with no input from the business staff, and none of the statements were paid for, controlled, or placed by Verizon Media. As for the affiliate links, the editors chose the affiliate links which were displayed in the advertising after the content was complete. While the editorial staff may have been aware that Verizon Media has deals with retailers, the staff was not privy to the monetization details (e.g., commission rates) so they are unaware as to which links would be more profitable to promote as compared to others. Consequently, the editorial staff would not have an incentive to promote one product over another. Verizon Media further assured that product recommendations were not changed after the fact based on the availability of affiliate link revenue. NAD determined that the content at issue here is not an advertisement because it is not a paid commercial message. Verizon Media separated editorial and business considerations such that the content in the article was not driven by revenue from affiliate links but solely the editorial staff’s opinions about the products.
**BuzzFeed, Inc.**

**Shopping Guides – St. Ives Renewing Collagen & Elastin Moisturizer**

Case #6210 (September 2018)

Statements included in an article on BuzzFeed, Inc. stating that St. Ives Renewing Collagen & Elastin Moisturizer was “A paraben-free facial moisturizer infused with collagen to hydrate your face and soften the appearance of wrinkles” and that the moisturizer would “have your skin looking smoother! NAD determined that the collagen and elastin proteins in this formula help reduce the appearance of fine lines” was not advertising. BuzzFeed is a digital media outlet that creates and publishes a variety of news and entertainment content, including news reporting, pop culture quizzes, “listicles” and “shopping guides.” In the shopping guide that drew the attention of NAD, BuzzFeed writers and editors featured a St. Ives moisturizer in a list of “35 Skincare Products That Actually Do What They Say They Will.” BuzzFeed inserts web links to retailers for the recommended products and is sometimes compensated when a reader reaches a retailer site through a monetized link, called an “affiliate link,” and purchases the product. At the top of the page, BuzzFeed disclosed its use of affiliate links and its potential to earn revenue from sales made through those links. NAD questioned whether BuzzFeed’s embedding of affiliate links into a review of products for sale rendered the shopping guide “national advertising” that requires substantiation. However, in this case, BuzzFeed’s primary economic motivation driving the content was to attract page views and develop a readership, not to directly influence readers to purchase products through its affiliate links. NAD noted that the affiliate links were added to the “shopping guide” after the editorial content was completed and the recommendations were not changed after the fact based on the availability of affiliate link revenue. Thus, NAD lacked jurisdiction because the content was not advertising.

**Joyus, Inc.**

**Dr. Brandt’s Needles No More Wrinkle Relaxing Cream**

Case #5956 (May 2016)

NAD recommended that Joyus, an online shopping retailer, disclose that its “Stuff We Love” page was advertising and not editorial content. Joyus is an e-commerce platform for lifestyle products. Joyous brings consumers online shopping using videos to showcase new products. NAD was concerned that advertising for Joyus products appeared in a format that made it look like the advertising was editorial content. The FTC has advised that advertising should be identifiable as such to avoid misleading consumers into believing that an advertisement is independent and impartial. Consumers did not know that “Stuff We Love” was promoting products for sale in the videos before watching the shopping video. As a result, consumers could give greater credence to claims made in the product descriptions than they would if they were aware that this is a form of advertising for those products, and further, consumers may interact with this content because they think it is editorial and not advertising. NAD therefore recommended that Joyus (in collaboration with People Magazine) revise the link so that it is clear that by clicking on the “Stuff We Love” link, consumer will be taken to a list of items for sale by Joyus. The link itself or text surrounding the link should advise consumers that the content to which consumers are linking is an advertisement or make clear that the links are “shopping” links.

Joyus, Inc. voluntarily discontinued advertising claims for Dr. Brandt’s Needles No More Wrinkle Relaxing Cream, which the National Advertising Division treated as though NAD recommended their discontinuance and the advertiser agreed to comply. NAD asked Joyus to substantiate claims about the efficacy of the advertised product. The claims were discontinued by Joyus after the commencement of this challenge.

Joyus agreed to comply with NAD’s recommendations.
American Express Company

OPEN Forum Sponsored Content
Case #5760 (September 2014)

As part of its routine monitoring program, NAD reviewed advertising by OPEN Forum, www.OPENForum.com, a website that is hosted and maintained by American Express. OPEN Forum—via a third-party service—placed images-plus-text “ad units” on publisher websites. The ad units appeared below the publisher’s editorial content, under a “You May Like” heading, with a small side indication of “by Taboola.” Consumers who clicked on the OPEN Forum article links were directed to www.OPENForum.com. NAD was concerned that the ad unit links could be understood by consumers to mean that they were being directed (linked) to editorial rather than sponsored content. In reliance on American Express’s written assurance that the label for links to articles on the American Express OPEN Forum website had been permanently modified so that the link indicates it is to American Express OPEN or American Express OPEN Forum, an action NAD deemed necessary and appropriate, NAD determined that the matter had been resolved to its satisfaction.

Taboola, Inc.

Online Advertising
Case #5708 (May 2014)

NAD recommended that Taboola clearly disclose that it was linking consumers to sponsored content rather than news stories. Congoo, LLC, an Internet-based advertising company, challenged the practices of competitor Taboola with respect to the way it displayed image-plus-text ad units. Taboola and its competitors purchase advertising space from a variety of online publishers on behalf of clients. Congoo argued that Taboola’s ad units were so vaguely labeled as to confuse consumers into believing they were going to be linked to editorial content when they were actually directed to an advertisement. NAD recommended that Taboola modify its disclosures to disclose that it was linking consumers to sponsored content.

While Taboola strongly believed that its current disclosure methods were best-in-class and far surpass what other recommendation platforms are using, Taboola agreed to modify the appearance of its disclosures in future iterations of its widget, as recommended by NAD.

American Media, Inc.

Shape Water Boosters
Case #5665 (December 2013)

NAD recommended that American Media clearly and conspicuously designate content as advertising when it advertises its SHAPE-branded products in its SHAPE magazine. In an article that appeared to be an editorial about the health value of hydration was an advertisement for Shape Water Boosters. NAD was concerned that consumers may give more credence to the advertiser’s objective claims about the product’s attributes because of the context in which the claims appeared. American Media argued that because consumers were aware of the connection between the magazine and the SHAPE-branded product, it has no obligation to disclose that its promotion of SHAPE-Branded products was advertising. There was also an editor’s note on page 32 of the magazine that disclosed the connection between SHAPE Magazine and SHAPE Water Boosters. Although consumers may be aware that SHAPE Water Boosters were related to SHAPE magazine, those same consumers can reasonably attach different weight to recommendations made in an editorial context than recommendations made in an advertising context. Consumers may reasonably believe that editorial recommendations in SHAPE magazine are independent of
the influence of a sponsoring advertiser. Thus, NAD recommended that American Media clearly and
conspicuously designate content as advertising when it promotes SHAPE-branded products.
American Media agreed to modify the format in which it promotes its branded products.

**eSalon**

**Custom Formulated Hair Color**

*Case #5645 (October 2013)*

NAD found that eSalon supported its express online and social media advertising. NAD reviewed
eSalon’s advertising online and in social media to determine whether the advertiser’s express
claims were supported and whether consumers were likely to believe that certain content
regarding eSalon online and in social media was editorial content based on the context in which
the advertising appeared. eSalon’s express claims including claims that its product is, “salon-
grade,” “personalized hair color,” “crafted by experts,” “using thousands of color variations”
which is “custom blended, bottled and packaged.” eSalon supported its salon-grade claims by
demonstrating that it purchases the dyes for its products from a manufacturer who provides hair
dyes to professional stylists. eSalon’s use of cosmetology licensed colorists to formulate hair colors
supported its claim that expert colorists craft eSalon hair color. Finally, eSalon’s claims regarding
individual customization and personalization of its product were supported by the technology
eSalon has implemented which allows it to formulate hair color ingredients based upon customer
input and the review of its professional colorists.

**Reviews and Ratings**

**BestCompany.com, LLC**

**BestCompany.com**

*Case #6999 (January 2022)*

NAD determined that BestCompany.com, LLC provided a reasonable basis for the claim that all
reviews posted on BestCompany.com are “moderated through a tech-enabled, proprietary, 7-point
moderation process to ensure they are real and authentic.” However, NAD recommended that
the advertiser discontinue certain express and implied claims related to the advertiser’s message
that Best Company is an independent and impartial review site. NAD also recommended that
Best Company limit its use of the “100% verified” claim to only those reviews where the individual
writing the review is verified as a bona fide purchaser of the product.

These claims, which appeared on BestCompany.com, were challenged by SmileDirectClub, LLC
(SDC), a national provider of clear aligner therapy (“invisible braces”) that uses a teledentistry
platform and sells related goods and services. Best Company offers general information, reviews,
and recommendations for a variety of products and services, including in the “invisible braces”
category and for specific brands within the category such as SDC and its competitors.

NAD determined that the advertiser has a reasonable basis for the claim that all reviews posted
on BestCompany.com are “moderated through a tech-enabled, proprietary, 7-point moderation
process to ensure they are real and authentic.” NAD was satisfied that the advertiser takes
reasonable measures to avoid publishing incentivized reviews such that it may reasonably claim
that it has a process to ensure that posted reviews are “real and authentic.” Nevertheless, NAD
determined that Best Company did not support express claims and implied messages that its
website is independent and impartial because its ranking criteria results in a higher score for
businesses that have a partnership with Best Company.
NAD noted that an independent and impartial ranking of products, even one based on consumer reviews, should be based on reviews that are representative of the universe of consumer reviews for all companies reviewed and ranked. Further, NAD found that a disclosure explaining the ranking methodology cannot cure the express and implied misleading message that the rankings are independent. Therefore, NAD recommended that the advertiser discontinue express claims that:

- Rankings on the BestCompany.com website “cannot be bought” or otherwise influenced to “unfairly favor one company over another, not based on merit”;
- Best Company does not have “any relationships with companies that guarantee their ranking or score and we never will”;
- Best Company never has and never will take payment in exchange for an unmerited rank on BestCompany.com;
- Best Company’s rankings of various companies and their products on BestCompany.com are “honest and unbiased”; and
- Best Company is a “Truly Independent and Impartial Review Site,” as well as the modified version that Best Company offers “Truly Independent and Impartial Rankings and Reviews.”

NAD also recommended that the advertiser discontinue implied claims that:

- Best Company does not and never will have any improper relationships with featured companies, and rankings or scores on BestCompany.com cannot be purchased or obtained through a direct relationship.
- Best Company is not “pay to play.”
- Best Company ranks the clear aligner brand “Byte” over all other brands based on its “expert recommendation” and not due to Best Company’s undisclosed true relationship with Byte.

NAD determined that a reasonable takeaway from the claim “100% Verified,” as used to describe Best Company’s review verification process, is that all reviews posted on BestCompany.com receive the same level of scrutiny. While the advertiser demonstrated that all reviews go through a pre-publication moderation process to confirm that the review is from a person and not a bot, not all published reviews go through the process to become “Verified Customer Reviews,” i.e., further confirmation that the individual is a paying customer of the reviewed business. Thus, NAD recommended that the advertiser modify its advertising to label only those reviews that have passed through additional verification (“Verified Customer Reviews”) as “100% verified” and to use the claim exclusively when it has verified that the individual writing the review is a bona fide purchaser of the product.

Finally, during the proceeding the advertiser voluntarily agreed to remove and modify two videos about SDC and its products and programs. Accordingly, NAD did not review the claims in those videos on the merits.

The advertiser agreed to comply with NAD’s recommendations.

**Function Inc.**

**Shampoo and Conditioner**

**NAD Fast-Track SWIFT Case #6938 (February 2021)**

Prose brought a challenge to Function’s claim that it had “over 110,000 5-star product reviews!” for its Function of Beauty customizable hair care products. NAD recommended that the advertiser discontinue the challenged claim or modify it to tout the number of 5-star reviews it can reliably support. The “110,000 5-star product reviews” claim was appropriate for Fast-Track SWIFT because the issue was limited to whether the advertiser provided a reasonable basis for the claim when it counted reviews in the combined “shampoo and conditioner” category as two separate product reviews, one for shampoo and one for conditioner. NAD determined that at least one reasonable
interpretation of the claim “over 110,000 5- star product reviews!” is the express message that consumers have submitted 110,000 distinct reviews. Nothing in the context of the claim, or the claim itself alerts consumers that its count of 5-star reviews is based on counting a single review of shampoo and conditioner as two product reviews. Nor did the advertiser provide a reasonable basis to support the claim that it has over 110,000 product reviews for “shampoo and conditioner” because reviewers had no mechanism to rate the products separately.

Function agreed to comply with NAD’s recommendation.

**Amerisleep, LLC**

**SleepJunkie.org and SavvySleeper.org**

*Case #6369 (May 2020)*

NAD recommended that Amerisleep, LLC discontinue two mattress review websites in their current form or modify them to ensure that consumers clearly understand the websites’ contents are advertising for Amerisleep. Casper Sleep, Inc., a manufacturer and marketer of competing mattresses, alleged that SleepJunkie.org and SavvySleeper.org were advertising by Amerisleep rather than independent review sites. The sites also each feature informative content and articles about the benefits of getting better sleep and seek to teach consumers what to look for when purchasing a mattress or bedding. Near the top of pages that have affiliate links or claims about specific mattresses, the websites includes disclosure stating, “We may receive financial compensation for products purchased through links or codes on this website. [SleepJunkie.org / SavvySleeper.org] is owned by Healthy Sleep, LLC, which is affiliated with Amerisleep, LLC.” NAD determined that the disclosure was insufficiently clear and conspicuous to make clear to consumers visiting SleepJunkie.org or SavvySleeper.org that they are advertising websites owned and operated by Amerisleep. Also, NAD determined that SleepJunkie.org and SavvySleeper.org conveyed the message that they were independent ratings and review websites, a message that cannot be cured by a contradictory disclosure. To the extent that Amerisleep wants to continue to rate and review competing mattresses, NAD cautioned Amerisleep that the format itself poses additional challenges in ensuring that consumers are not misled to believe the content is from an independent third-party. Only if reasonable consumers understand that Amerisleep is rating itself against its competitors would the use of such ratings not be misleading.

Amerisleep agreed to comply with NAD’s recommendation.

**Choice Home Warranty**

**Home Warranty Service Plans**

*Case #6341 (January 2020) // NARB Case #277 (January 2021)*

NAD recommended that Choice Home Warranty (CHW) discontinue claims that it is the “#1 Rated Home Warranty Service. Rated #1 Home Warranty Service by Top10HomeWarrantyReviews.com” or modify it to clearly and conspicuously disclose its material connection to Top10HomeWarrantyReviews.com. Consumers who view the claim that CHW is the #1 ranked website on Top10HomeWarrantyReviews.com, would expect that the rating is independent and was not based in part upon payments that home service contract companies, including CHW, paid to the site. CHW argued that Top10HomeWarrantyReviews.com disclosed the parameters of its ranking system on its website and, as a result, is readily available information for consumers. However, consumers should not have to seek out the source of a ranking or rating in order to understand the material limitations of the advertiser’s “#1 ranked” advertising claim. NAD appreciated CHW’s voluntary modification of its TrustPilot.com and ConsumerAffairs.com ratings claims and cautioned CHW to continue monitoring its ratings at regular intervals and modify its claims accordingly to ensure that its advertising remains supported. The advertiser appealed NAD’s finding to the National Advertising Review Board (“NARB”).
NARB (#277- 01.28.21) -- The NARB panel recommended that when making references in advertising to ratings and/or rankings by third party websites to which CHW pays a fee, CHW should clearly and conspicuously disclose that CHW had made a payment to the website. The advertiser agreed to comply with NARB’s recommendation.

**Pyle Audio, Inc.**

**NutriChef Vacuum Sealers**  
Case #6265R (August 2019)  

NAD recommended that Pyle take reasonable measures to have the existence of the material connection between the reviewer and Pyle clearly and conspicuously disclosed should it offer incentives to product purchasers in exchange for posting reviews. With respect to incentivized reviews currently posted by product purchasers, NAD further recommended that Pyle take reasonable measures to have those reviews taken down or to modify them to include a clear and conspicuous disclosure that the consumer who posted the review received something of value from Pyle (i.e., free product). NAD further recommended that, in any future review solicitations, Pyle invite consumers to leave a review in exchange for a reward, without language that suggests a positive review is necessary to receive a reward.

**Reckitt Benckiser, LLC**

**Dimensions Home Fragrance**  
Case #6290 (June 2019)  

NAD recommended that Reckitt Benckiser, LLC discontinued the claim “4.4/5 stars” for its Dimension Home Fragrances products or modify its advertising to clearly and conspicuously disclose that it is based on reviews from consumers who had received free or discounted products. Reasonable consumers may skip reviewing each of the hundreds of reviews on the Dimensions website and assume that the aggregate claim, “4.4/5 stars” represents the sum total of all the reviews. These consumers would not be made aware of the material connection between the advertiser and the majority of consumers that provided the underlying reviews. Consequently, NAD determined that disclosure of this information is necessary to avoid misleading consumers.

The advertiser agreed to comply with NAD’s recommendation.

**TaxSlayer LLC**

**TaxSlayer Tax Preparation Software**  
Case #6286 (June 2019)  

TaxSlayer LLC was unable to support the claims that its tax preparation software was the “#1 Rated in the Tax Prep Software Category on Trustpilot.” Intuit Inc., the maker of TurboTax online tax preparation software, challenged TaxSlayer’s #1 claims in online advertising, as well as a series of commercials and online videos, because TaxSlayer is ranked second on Trustpilot’s public ranking list of “Best Tax Preparation Software companies.” At one point, however, TaxSlayer was rated #1. To support a claim that a product is Rated #1 within a broad product category, an advertiser should, as a general rule, compare itself to at least 85% of the relevant marketplace. NAD concluded that Trustpilot’s collection of user reviews did not provide reliable evidence to support the challenged Rated #1 claim, or demonstrate the comparative satisfaction of users of tax preparation software. First, the population of online reviews that created the basis for Trustpilot’s score was not representative of the general opinion of tax prep software consumers across the United States. Second, NAD was not persuaded that any consumer could simply visit the Trustpilot...
website to clarify any confusion about the universe of companies TaxSlayer was being ranked against or the number of reviews upon which each company's ranking was based. Finally, there was insufficient information in the record about how Trustpilot created its rankings based on review data for NAD to evaluate the methodology.

NAD also determined that TaxSlayer LLC's modified claim, “Rated #1 in the tax prep software category on Trustpilot among companies with 3,500+ reviews.” conveyed a misleading and unsupported message. The use of the term “#1” in conjunction with the qualifying language “among companies” reasonably conveys to consumers that the tax prep software category on Trustpilot includes multiple companies. The advertiser readily admits that it is the only tax prep software company with over 3,500 reviews on Trustpilot, and therefore the review data on Trustpilot cannot support the message conveyed.

The advertiser agreed to comply with NAD’s recommendations.

**Schmidt’s Deodorant Company**

**Natural Deodorant Products**
Case #6127 (October 2017)

Schmidt’s Deodorant Company provided a reasonable basis for its claims it has over 10,000 five-star reviews. While more traditional survey or other methods are not necessary to support claims based on crowd-sourced data, advertisers using crowd-sourced data must provide evidence which meets NAD’s requirements for reliability. Claim based on crowd-sourced data like consumer reviews must also be narrowly tailored and accurately conveyed. In this case, the reviews were verified and not double-counted. NAD recommended that to the extent Schmidt’s ties its five-star reviews claim to product satisfaction, that Schmidt’s modify the claim to accurately reflect the number of reviews that are based on customers’ product satisfaction.

Schmidt’s Deodorant Company agreed to comply with NAD’s recommendation.

**Fit Products, LLC**

**FitTea**
Case #6042 (December 2016)

NAD advised Fit Products to separate its endorsements and testimonials from its product reviews as well as to prominently disclose that the reviews on its website are authentic user reviews and that Fit Products does not edit those reviews.

Fit Products agreed to comply with NAD’s recommendation.

**Vapore, LLC**

**MyPurMist Handheld Steam Inhaler**
Case #5971 (July 2016)

NAD recommended that Vapore, LLC (“Vapore”) discontinue the claim that its MyPurMist Handheld Steam Inhaler received “More 5-star reviews than any other steam inhaler.” Where the 5-star reviews were verified, this does not guard against the potential for double-counting of reviews, which undermines the reliability of the reviews. In addition, certain reviews were too dated to be considered sufficiently reliable. Further, star ratings do not indicate why the rating was given, and they may have been given for reasons other than the attributes mentioned in the commercial. However, NAD noted that nothing in this decision precluded Vapore from making a more qualified claim about its product being highly-rated.

The advertiser agreed to comply with NAD’s recommendation.
JumpSport, Inc.

Trampolines
Case #5970 (July 2016)
A purportedly third-party review site for trampolines that was actually owned and operated by trampoline manufacturer JumpSport, Inc. was misleading and should be discontinued, according to the National Advertising Division in a challenge by competitor Vuly Trampolines Pty. Ltd. Product reviews generated by an advertiser must be clearly identified and not in a format that makes them appear to be independent editorial content. www.TrampolineSafety.com appeared to be operated by an independent third party, but is owned, operated, and controlled by JumpSport. The reviews and ratings were established by JumpSport. The advertising format was inherently misleading to consumers. Even if a disclosure could cure this false impression, as argued by JumpSport, the disclosures on the website were not clear and conspicuous.

JumpSport agreed to comply with NAD’s recommendations.

Euro-Pro Operating, LLC

Shark Rotator Powered Lift-Away NV650 Vacuum
Case #5860 (August 2015)
Reviews relied upon by Euro-Pro Operating, LLC lacked important indicia of reliability and representativeness to provide a reasonable basis to support its broad “More 5-Star Ratings online than any other vacuum brand” claim. Dyson, Inc. challenged Euro-Pro’s advertising claim that its Shark Rotator Powered Lift-Away NV650 vacuum received “More 5-Star Online Ratings.” The “online ratings” claim reasonably conveyed the message that Euro-Pro conducted an extensive compilation of reliable and representative “5-Star” online-wide reviews in support of its claim. Euro-Pro gathered 5-star review data from online retailer websites comprising the top 85% of online retailers. The websites that were subject to Euro-Pro’s analysis did not have consistent policies as to how long consumer reviews were displayed, which meant that some may have been more heavily weighted towards the review of outdated models. Such inconsistencies and uncertainties were particularly problematic when attempting to combine reviews from various sources to support a single, broad superiority claim. Even if NAD accepted Euro-Pro’s tally of reviews for the seven sites considered in support of its claim, NAD questioned the reasonableness of selection of a $149.99 price point (or above) for its calculation of 5-star reviews. This unnecessarily narrowed the limited data upon which Euro-Pro based its claim.

The advertiser agreed to comply with NAD’s recommendations.

Euro-Pro Operating, LLC

Shark-brand Vacuum Cleaners
Case #5717 (May 2014) // NARB Case #196 (September 2014)
Dyson, Inc. challenged advertising claims made in television commercials, infomercials, and on website by Euro-Pro for its Shark brand vacuum cleaners. Euro-Pro’s advertisements stated that the Shark was “America’s Most Recommended Vacuum Brand.” “Based on percentage of consumer recommendations for upright vacuums on major national retailer websites through August 2013, U.S. Only.” Dyson argued that the claim at issue implied that the Shark products were the most recommended vacuum cleaners among all vacuum cleaner owners nationwide, not just those who bought their vacuums online, and that the disclaimers would be interpreted by consumers to be a statement of method rather than a limit on the scope of the claim. NAD determined that the claim should be discontinued because it conveyed the message that the Shark brand was the most often recommended upright vacuum amongst all American vacuum cleaner consumers. The aggregated
online review data did not represent American upright vacuum cleaner consumers and Euro-Pro's evidence was insufficiently reliable or robust to provide a reasonable basis for its “America's Most Recommended Vacuum Brand” claim. Euro-Pro does not agree with NAD’s conclusion that its aggregation of online reviews is so inherently unreliable or unrepresentative that no claim, irrespective of its wording or disclaimer, can be supported. Accordingly, Euro-Pro appealed this finding to the National Advertising Review Board (NARB).

NARB (#196–09.09.14) -- The panel appreciated the usefulness of online consumer reviews and recognized that consumers increasingly rely on them. The panel's decision is not intended to preclude the possibility that web-based consumer review data can be aggregated across websites in support of advertising claims. While Euro-Pro’s analysis might possibly support narrower claims, the panel found that it does not support the broad “America's Most Recommended” claims made. The panel recommended that Euro-Pro promptly discontinue the challenged “America's Most Recommended” claims.

The advertiser agreed to comply with NARB's recommendation.

**General Mills, Inc.**

**Yoplait Blended Greek Yogurt**
**Case #5715 (May 2014)**

General Mills, Inc. was required to discontinue or modify its claim comparing its Greek blueberry yogurt to “the leading Chobani. Such claims must expressly state the basis for comparison. Future advertising for the Greek blueberry yogurt must more clearly separate its claims about Yoplait’s taste test results from the comments it solicited on taste preferences, including on its Tumblr page, on Twitter, on YouTube, and other social media sites. When General Mills provides incentives for posting reviews of its products in social media, NAD recommended that the advertiser advise reviewers of their obligation to disclose any material connection between the reviewer and General Mills.

General Mills agreed to comply with NAD’s recommendations.