

BBB NATIONAL PROGRAMS, INC.
The Direct Selling Self-Regulatory Council

Case Number: 13-2020 – Challenge – Young Living Essential Oils, LLC

INQUIRY BACKGROUND

Truth in Advertising, Inc. (“TINA” or the “Challenger”), a nonprofit organization located in Connecticut, challenged certain marketing claims of Young Living Essential Oils, LLC (“Young Living” or the “Company”).

THE PARTIES

TINA is an online resource dedicated to protecting consumers against questionable advertising and marketing. It aims to achieve its mission through investigative journalism, education, advocacy, and the promotion of truth in advertising.

Young Living is a Utah based multi-level direct selling company that offers essential oils and related products to consumers. Young Living has approximately 4 million independent distributors including over 2 million distributors in the United States.

BASIS OF INQUIRY

The Direct Selling Self-Regulatory Council (“DSSRC”) is a national advertising self-regulation program administered by BBB National Programs, Inc. This inquiry was commenced by TINA pursuant to the challenge provisions articulated in the DSSRC Policies & Procedures.

Specifically, TINA identified several core product and health-related claims being disseminated on the social media pages of certain distributors of Young Living. TINA alleged that many of the representations at issue include both express and implied claims that Young Living’s oils can treat diseases and/or medical symptoms. In its initial written submission to DSSRC (the “Challenge Letter”), TINA identified 153 examples of such claims which are available on its website.¹ The representative product and health-related claims that were the subject of this review are as follows:

- “Essential Oils & Autism... Essential oils may help your child think more clearly, calm down, and stay focused on what they need to help them. If you're looking for holistic and new ways to help your child with autism, We would like to invite you to join Dr. Brooks for a personal 20-minute consultation... For Dr. Brooks' current patients, here is the link to purchase your Young Living Essential Oils for the month: <https://tinyurl.com/DrBrooksYL>”
- “CONDITION: AUTISM
Autism appears to have its roots in very early brain development. However, the most obvious signs of autism and symptoms of autism tend to emerge between two and three years of age. Most cases of autism appear to be caused by a combination of genetics and environmental factors influencing early brain development.

¹ <https://www.truthinadvertising.org/young-living-health-claims-database/>

ESSENTIAL OILS:

*Vetiver: Contains relaxing and calming properties; helps with concentration and focus.

*Lavender: Calms the mind and body. Can help with neurological issues.

*Frankincense: Shown to reduce stress. Helps reduce heart rate and high blood pressure.

*Rosemary: Stimulates the senses and supports memory retention.

“RESEARCH: A recent study found that inhaling rosemary essential oil produced a significant enhancement of performance for overall quality of memory. In addition, inhaling a combination of rosemary and lemon in the morning showed significant improvement in personal orientation.”

HOME REMEDY: Calming and Relaxing Blend. Mix equal parts of vetiver, frankincense, lavender and rosemary. Each morning and evening, inhale for as long as the child is willing. These oils can also be diluted in coconut oil and massaged into the skin.

Reference from: Essential Oils Ancient Medicine

By: Dr. Josh Axe; Ty Bollinger; Jordan Rubin”

- “How I cured my UTI in 3 days...

First, I made 9 capsules with the following recipe. Then I took 1 pill 3 times a day. And..... Literally did the happy dance and yelled “YAY” after every restroom visit following my 2nd pill!” with image of bottles of Thieves, Rosemary and Frankincense.”

- “A week ago Friday, I felt the symptoms of a UTI coming on fast. I had just started Whole30 and didn't want to go on antibiotics if I didn't have to! I pulled out my Young Living essential oils and started making my own capsules with Oregon and Thieves essential oil. Took 3 of those a day, drank lemon essential oil water, and oiled my abdomen and lower back with oregano and thieves a couple times a day. By the end of the day my symptoms were gone! I was amazed at how fast I beat it!!!! I did this for a few more days. I had a natural path appointment the following Wednesday and she confirmed my Uti was gone.

I love that:

1)I didn't have to waste my time sitting in a walk in.

2)I didn't have to find care for my kids (cuz who wants to bring kids to a clinic 🏥)

3)I didn't have to wipe out my immune system with antibiotics

Love that I have the resources that God made for us to use to heal our bodies! I love my essential oils and I love the that i can 100% trust Young Living's quality of oils. #yloilsforthewin #beatmyutinaturally #keptmyimmunesystem #empowering! #younglivingessentialoils”

- “Since I started using the young living essential oils especially thieves. Wills allergies are a whole lot better! And he really never gets sick anymore. Diffusing Peppermint really helps with headaches an thieves o it has so many uses! I call it a natural Lysol on steroids 🙌 Wanna know more just message me! Your gonna wish you did sooner!”

- “Thieves essential oil... Cold & Flu, Household Germs, Gingivitis or Bleeding Gums, Strep Throat, Fungal Skin and Toenail Infections, Mold, Cold Sores and Canker Sores, Bronchitis, Washing Dishes”
- “I LOVE 2 Young Living Oils: STRESS AWAY & SARA - brilliant to reduce ANXIETY & DEPRESSION. For all PTSD sufferers! And they smell good to boot. Don't believe FDA on this. They push pharmaceuticals funded by the World Bank...”

CHALLENGER’S POSITION

According to the Challenger, Young Living distributors have been using and continue to use unsubstantiated, and therefore misleading, health-related disease treatment claims to market the Company’s essential oil products. The Challenger asserts that such health-related claims include both express and implied claims that Young Living’s essential oils can treat or alleviate symptoms of, among other conditions, urinary tract infections, autism, post-traumatic stress disorder, depression, epilepsy, insomnia, anxiety, strep throat, influenza, Alzheimer’s and arthritis. The Challenger stated that it previously brought similar health-related claims to the Company’s attention in November 2016. The Challenger also maintained that 124 of the 153 claims identified in its Challenge Letter to DSSRC were collected by TINA after that time. The Challenger stated that these health-related claims were disseminated after the United States Food and Drug Administration (FDA) sent Young Living a Warning Letter, dated September 22, 2014, regarding disease treatment claims for products sold by the Company.

In its reply submission (the “Reply”) to Young Living’s written response (the “Company Response”) to the Challenge Letter, TINA argued that the Company Response made clear that Young Living did not dispute the fact that the health-related claims at issue in this Challenge were unsubstantiated and should not have been in circulation. The Challenger further argued that the Company has a responsibility to search the internet for inappropriate claims made by its distributors and undertake to have such claims removed. The Challenger further argued that, while the Company did have many of the claims identified in the Challenge Letter removed from circulation, many other health-related claims remain in circulation. In addition, after receiving the Company Response, the Challenger found ten additional health-related claims being made by distributors of Young Living. In short, the Challenger argued that the health-related claims it identified were merely a sampling of the types of claims being disseminated more broadly in the marketplace and that the Company must improve its compliance oversight and enforcement to ensure that health-related claims similar to those at issue in this Challenge are not being disseminated in the marketplace.

COMPANY’S POSITION

Young Living informed DSSRC that it takes compliance with all applicable laws seriously. With respect to the five social media posts which contained the representative claims identified above in the Basis of Inquiry, the Company stated that it was able to facilitate the removal of three of those claims. Young Living stated that the two remaining representative posts belong to individuals who are no longer distributors for the Company and therefore, Young Living

maintains, the Company does not possess the ability to force those individuals to remove such social media posts.

In its Company Response, Young Living further stated that its distributor compliance department carefully reviewed the 153 claims identified by TINA and that 103 of such claims had already been removed as of the time of the Company Response. The Company stated that another 32 posts were in the process of enforcement, meaning the distributors' accounts with Young Living were placed on hold and subject to termination if the posts are not removed within a specified time period. The Company stated that the remaining posts belong to individuals who either were never distributors of Young Living, distributors of Young Living who have gone inactive, or distributors who are not identifiable via the platform of their post. With respect to these posts, the Company stated that it did not have any leverage to force these individuals to remove their posts.

With respect to the ten additional health-related claims identified by the Challenger in its Reply, Young Living stated that eight had been removed from circulation and the remaining two were in the process of being removed with the accounts of the distributors in question being placed on hold until such claims were removed.

Young Living stated that its distributor compliance program monitors its distributors' online behavior and educates them on and enforces its distributor policies regarding product claims. Young Living further stated that the Company has identified that a vast majority of all product claim violations are made by new distributors who are first-time offenders. According to the Company, this suggests that the Company's existing distributor base largely follows Young Living's policies and that the Company's educational program and compliance efforts are effective. The Company argued that since thousands of new distributors enroll monthly there is a continual need for education and, when necessary, enforcement with new distributors.

The Company stated, however, that it is impossible to remove an inappropriate claim immediately and that some improper claims will remain published, even if Young Living is working to remove them. Young Living stated that it has no authority or ability to remove others' online claims on its own and that it must encourage its distributors to remove claims they publish which typically takes several days or longer if a distributor is uncooperative. The Company argued that even if Young Living terminates a distributor's account for failing to remove an improper claim, such claim will remain online. Young Living also stated that it has no contractual right to request that claims made by a retail or preferred customer be removed. In short, the Company argued that the Challenger's conclusion that Young Living turns a blind eye to disease treatment claims because some such claims can be found online is incorrect and fails to account for the fact that those claims may be in the process of being addressed by Young Living's compliance department or that Young Living may have no ability to have such claims removed.²

Young Living also argued that the Challenger's "illegal disease treatment claims" allegations are outside of the DSSRC's jurisdiction since such claims relate, "not to the truthfulness of the claims" but the "disease-treatment" nature of the claims. The Company argued that "disease-

² Young Living identified 18 of the social media posts identified by the Challenger as belonging to individuals that are not active Young Living distributors.

treatment” and “inappropriate health” claims are grounded in FDA regulations, which it believes are outside the scope of the DSSRC’s authority. Young Living argued that TINA’s references to Federal Trade Commission (FTC) law and “unsubstantiated and misleading” claims were merely nominative and used to position this Challenge within DSSRC’s jurisdiction.

In response to DSSRC’s inquiry regarding the Company’s distributor training and compliance processes, Young Living provided DSSRC with additional distributor educational and training materials³ which include, among other items a list for distributors of “hot words and drug claims to avoid when telling your Young Living story.” The prohibited words set forth the types of conditions and health-related claims at issue in this Challenge.

Young Living maintained that when the Company becomes aware of an unauthorized claim made by an active distributor through its own monitoring or via a complaint, it creates a “case” for such claim the distributor is contacted via phone and sent a “First Step Letter” via email and mail requesting removal of the unauthorized claims within ten business days. The Company provided DSSRC with an exemplar of a First Step Letter which, among other things, contained the following form language to the distributor:

Recently, it has come to our attention that you control and/or operate the following www.pinterest.com, www.instagram.com, www.facebook.com (“website(s)”), which currently contain claims about Young Living’s products that (1) are not supported by competent and reliable science and/or (2) are intended to diagnose, mitigate, cure, prevent, or treat diseases...

Please immediately take action to carefully review and revise content on all websites that you own, operate, and/or control for compliance with federal regulations and the P&P. Still have questions about what those regulations are? You can find the P&P in the Virtual Office Member Resources tab under “Policies.” Please don’t hesitate to reach out if we can assist you in any way as you review these channels. We are here to support and empower you on this journey of wellness and success!

We’ll **review** your website(s) and relevant materials again in ten business days. If you have not corrected the information on your channels, Young Living may have to take further measures to ensure that these are either aligned to be in compliance with the P&P or completely removed.

Young Living maintained that it follows up on a case twice (by phone and email) within the ten-day period following its First Step Letter and that if the subject post is removed or sufficiently edited the case is closed. If the unauthorized post remains after ten business days, the Company stated that it then proceeds to an account hold of such distributor. In that case, the distributor is contacted via email, phone, and mail to notify such distributor that the time period for removal of the claim has expired and to notify such distributor that his/her account hold is being placed and that such account is placed on hold for five business days or until the claims are

³ These educational and training materials are also available at <https://www.facebook.com/ylconductsuccess>

removed. The Company further stated that such distributor's upline leader is then notified of the account hold and requested to facilitate removal of the unauthorized claim. Young Living stated that it then follows up on the case one time within five days by email/phone and that if the post remains after another five business days, a 24-hour notice is communicated to the distributor via phone and email and that if the post remains after the 24-hour notice, the distributor's account is terminated.

With respect to an active distributor that engages in repeated claim violations, the Company stated that if a distributor engages in a second violation within 12 months of a first violation, the account goes to an immediate second step, is placed on hold and the process listed above is followed. A distributor with three or more violations account is reviewed by the Company's product claims committee for review of potential termination, probation, and/or fine.

In response to DSSRC's inquiry regarding what steps Young Living has taken to contact former distributors to request that unauthorized claims be removed from circulation, Young Living stated that its legal department regularly contacts inactive and non-members identified by its Conduct Success team who have infringed upon its copyright or trademark rights. The Company stated that since inactive and non-members have no agreement with Young Living, the Company is not aware of any legal basis to compel these individuals to alter or remove content that does not clearly contain a copyright or trademark violation.

The Company stated that if the social media platform where the subject post was made (e.g. Facebook) provides a mechanism for reporting trademark or copyright violations, the legal team will submit complaints to such platform seeking removal of such posts. The Company provided DSSRC with three examples of resolved complaints that it submitted to social media platforms. Young Living stated that if the violation occurs on a website or platform without a reporting mechanism, the individual is sent a letter and an email, if available, and is asked to respond within 14 days. If the Company receives no response, another letter is sent with a request for a response within seven days. The Company informed DSSRC that if no response is received, or the individual is unwilling to correct the issue, the Company then confers about whether to move forward with legal proceedings.

ANALYSIS AND RECOMMENDATION

Young Living argued that the Challenger's allegations as to "illegal disease treatment claims" are outside of the DSSRC's jurisdiction since such claims relate, "not to the truthfulness of the claims" but the "disease-treatment" nature of the claims. Specifically, Young Living argued that "disease-treatment" and "inappropriate health" claims are grounded in FDA regulations, which it believes are outside the scope of the DSSRC's authority.

DSSRC does not step into the shoes of the FDA and does not take a position as to whether the challenged claims are compliant with federal law. Nonetheless, it is the Company's burden as the marketer to possess and provide to DSSRC evidence to substantiate all the messages reasonably conveyed by its advertising claims.⁴ Prior advertising self-regulatory precedent by the

⁴ <https://www.ftc.gov/public-statements/1983/03/ftc-policy-statement-regarding-advertising-substantiation>

National Advertising Division (NAD) is instructive and sets forth the standard DSSRC will apply to health-related claims such as those at issue here:

NAD does not make distinctions across product or regulatory categories. For example, whether a product is an OTC drug, a dietary supplement, or even a homeopathic remedy, NAD's analysis remains the same: identify the messages reasonably conveyed by the advertising, examine the reliability of the evidence, and if reliable, determine whether the evidence is a good fit for the reasonably conveyed messages. The strength of the messages drives the level of support sufficient to provide a reasonable basis for the claims.⁵

Here, DSSRC determined here that the requisite level of support for the challenged claims is competent and reliable scientific evidence because the claims at issue are powerful health-related claims that Young Living's products may treat or alleviate symptoms of a number of conditions including urinary tract infections, autism, post-traumatic stress disorder, depression, epilepsy, insomnia, anxiety, strep throat, influenza, Alzheimer's and arthritis.⁶ Further, the claims strongly convey the message to consumers that the promised health benefits are supported by scientific testing.⁷ While there is no requisite number of studies required, generally, competent and reliable scientific evidence consists of randomized, placebo-controlled, well-conducted human clinical trials with statistically significant results.⁸

Here, Young Living did not attempt to substantiate the health-related claims at issue and conceded that such claims should not be in circulation or used by the Company's distributors. Indeed, the Company's own educational and training materials for distributors make clear that health-related claims such as those at issue in this inquiry are not authorized by Young Living.

DSSRC acknowledges and appreciates that the Company's materials include guidance for distributors as "Say This" and "Not That" to avoid problematic health-related claims in similar format to the following:

⁵ Mommy's Bliss Inc. (Cough Syrups and Probiotic Drops), Report #6257, NAD/CARU Case Reports (March 2019)

⁶ Id.; POM Wonderful vs. FTC, United States Court of Appeals for the District of Columbia Circuit (2015) <https://www.cadc.uscourts.gov/internet/opinions.nsf/CF44C4FA22F615C585257DDD00549353/%24file/13-1060-1535012.pdf>.

⁷ Advertisers should possess the support that is promised in their advertising. POM Wonderful, *supra*, at fn 5.

⁸ Mommy's Bliss Inc. (Cough Syrups and Probiotic Drops), Report #6257, NAD/CARU Case Reports (March 2019).

YOUNG LIVING
ESSENTIAL OILS

Young Living Conduct Success
November 27

Young Living wants people to enjoy lives filled with wellness, health, and happiness—which includes the safe use of our products. That's why we carefully label Young Living products with their intended use. When you share your favorite Young Living products with your friends and family, make sure to discuss essential oils according to their labels and designations.

24 8 Shares

Like Comment Share

Write a comment...

SAY THIS

I apply Stress Away™ to my wrists. That way, I get to enjoy its calming scent everywhere I go.

NOT THAT

I dilute Stress Away™ with coconut oil and rub the mixture along my jaw to relieve teeth grinding.

This graphic contains content consistent with the labeling for the United States only.

DSSRC also acknowledges and appreciates that the Company’s “Winter Hot Words” list contains a list for distributors of “hot words and drug claims to avoid when telling your Young Living story” which include the types of conditions and health-related claims at issue in this Challenge.

YOUNG LIVING
ESSENTIAL OILS

WINTER HOT WORDS

Here is a list of hot words and drug claims to avoid when telling your Young Living story:

- Allergies
- Alzheimer's
- Antibiotic
- Anti-inflammatory
- Antiseptic
- Arthritis
- Asthma
- Bronchitis
- Chronic fatigue
- Chronic depression
- Eczema
- Fever
- Flu
- Inflammation
- Migraine
- Post-Traumatic Stress Disorder (PTSD)
- Respiratory tract infection
- Sciatica
- Shingles
- Sinus infection
- Strep throat
- Vertigo
- Virus

This is not an all-inclusive list. This educational tool is consistent with labeling requirements for the United States only.

Young Living Conduct Success
November 26

Wondering which words to avoid when promoting and selling Young Living essential oils? To help all Young Living members remain compliant with federal regulations, we compiled a list of hot words to avoid. Please remove all these words and any implications, restatements, or descriptions of them from personal and business websites used to promote and sell Young Living products. Also, remember to review any social media platforms you use, including Facebook, Twitter, Instagram, YouTube, Pinterest, blogs, or any other marketing pages you produce or control.

This is not an all-inclusive list. If you have any questions about other words or claims, please contact the Conduct Success team at conduct@youngliving.com. For products that are not cosmetic essential oils, please refer to their label for proper usage.

74 Likes 10 Comments 37 Shares

Like Comment Share

Most Relevant

alexis.barreira Great reminders for how to share!
Like · Reply · 1w

Anne Rodbard Good to know! Thank you.
Like · Reply · 1w

Deidre Johnson Cathy Mayle - great reminder
Like · Reply · 1w

Write a comment...

DSSRC determined that it is necessary and appropriate for the Company to continue its efforts to educate its distributors regarding the types of health-related claims they should avoid making. DSSRC also recommends that the Company actively monitor the marketplace for health-related claims made by active distributors of Young Living and employ the enforcement mechanisms described above including suspension or termination of a distributor’s account if necessary.

When a direct selling company such as Young Living is made aware of an improper product or income claim that was made by an individual that was an active distributor when such claim was made but that has since become an inactive distributor of the company, DSSRC acknowledges that the direct selling company may not be able to require the former distributor to remove such claim. In that instance, DSSRC nonetheless recommends that the direct selling company make a bona fide good faith effort to have the improper claim removed. DSSRC determined that actions similar to Young Living’s “First Step Letter” requesting the removal of claims communicated by active distributors would constitute a bona fide good faith attempt with respect to removing improper claims made by distributors that have since become inactive distributors. If the social media platform where the subject post was made provides a mechanism for reporting trademark or copyright violations, DSSRC recommends that the direct selling company promptly utilize such mechanism and seek removal of the subject claims and posts. If the subject claim that came to the attention of the direct selling company occurred on a website or platform without a reporting mechanism, DSSRC recommends that in addition to contacting the

former distributor in writing as described above, the Company contact the website or platform in writing and request removal of the subject claim or post.

CONCLUSION

At the outset, DSSRC determined that it is the Company's burden as the marketer to possess and provide to DSSRC evidence to substantiate all the messages reasonably conveyed by its advertising claims. Here, DSSRC determined that the requisite level of support for the challenged product claims is competent and reliable scientific evidence because the claims at issue are powerful health-related claims that Young Living's products may treat or alleviate symptoms of serious medical conditions.

Since Young Living agreed that the health-related claims at issue in this inquiry should not be in circulation or used by the Company's distributors, DSSRC determined that it is necessary and appropriate for the Company to continue its efforts to educate its distributors regarding the types of health-related claims they should not make on behalf of the Company's products. DSSRC also recommends that Young Living actively monitor the marketplace for health-related claims made by active distributors of Young Living and employ the enforcement mechanisms described in this decision including, when necessary, suspension or termination of a distributor's account.

With respect to improper claims made by distributors that later became inactive distributors, DSSRC recommends that, promptly upon learning of such a claim, Young Living make a bona fide good faith effort to contact the former distributor to request that the improper claim be removed. DSSRC also recommends that the Company take additional steps to remove such claims from the marketplace including utilizing the mechanism that websites and social media platforms may have for removal of trademark or copyright violations. If the subject claim by a former distributor occurs on a website or platform without a reporting mechanism, DSSRC recommends that the Company should also contact the website or platform in writing and request removal of the subject claim or post.

COMPANY STATEMENT

Young Living respects the DSSRC and its efforts to protect the direct sales industry. We also appreciate the opportunity to respond to Challenger's allegations and explain our robust distributor compliance program. Per [DSSRC's] recommendation, Young Living will continue to actively monitor the marketplace for improper health-related claims made by active distributors and will continue to employ enforcement mechanisms to remove such claims. Young Living also agrees to: (i) make reasonable efforts to request that former distributors who made improper products claims while Young Living distributors remove such claims and (ii) make reasonable efforts to request that such claims be removed through IP enforcement mechanisms when Young Living can confidently determine that Young Living's IP was improperly used and Young Living has adequate IP rights to request its removal.

(Case No. 13-2020 HJS, closed on 2/19/2020)

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