Current Advertising Litigation Trends in The Telecommunications & Consumer Goods Industries: From 5G to 5X

November 11, 2024

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Lanham Act

August 26, 2024

Wisconsin court grants summary judgment in garden tool Lanham Act false advertising claims, counter-claims

The U.S. District Court for the Western District of Wisconsin granted defendant Woodland Tools Inc.'s motion for summary judgment regarding a Lanham Act false advertising claim brought by Fiskars Brands Inc. alleging defendant falsely represented that its gardening tool was designed in the United States. The complaint alleged that defendant copied plaintiff's version of the tool, which was designed in Finland. The court ruled that plaintiff failed to sufficiently allege that the challenged statements were literally false or to produce any evidence of consumer confusion in relation to the challenged statements. The court noted that plaintiff did not provide any evidence from which a reasonable jury could determine that defendant's tools were not designed in the United States other than the allegations that the designs were copied from its own product. The court also denied Fiskars's motion for summary judgment with regard to a Lanham Act false advertising counterclaim brought by Woodland based on Fiskars's product packaging that its tools have "up to 3x more cutting power." Counter-plaintiff argued that such statements are ambiguous and misleading to consumers because they do not identify the baseline for the "3x" comparison, such as which tools are being compared. The court agreed, holding that a reasonable jury could credit counter-plaintiff's expert's analysis and consumer surveys to conclude that such statements have a tendency to deceive consumers. However, the court granted counter-defendant Fiskars's motion for summary judgment in regard to statements that certain of its products had a titanium blade coating, which counter-plaintiff argued was literally false because the coating was not 100 percent titanium. According to the court, this statement was not literally false because it could plausibly mean that the coating contained some amount of titanium.

August 20, 2024

Florida court dismisses ZAGG Lanham Act false advertising counterclaim

The U.S. District Court for the Southern District of Florida granted counter-defendant ZAGG Inc.'s motion to dismiss a Lanham Act false advertising counterclaim alleging counter-defendant falsely reported to Amazon that the ZAGG product sold on the e-commerce site by counter-plaintiff infringed on its rights. Counter-defendant argued that the challenged statements were submitted directly and privately to Amazon and not disseminated to the general public in commercial advertising. Counter-plaintiff argued that the statements were sufficiently disseminated to actual and prospective customers by way of the notices to Amazon so as to constitute advertising. However, the court noted that counter-plaintiff failed to explain how these notices were

disseminated to customers, particularly since the notices include no information from which the court could infer that they were made public. As a result, the court agreed with counter-defendant's argument that the challenged statements were not made as part of commercial advertising or promotion and granted the motion to dismiss the Lanham Act false advertising counterclaim without prejudice.

August 13, 2024

California court grants motion to dismiss printer component Lanham Act claim

The U.S. District Court for the Southern District of California granted defendants Vanguard Graphics International LLC and Printware LLC's motion to dismiss a Lanham Act claim brought by Memjet Technology Limited alleging defendants sent a communication to a group of consumers that included false statements regarding plaintiff's manufacturing of printer components. Plaintiff alleged that the communication falsely stated that it would no longer be producing a DuraFlex print head and that defendants would be able to provide better options moving forward. Plaintiff also alleged that its customers have stopped ordering the DuraFlex units and the associated components because of the false statements. The court held that plaintiff's allegations were too sparse to determine whether the complaint set forth a false association claim or a false advertising claim, making it too ambiguous to provide fair notice. Further, the court noted that the complaint failed to allege the nature of plaintiff's or defendants' businesses or provide sufficient detail regarding the communication. Therefore, the court held that it could not determine whether the communication appeared in a commercial advertisement or promotion, or if it commented on the nature, characteristics, or qualities of plaintiff's goods or services. As a result, the court granted the motion to dismiss plaintiff's Lanham Act claim without prejudice, noting that it appeared the claim could be cured by including additional information in the complaint.

August 02, 2024

California court grants MDalgorithms' motion for summary judgment regarding Lanham Act false advertising claim

The U.S. District Court for the Northern District of California granted summary judgment for defendant MDalgorithms Inc. regarding a Lanham Act false advertising claim alleging defendant made false representations about its MDacne and MDhair products. Plaintiff first challenged defendant's claim that its product kits are individually customized based on a customer's skin and haircare needs, arguing that is false because the products within those kits have over-the-counter chemical formulations. The court disagreed, stating that plaintiff offered no evidence to support such a restricted view of the term "customized." Plaintiff also alleged defendant falsely advertises "unlimited dermatologist support," arguing that defendant employs only one dermatologist who is not currently allowed to practice in the United States. However, the court held that defendant's actual statement on its website indicates that customers may receive "dermatologist support" is not literally false or misleading because defendant employs a dermatologist who is licensed to practice in Israel. The

court stated it was inapposite that the dermatologist is unable to practice in the United States. With regard to statements that defendant's products are FDA-approved, the court noted that plaintiff offered no evidence that defendant ever publicly stated or advertised to consumers that its products are FDA-approved, finding that a slide-deck prepared by defendant and disseminated to investors did not qualify. The court also held that defendant's statement that its acne products consist of "FDA-cleared topical anti-acne ingredients" is not literally false or misleading, noting that the ingredients themselves are in fact approved by the FDA to clear acne. Finally, the court held that defendant's statement that consumers cannot return products because they are "medical products" was not false or misleading, noting that plaintiff provided no evidence for the argument that "medical" is limited to prescription products. As a result, the court granted summary judgment for defendant in regard to the Lanham Act false advertising claim.

August 01, 2024

Tennessee court denies motion for preliminary injunction regarding GPS pet collar Lanham Act false advertising claim

The U.S. District Court for the Eastern District of Tennessee denied plaintiff's motion for preliminary injunction regarding a Lanham Act false advertising claim alleging defendant Protect Animals With Satellites LLC falsely advertised its Halo Collar GPS-based pet containment system. Plaintiff Radio System Corporation, which offers a competing product, the Guardian GPS Pet Fence, alleged that defendant falsely represented that the Halo Collar was the "most accurate" GPS fence on the market. The court held that plaintiff failed to demonstrate a likelihood of success on the merits, explaining that plaintiff did not allege that without the purported false advertising, consumers would have chosen its own competing product over the Halo Collar. According to the court, plaintiff's argument may have carried more weight if it and defendant were the only two players in the GPS-based pet containment space, but since they were not, plaintiff failed to allege that it suffered a loss of sales due to the purported false advertising. Additionally, the court noted that plaintiff's competing product received a number of negative reviews regarding its efficacy, making it possible that consumers dissatisfied with defendant's product would avoid such products altogether rather than purchase plaintiff's product. Consequently, the court held that plaintiff failed to show that the alleged false advertising caused consumers to purchase defendant's product over its own and denied the motion for preliminary injunction.

July 19, 2024

Texas court dismisses Lanham Act false advertising lawsuit regarding U.S. Shelby can-openers

The U.S. District Court for the Western District of Texas granted defendant Tag-Z LLC's motion to dismiss a Lanham Act false advertising claim alleging defendant filed, and later withdrew, a fraudulent trademark application for U.S. Shelby military-style can openers, allegedly allowing defendant to achieve sole brand owner and seller status

for U.S. Shelby openers through Amazon's Brand Registry Program while the trademark application was pending. Plaintiff, a military equipment company, alleged that it had sold U.S. Shelby openers through both Amazon and its own websites since 2009, but that defendant's brand owner status prevented plaintiff and other companies from selling the products on Amazon, resulting in a marked decrease in sales. The court stated that plaintiff's claims were conclusory and merely alleged that defendant made a false statement of fact in commercial advertising but failed to specifically identify the commercial advertisement, if any, in which false or misleading statements took place. As a result, the court granted the motion to dismiss the Lanham Act false advertising claim with leave to amend.

April 17, 2024

California court denies motion to dismiss Kitchen Cube Lanham Act false advertising claim

The U.S. District Court for the Central District of California denied defendant Kitchen Cube LLC's motion to dismiss a Lanham Act false advertising claim alleging defendant falsely represented on its website that it "designed and manufactured" a measuring cube product that plaintiff originally designed. The court held plaintiff adequately alleged that defendant's conduct misled consumers regarding the product's origin, which impacted plaintiff's market. Therefore, the court ruled plaintiff sufficiently alleged a reputational injury and thus had standing to bring the false advertising claim under the Lanham Act. The court also held plaintiff sufficiently alleged that the challenged statements were false by alleging that the design used and sold by defendant was actually the one created by plaintiff. Further, the court held plaintiff properly alleged that defendant falsely advertised and misrepresented in its patent application that it had created the product. As a result, the court ruled that plaintiff had sufficiently stated a false advertising claim under the Lanham Act and denied the motion to dismiss.

April 02, 2024

California court dismisses iPhone titanium cover Lanham Act false advertising claim brought by consumer

The U.S. District Court for the Northern District of California granted defendants T-Mobile U.S., Verizon Communications Inc., Apple Inc. and AT&T Mobility LLC's motion to dismiss a Lanham Act false advertising claim alleging defendants falsely advertised that the outer material of Apple's iPhone 15 Pro was titanium. According to plaintiff, the advertisements were false because the product actually contains alloys of both titanium and aluminum. The court ruled plaintiff failed to allege that he had a commercial interest in reputation or sales and that he was merely a consumer who had purchased Apple iPhones in the past. As a result, the court ruled plaintiff lacked standing to bring a Lanham Act false advertising claim and granted the motion to dismiss.

March 15, 2024

New Jersey court denies motion to dismiss Lanham Act false advertising claim over allegedly non-genuine Swarovski Optik binocular products

The U.S. District Court for the District of New Jersey denied defendants iBuy Group LLC and iBuy Distribution LLC's motion to dismiss a Lanham Act false advertising claim brought by Swarovski Optik North America Limited. Plaintiff alleged that defendants, who are unaffiliated with Swarovski, sell non-genuine binocular products bearing plaintiff's marks and describe their merchandise as "new" Swarovski products sold in "original packaging" on various e-commerce platforms including Amazon and eBay. The court held that plaintiff sufficiently alleged that defendants' statements were literally false, and had or were likely to deceive consumers and harm plaintiff's reputation. On falsity, the court noted that plaintiff alleged the products were not "new" as defined in Amazon's terms and conditions because they were not covered by Swarovski's original warranty, and were not sold in the original packaging of genuine Swarovski products that contain specific policies, instructions, and legal disclaimers. The court stated that at the motion to dismiss stage, it could not properly say that no reasonable person could be misled by defendants' statements. As a result, the court ruled plaintiff had adequately stated a claim for false advertising under the Lanham Act and denied the motion to dismiss.

March 11, 2024

Colorado court denies motion to dismiss Lanham Act false advertising claims regarding Crocs press release

The U.S. District Court for the District of Colorado denied defendant Crocs, Inc.'s motion to dismiss a Lanham Act false advertising claim regarding a press release it issued stating that it had obtained "a judgment of infringement" and damages against plaintiff as a result of plaintiff's sales of imitation Crocs shoes, which reinforced the validity of Crocs' patent rights. Plaintiff argued that the offer of judgment was filed under Rule 68 and was not determinative of or an admission of guilt. The court held that the essence of the press release was that the court's judgment determined that plaintiff sold shoes that infringed on defendant's patents. However, the court noted that the offer of judgment stated that it was not to be construed as an admission of liability, nor that defendant had suffered any damages. Consequently, the court ruled that plaintiff had adequately alleged that the press release contained materially false statements. The court also held that plaintiff adequately alleged that defendant made the false statements in order to receive substantial benefits, including increased sales and brand differentiation. Therefore, the court ruled plaintiff had sufficiently alleged that the press release was commercial advertising under the Lanham Act.

March 07, 2024

Washington court denies preliminary injunction in ECO water treatment product Lanham Act false advertising claim

The U.S. District Court for the Western District of Washington denied plaintiff's motion for preliminary injunction regarding a Lanham Act false advertising claim against defendant ECO Integrated Technologies, Inc. Plaintiff alleged that defendant falsely advertised on its website that its devices have "unparalleled patented and proven electronic water products and services." Plaintiff filed declarations by its CEO, a shareholder, and a former officer stating that they had investigated and found nothing to support defendant's statement that its devices are patented or have a proven track record or testing to prove their effectiveness. The court held that the declarations were not sufficient evidence to warrant a preliminary injunction requiring defendant to remove the statement from its website. In fact, the court said it would not consider the contents of the declarations, because the declaration by plaintiff's CEO was stricken, and the others were submitted for the first time on reply. However, the Court noted that even if it were to consider the late-filed declarations, they were not sufficient to demonstrate a likelihood of success on the false advertising claim. The court noted that while the declarants stated that they had investigated the veracity of the challenged claims, they provided no details of what their investigation entailed. According to the court, the vague declarations may be enough to survive a motion to dismiss but were inadequate to establish the likelihood of success on the merits. Further, the court noted that while discovery could provide more support for plaintiff's claim, the evidence was insufficient to support a preliminary injunction requiring affirmative action by defendant, which would only be warranted if the law and facts clearly favored plaintiff's position. Therefore, the court denied the motion for preliminary injunction regarding the false advertising claim.

December 13, 2023

California court grants summary judgment regarding biodegradable cooler Lanham Act false advertising claim

The U.S. District Court for the Northern District of California granted defendant Igloo Products Corporation's motion for summary judgment in regard to a Lanham Act false advertising claim alleging defendant falsely represented that its Recool biodegradable cooler was the first of its kind. Plaintiff alleged it had actually invented, designed, marketed and sold its Vericooler III-brand fully biodegradable cooler before defendant's product hit the market. Plaintiff further alleged that the defendant's representations that its product was the "first" was a claim of inventorship, which misled consumers into believing that its product was innovative and original. The court held that defendant's representations that its product was the "world's first" biodegradable cooler related to the origin of an idea, rather than a characteristic of the product. Thus, the court stated that while plaintiff filed its complaint under the Lanham Act, it was actually trying to protect its intellectual property rights, which was a patent issue. The court added that plaintiff underscored this in its opposition brief, in which it asserted that it sought to "defend its patent." As a result, the court ruled plaintiff failed to state a

viable Lanham Act false advertising claim and granted defendant's motion for summary judgment.

December 05, 2023

California court dismisses Amazon printer cartridge Lanham Act false advertising claim

The U.S. District Court for the Central District of California granted defendant Amazon.com Inc.'s motion to dismiss a Lanham Act false advertising claim alleging defendant falsely advertised plaintiff's printer ink cartridges as "remanufactured" or "recycled." While defendant did not create any of the product listings containing the purported false statements, plaintiff alleged it was still liable because it approved seller listings, attracted customers to its website using third-party seller listings, provided customers with product listings for their searches, processed customer payments for the product, and shipped products in its own packaging to customers. Defendant argued that it was entitled to immunity against plaintiff's claims under Section 230 of the Communications Decency Act ("CDA"). The court agreed, holding that plaintiff's allegations made clear that defendant was a provider of interactive computer services as defined by Section 230 because it markets and sells products to retail customers through internet websites. Further, the court held that the defendant could not be held liable for third-party content simply because it resold third-party products. Finally, the court ruled that plaintiff failed to allege that defendant created any of the purportedly false or misleading statements at issue and, therefore, was not responsible for any of those statements. As a result, the court held that defendant was entitled to immunity under Section 230 of the CDA and granted the motion to dismiss the Lanham Act false advertising claim.

November 21, 2023

California court dismisses automated litter box Lanham Act false advertising claim

The U.S. District Court for the Northern District of California granted counter-defendant Automated Pet Care Products, LLC's motion to dismiss a Lanham Act false advertising counterclaim alleging counter-defendant posted fake reviews on Amazon.com and Chewy.com to boost the ratings for its automated cat litter box product. The complaint also alleged that counter-defendant spread false information to influencers, for example that counter-plaintiff's competing product was a cheap knock-off of its own product. The court dismissed the claim as it pertained to the allegedly fake reviews, noting that counter-plaintiff failed to specifically identify any such reviews that were posted by counter-defendant. The court also dismissed the claim based on counter-defendant allegedly spreading false information to influencers, holding that counter-plaintiff failed to allege any statements, let alone any false ones, that were made about counter-plaintiff's product by those influencers. Because the counter-plaintiff failed to identify any specific false advertisements by counter-defendant that injured counter-plaintiff, the court dismissed the false advertising counterclaim.

Consumer Class Action

August 28, 2024

California court dismisses aluminum products 'Made in the USA' false labeling lawsuit

The U.S. District Court for the Northern District of California granted defendants Handi-Foil Corporation, Jiffy-Foil Corporation and Handi-Foil Aluminum Corporation's motion to dismiss a putative class action alleging that defendants falsely labeled their disposable aluminum products as being "Made in the USA." Plaintiffs alleged that the products were made with foreign-sourced bauxite. The court found that plaintiff failed to sufficiently allege that the amount of foreign bauxite contained in the products exceeded 10% of the final wholesale value of the manufactured product, one of the safe harbor provisions included in the California Business and Professions Code (BPC) for labeling a product as "Made in the USA." The court also rejected plaintiff's argument that the motion to dismiss stage was an inappropriate juncture to consider whether the BPC's safe harbor provisions were met. The court reasoned that for plaintiff to advance her claims, she must plead with particularity facts giving rise to liability on the part of defendants, which she had not. As a result, the court granted the motion to dismiss California consumer protection claims.

August 28, 2024

Sixth Circuit affirms decision granting motion for class certification in GM defective transmission lawsuit

The U.S. Court of Appeals for the Sixth Circuit affirmed a district court's decision granting plaintiffs' motion for class certification regarding a lawsuit alleging that the transmissions installed in defendant General Motors LLC's vehicles were defective. On appeal, defendant argued that the district court abused its discretion in certifying the 26 subclasses because most class members never had any transmission issues in their own vehicles and, thus, lacked standing. The panel disagreed, finding that plaintiffs produced evidence showing that all named plaintiffs experienced the symptoms caused by the defect and produced evidence suggesting that even if the defect had yet to manifest in some class members' vehicles, they were likely to develop at some point. Therefore, the panel affirmed the district court's determination that plaintiffs sufficiently pled standing. Further, the panel held that defendant failed to identify any individualized issues that predominated over common questions of law that would suggest that the district court had abused its discretion in certifying the class. Accordingly, the panel affirmed the lower court's determination that the manifest defect rule of certain states did not predominate over the common questions of law. As to the issue of variations among several state laws, the panel noted that in the event individualized issues arise in the course of the proceedings, the district court could limit the classes at that time.

August 27, 2024

Georgia court grants in part, denies in part Mercedes-Benz defective sunroof lawsuit

The U.S. District Court for the Northern District of Georgia granted in part and denied in part defendant Mercedes-Benz USA LLC's, motion to dismiss a putative class action alleging that the sunroofs installed in defendant's vehicles were defective. Plaintiff alleged that the defect caused the sunroofs to shatter randomly under normal conditions. The court dismissed Magnuson-Moss Warranty Act claims because the number of named plaintiffs was less than the required 100 members. The court also dismissed the breach of express warranty claims for two named plaintiffs because they failed to provide adequate pre-suit notice. However, the court denied the motion to dismiss the remaining express warranty claims because plaintiff adequately alleged that defendant investigated her issue and refused to cover the repair under warranty. The court also denied the motion to dismiss the fraudulent concealment claims, because plaintiffs alleged that numerous consumer complaints regarding the defect were posted on the National Highway Traffic Safety Administration's website for years. Since defendant monitors that website, the court found that plaintiff sufficiently alleged that defendant was aware of the defect. Likewise, the court denied the motion to dismiss the Alabama consumer protection claims because defendant knew or should have known about the defect. Additionally, the court denied the motion to dismiss the Georgia consumer protection claims because plaintiffs from that state established that they had to pay for a replacement sunroof that likely contained the same defect.

August 21, 2024

Sixth Circuit reverses summary judgment dismissal GM emissions lawsuit

The U.S. Court of Appeals for the Sixth Circuit reversed in relevant part a district court's decision granting summary judgment in favor of defendants General Motors LLC and Robert Bosch LLC in a consolidated class action alleging that defendants overstated how environmentally friendly their vehicles were. The district court had ruled that plaintiffs' claims were impliedly preempted by the federal Clean Air Act. However, the panel found that plaintiffs claimed that defendants violated state law via their misleading omissions regarding the vehicles' emissions compared to their gasoline counterparts. The panel held that such claims did not implicate or challenge the EPA's determinations. According to the panel, a jury in this case would not be required to look at any EPA-approved figures or make determinations as to whether the agency was correct in accepting defendants' submissions. Instead, a jury would only need to examine defendants' advertising and the expectations of a reasonable consumer. As a result, the court reversed the lower court's decision granting summary judgment to defendants with respect to plaintiffs' state consumer deception claims.

August 16, 2024

Delaware court grants in part, denies in part motion to dismiss FCA defective drive train system lawsuit

The U.S. District Court for the District of Delaware granted in part and denied in part defendant FCA U.S. LLC's motion to dismiss a putative class action alleging that certain vehicles manufactured by defendant had a design flaw that made them dangerous to operate. Plaintiffs alleged that the design, manufacturing, material and workmanship of the Multi-Displacement Systems valve-train-system technology was flawed and that those flaws caused the vehicles' engines to malfunction and fail prematurely. The court found that plaintiffs adequately alleged that defendant had pre-sale knowledge of the defect and that defendant actively concealed the defect. Further, the court held that plaintiffs sufficiently pled that defendant had a duty to disclose the defect. Therefore, the court denied the motion to dismiss the New Hampshire and Louisiana consumer protection claims. However, the court dismissed the breach of express warranty claims, holding that plaintiffs failed to adequately allege that the purported defect was one of design rather than manufacture or workmanship. As to the breach of implied warranty claims, the court found that plaintiffs alleged their vehicles ran rough and would not start and failed while driving, making them unfit for their ordinary purpose. Consequently, the court denied the motion to dismiss the breach of implied warranty claims. Additionally, the court dismissed the nationwide class allegations because plaintiffs failed to allege that they had standing to bring claims on behalf of consumers in states in which they do not reside.

August 15, 2024

California court dismisses Intel security defect lawsuit

The U.S. District Court for the Northern District of California granted defendant Intel Corporation's motion to dismiss a putative class action alleging that defendant knowingly sold its CPU units with a security vulnerability. Plaintiff alleged that the CPU's were vulnerable to a particular type of attack that can be exploited to steal sensitive data present in a computer's memory. The court found that plaintiffs failed to allege that the defect rendered the CPUs incapable of performing their central function, which is to process instructions. Plaintiffs argued that the CPUs sold by defendant did not act as the "brains" of the computing device as advertised, and did not perform all of the necessary computations for each application. The court disagreed, finding that plaintiff still failed to plausibly allege that impairment of the CPU's features caused the computer to cease operating as intended. Consequently, the court ruled that plaintiffs failed to plead that the alleged defect was vital to the functionality of defendant's microprocessors and granted the motion to dismiss the fraud-based California consumer protection claims. The court also dismissed the negligence claims as barred by the economic loss doctrine. Additionally, the court dismissed the breach of implied warranty claims because plaintiffs failed to allege the required privity for such claims.

August 15, 2024

California court denies motions to dismiss, compel arbitration in Tempur Sealy illusory pricing lawsuit

The U.S. District Court for the Northern District of California denied defendant Tempur Sealy International Inc.'s motion to compel arbitration and motion to dismiss a putative class action alleging that defendant misled consumers by prominently displaying false sales prices on its website. According to plaintiff, defendant posts "35% off" sales on its website with countdown timers at the top of the page. However, plaintiffs alleged that the timer reset to four days at the end of the countdown, and therefore defendant never actually sells the mattresses at the website's advertised regular price. Defendant argued that plaintiffs agreed to the website's Terms of Use, which included an arbitration clause, and plaintiffs, therefore, must submit their claims to arbitration. The court found that the hyperlink to the Terms of Use was not conspicuously displayed on the website, and a reasonable consumer would struggle to locate the link. Consequently, the court denied the motion to compel arbitration as the parties never agreed to arbitrate. The court also denied the motion to dismiss, finding that plaintiff adequately alleged that a reasonable consumer would believe the regular prices posted on the website were accurate.

August 12, 2024

New York court adopts R&R, dismisses Bissell floor cleaner fluid lawsuit

The U.S. District Court for the Eastern District of New York adopted a magistrate court's report and recommendation (R&R) to dismiss a putative class action alleging that defendant Bissell Home Care Inc. misleadingly conditions warranty coverage of its CrossWave 1785 series floor cleaner on using only a Bissell-branded replacement fluid. Plaintiff alleged that the warranty states that using third-party replacement fluid could potentially lead to fire or electric shock and void the warranty. According to plaintiff, non-Bissell replacement fluids do not cause any damage to the product and are less expensive. The court found that plaintiffs failed to allege how much they paid for the branded replacement fluid, nor what the price difference was between the Bissell fluid and third-party fluids. Therefore, the court agreed with the R&R that plaintiffs failed to adequately allege that they suffered an injury and accordingly granted the motion to dismiss New York General Business Law (GBL) claims for lack of standing. The court also adopted the R&R's reasoning regarding the Magnuson-Moss Warranty Act (MMWA) claims, holding that plaintiffs' failure to allege standing for the GBL claims precluded supplemental jurisdiction for the MMWA claims. As a result, the court also dismissed MMWA claims.

August 08, 2024

California court largely denies motion to dismiss OpticsPlanet illusory pricing lawsuit

The U.S. District Court for the Central District of California largely denied defendant OpticsPlanet Inc.'s motion to dismiss a putative class action alleging that defendant displayed false reference prices for its on-sale firearm accessories. Plaintiff alleged that

defendant never offered or sold the products for the listed reference price and that the reference prices were not the prevailing market prices. The court found that plaintiff adequately alleged where and when he saw the alleged false representations that he relied upon, as well as the dates on which he made his purchases. Further, plaintiff adequately alleged that the false reference prices would misleadingly convey to a reasonable consumer that the product had been offered at the reference price by either defendant or one of its competitors. The court also held that a disclosure on the FAQ section of defendant's website describing how it calculated its reference prices did not defeat defendant's claim at this stage of the proceedings. According to the court, a back-label "disclaimer" or other back-label "fine print" may only be relied on if the front-label representation is ambiguous. The court found that, in this case, the crossed-out reference price unambiguously conveyed the message that the reference price was the price at which either defendant or its competitors recently offered the product. As a result, the court denied the motion to dismiss plaintiff's California consumer protection claims.

August 08, 2024

New Jersey court largely dismisses Samsung defective laptop hinge lawsuit

The U.S. District Court for the District of New Jersey granted in relevant part defendant Samsung Electronics of America Inc.'s motion to dismiss a putative class action alleging that the hinges on defendant's Chromebook laptop product were defective. Plaintiffs alleged that the defect caused one or more of the hinge arms to separate from its mount inside the display, damaging the screen and preventing owners from opening, closing or adjusting the displays. The court found that while plaintiffs had alleged defendant was aware of the defect and did not disclose it, they failed to adequately allege that the defect manifested itself shortly after purchase. Therefore, the court granted the motion to dismiss the breach of implied warranty claims. The court also dismissed the fraudulent omissions claims because plaintiff failed to plead the necessary special relationship with defendant or that the purported defect created a safety issue that would give rise to a duty to disclose. In addition, the court dismissed the Florida, Oklahoma, Missouri, Ohio and New York consumer protection claims, finding that the plaintiff failed to specifically allege the false or misleading representations that they relied on when making their purchases. Finally, the court held that plaintiffs failed to sufficiently allege that they were likely to suffer future harm and, thus, lacked standing to pursue declaratory and injunctive relief.

August 06, 2024

California court dismisses Apple iOS 15 download lawsuit

The U.S. District Court for the Northern District of California granted defendant Apple Inc.'s motion to dismiss a putative class action alleging that defendant misled consumers about the performance degradation their iPhone 7s would experience upon downloading the iOS 15 software update. Plaintiffs alleged that defendant encouraged users to download the software, which led to the decline in value and functionality of users' devices. The court found that plaintiffs failed to allege that they

received any messages from defendant nor were otherwise aware of any statements regarding the software's improvements, security measures or updates. Further, plaintiffs failed to allege that they would not have downloaded the software had defendant disclosed the issues that the software would cause their phones. Consequently, the court ruled that plaintiffs failed to allege reliance and granted the motion to dismiss the fraudulent omissions claims. The court also dismissed plaintiffs' claims brought under California's Unfair Competition Law and False Advertising Law, finding that plaintiffs failed to allege that they lacked an adequate remedy at law.

July 25, 2024

New York court dismisses Costco '146 loads' laundry detergent false labeling lawsuit

The U.S. District Court for the Eastern District of New York granted defendant Costco Wholesale Corporation's motion to dismiss a putative class action alleging that defendant falsely represents that its 5.73-liter Kirkland Signature Ultra Clean laundry detergent can wash 146 loads of laundry. Plaintiff alleged that the reference to 146 loads of laundry on the front of the product's packaging was accompanied by a difficult-to-see asterisk, leading to an explanation on the back label stating that the amount of detergent is only sufficient for 146 loads when a certain amount is used per load. The court dismissed plaintiff's New York General Business Law claims, finding that the term "load" is ambiguous in this case. According to the court, a reasonable consumer faced with this ambiguous term would look to the disclaimer for clarification and would not interpret the "146 loads" claim means that the product contains enough detergent to wash 146 loads using the whole usable capacity of the washing machine. The court also dismissed plaintiff's state consumer fraud claims because plaintiff failed to identify the specific "consumer fraud acts" at issue or allege how defendant purportedly violated them.

July 23, 2024

Illinois court dismisses Yamaha defective watercraft lawsuit

The U.S. District Court for the Northern District of Illinois granted defendants Yamaha Motor Corporation and Nielsen Enterprises Inc.'s motion to dismiss a putative class action alleging that Yamaha's WaveRunner-brand personal watercraft was defective. Plaintiffs alleged that the watercraft had defective fuel gauges and trip computers that would read as empty when the tank was 40% to 45% full, setting off a warning alarm that cannot be silenced. According to plaintiffs, the defect makes the watercraft incapable of being used on large bodies of water. The court dismissed the breach of implied warranty claims, finding that plaintiffs failed to allege that the watercraft's ordinary purpose was for use on large bodies of water. Therefore, the court found that plaintiffs failed to allege that the watercraft was unfit for its ordinary purpose. The court also dismissed the Illinois consumer protection claims because plaintiffs failed to identify any affirmative misrepresentations made by defendants that could have misled a reasonable consumer. The court rejected plaintiffs' argument that the marketing of the watercraft as "luxury" was deceptive, noting that such a representation was mere puffery.

July 17, 2024

Ninth Circuit affirms in part, vacates in part dismissal Kimberly Clark 'plant-based' baby wipes lawsuit

The U.S. Court of Appeals for the Ninth Circuit affirmed in part and reversed in part a district court's dismissal of a putative class action alleging that defendant Kimberly Clark Corp. falsely represented that its Huggies Natural Care Baby Wipes products were made entirely from plant products. Plaintiff initially challenged the front labels of two types of products – those with an asterisk, which was accompanied by a clarification of "*70%+ by weight" - and those without an asterisk. The district court initially found that both kinds of front labels were not misleading but were instead ambiguous and would lead a consumer to check the back label to determine the products' materials. On appeal, the panel agreed with the district court as to the asterisked products but found that the lower court erred as to the products without an asterisk. The panel found that while the phrase "plant-based" could be interpreted in many ways, it plausibly conveyed the unambiguous meaning to a reasonable consumer that the products did not contain any synthetic materials. As a result, the panel affirmed the district court's dismissal of claims in regard to the products, including the asterisk, but vacated the dismissal of the non-asterisked product claims and remanded those claims to the district court.

July 15, 2024

California court largely dismisses Honda defective transmission lawsuit

The U.S. District Court for the Northern District of California granted in part and denied in part defendant American Honda Motor Co. Inc.'s partial motion to dismiss a putative class action alleging that the automatic transmission installed in certain Honda vehicles was defective. Plaintiffs alleged that the transmission had a design defect that caused rough, delayed, or sudden shifting or a failure to shift if not properly calibrated. The court granted the motion to dismiss the California breach of express and implied warranty claims, finding that plaintiffs did not experience the defect until the vehicle was outside of the duration of the written warranty. Further, the court found that plaintiffs failed to allege that the defect was inherent and made the vehicle unmerchantable at the time of purchase. The court also dismissed Illinois and Ohio breach of implied warranty claims because plaintiffs failed to allege the required privity. The court also granted the motion to dismiss as to the Magnuson-Moss Warranty Act (MMWA) claims, because the complaint failed to satisfy the numerosity requirement. Additionally, the court dismissed the Ohio Consumer Sales Practices Act (OSCPA) claims as they were barred by the two-year statute of limitations. Likewise, the court dismissed the Illinois Consumer Fraud and Deceptive Business Practices Act (ICFA) claims because plaintiffs failed to specifically identify which of defendant's communications they relied on when purchasing the vehicle. Finally, the court dismissed the equitable relief claims because plaintiffs failed to allege they lacked an adequate remedy at law.

July 12, 2024

California court grants in part, denies in part motion to dismiss defective Onewheel MDL

The U.S. District Court for the Northern District of California granted in part and denied in part defendant Future Motion Inc.'s motion to dismiss a multidistrict litigation alleging that defendant's Onewheel electronic motorized skateboard was defective. Plaintiffs alleged that the Nosedive Defect caused the board to nosedive, throwing riders off of the board in the process. The court found plaintiffs failed to plead specifically what the defect is and merely identified a number of possible components that could be responsible for the nosedives, as well as a host of other issues. Consequently, the court dismissed claims pertaining to the purported defect because plaintiffs failed to specifically allege a component, feature or combination thereof was defective. As to the omissions claims, the court found that plaintiffs failed to allege that defendant had presale knowledge of the defect and granted the motion to dismiss. However, the court denied the motion to dismiss affirmative misrepresentation claims, finding that defendant's advertisement that the Onewheel is so safe that anyone can use it without limitations could be shown to be provably false. Additionally, the court denied the motion to dismiss breach of implied warranty claims because plaintiffs adequately alleged that the nosedive issue rendered the Onewheels unsafe for ordinary use.

July 10, 2024

Texas court grants in part, denies in part motion to dismiss Boston Foundry non-stick cookware lawsuit

The U.S. District Court for the Western District of Texas granted in part and denied in part defendant Boston Foundry Inc.'s (d/b/a Made in Cookware) motion to dismiss a putative class action alleging that defendant falsely represented that its non-stick cookware products were non-toxic and made without perfluorooctanoic acid (PFOA). Plaintiffs alleged that the representations were false because the products contained polytetrafluoroethylene (PTFE), which defendant did not disclose. The court dismissed plaintiffs' injunctive relief claims, finding that plaintiffs are now aware that the cookware contains PTFE and it is unlikely they will be misled in the future. The court also found that while both PFOA and PTFE fall under the same larger group of chemicals, perfluoroalkyl and polyfluoroalkyl substances (PFAS), defendant did not disclaim the use of PFAS chemicals in its advertising. Therefore, the court found that defendant cannot be held liable for misrepresentation because plaintiffs misread PTFE for PFAS. Accordingly, the court granted the motion to dismiss claims relating to the "made without PFOAs" statement. However, the court denied the motion to dismiss claims relating to the "safe" and "100% non-toxic" statements. According to the court, plaintiffs adequately alleged that the presence of PFAS chemicals can cause a danger to humans and that heating these chemicals to high temperatures may increase that risk. Finally, the court dismissed the Kentucky Consumer Protection Act claims because plaintiff Mills failed to allege the necessary privity.

July 08, 2024

Delaware court grants in part, denies in part motion to dismiss Ford defective oil pump lawsuit

The U.S. District Court for the District of Delaware granted in part and denied in part defendant Ford Motor Company's motion to dismiss a putative class action alleging that defendant failed to disclose a defect in the oil pump for its EcoBoost engine vehicles. Plaintiffs alleged that the defect prevented oil from properly circulating, causing significant engine damage that often carried a repair bill that would exceed the value of the vehicle. The court found that named plaintiffs had standing to bring claims regarding products they did not purchase, because all putative class members had purchased or leased either Fiesta or Focus models that contained the 1.0L EcoBoost Engine with the purported defect. The court also found that plaintiffs sufficiently pled the presence of a defect and that defendant had pre-sale knowledge of it because defendant had identified the two specific causes of the defect in a recall notice to the National Highway Traffic Safety Administration. Therefore, the court denied the motion to dismiss the majority of plaintiffs' state consumer protection claims. However, the court dismissed the Michigan Consumer Protection Act claims, finding that claims brought against car manufacturers were exempt under that statute due to current precedent. The court also found that plaintiffs sufficiently alleged their fraud claims, specifically that defendant had knowledge of the defect.

July 03, 2024

California court largely dismisses Honda defective windshield lawsuit

The U.S. District Court for the Central District of California granted in part defendant American Honda Motor Co. Inc.'s motion to dismiss a putative class action alleging that the rear windshield on defendant's Acura RDX vehicle was defective. Plaintiffs alleged that the vehicle's electric defroster caused the rear hatch window to spontaneously break or shatter despite no external impact. The court dismissed the breach of express warranty claims, finding that plaintiffs failed to allege that their windshield broke within the 50,000-mile limit imposed by the warranty and that they were denied coverage for reasons permitted by the warranty. The court also largely dismissed the breach of implied warranty claims, finding that plaintiffs failed to allege the required privity of contract for such claims. As to the omissions claims under state consumer protection laws, the court granted the motion to dismiss, finding that plaintiffs failed to identify the specific location of defendant's alleged omissions. Additionally, the court dismissed the equitable relief claims because plaintiffs failed to allege that they lacked an adequate remedy at law.

July 01, 2024

California court grants in part, denies in part motion to dismiss Kipling Apparel illusory pricing lawsuit

The U.S. District Court for the Southern District of California granted in part and denied in part defendant Kipling Apparel Group Corp.'s motion to dismiss a putative class action

alleging that defendant used illusory discounts at its outlet stores to make customers believe they were getting a bargain on clothing items. The court found that plaintiff sufficiently pled that defendant designed and implemented the challenged pricing scheme and knew the listed comparative and former prices were false or misleading. Consequently, the court denied the motion to dismiss claims under California's False Advertising Law. The court also found that plaintiff sufficiently stated a claim under the Consumers Legal Remedies Act by alleging that the merchandise sold at defendant's outlet stores was lesser in quality than those sold in defendant's full-price stores, and presenting sales prices that suggest customers are receiving a discount compared to products sold at the flagship stores. As to the Unfair Competition Law (UCL) claims, the court found that plaintiff adequately pled that the misleading pricing induced consumers to purchase products they otherwise would not have. Therefore, the court declined to dismiss plaintiff's UCL claims. Additionally, the court declined to dismiss plaintiff's claims seeking injunctive relief, finding that plaintiff sufficiently alleged that she was at risk of future harm because she could not rely on defendant's prices and, therefore, would not be able to purchase the products without fear of being misled again. However, the court dismissed plaintiff's claims seeking equitable monetary relief, finding that plaintiff failed to allege how damages would not sufficiently compensate her for her injuries.

June 28, 2024

New York court grants in part, denies in part motion to dismiss Michael Kors illusory pricing lawsuit

The U.S. District Court for the Southern District of New York granted in part and denied in part defendant Michael Kors (USA) Inc.'s motion to dismiss a putative class action alleging that defendant deceptively priced merchandise sold at its outlet stores. Plaintiffs alleged that the merchandise included price tags with false reference prices that defendant never actually sold the items for. The court dismissed claims under New York and New Jersey consumer deception laws, finding that plaintiffs failed to allege a cognizable injury and, therefore, did not have standing. As to the remaining California and Oregon claims, the court found that plaintiffs adequately pled the products that were purchased, where the purchase was made, and the advertising the viewed. Further, plaintiffs' investigation revealed that numerous items sold by defendant remain on sale perpetually over the course of a year and sufficiently pled that a reasonable consumer would believe the advertised prices were actually former prices. As a result, the court found that plaintiffs had adequately stated a claim under California and Oregon laws.

June 18, 2024

New Jersey court dismisses BMW defective coolant line lawsuit

The U.S. District Court for the District of New Jersey granted defendant BMW of North America LLC's motion to dismiss a putative class action alleging defendant's vehicle contained a defective coolant line, causing premature failure when exposed to normal engine operating temperatures. Plaintiffs alleged that the vehicles' coolant lines suffer

from one or more design and/or manufacturing defects that caused premature wear at an accelerated rate due to their inability to withstand the high temperatures of the engine. The court found that while plaintiffs alleged the symptoms of a defective coolant line, they failed to plausibly plead what was actually defective in the coolant line. As a result, the court found that plaintiffs failed to adequately allege the existence of a defect and granted the motion to dismiss with leave to amend.

June 14, 2024

Ninth Circuit affirms dismissal of Energizer '50% longer' false labeling lawsuit

The U.S. Court of Appeals for the Ninth Circuit affirmed a district court's dismissal of a putative class action alleging that defendant Energizer Brands falsely represented that its AA Max Batteries lasted longer than competing products. Plaintiffs alleged that the label stated the product was "50% longer lasting" in large bold font, followed by the disclaimer "than basic alkaline in demanding devices" in a much smaller font. According to plaintiffs, the label was designed in such a way so that shoppers would only notice the larger font, rather than the fine print, and reasonable consumers would interpret it to mean the batteries usually last 50% longer than other batteries. The panel found that defendant did not promise the product would usually or always last 50% longer than most or all batteries in all devices, as plaintiffs argued. Rather, the label only promised an upper limit of performance compared to a certain category of competitors in a certain subset of applications. Further, the panel found the phrase "up to" was not vague such that an ordinary customer would not understand it. As a result, the panel found that the district court correctly dismissed plaintiffs' claims under California's consumer protection laws and Unfair Competition Law.

June 11, 2024

New York court grants in part, denies in part motion to dismiss outlet store deceptive pricing lawsuit

The U.S. District Court for the Southern District of New York granted in part and denied in part defendant Premium Brands Opco LLC's motion to dismiss a putative class action alleging that defendant advertised a false "original" or "reference" price for sale items at its Ann Taylor Factory Store and LOFT Outlet stores. The court found that plaintiffs' knowledge of the purported deceptive pricing prevented them from being deceived by defendant's conduct in the future. Consequently, the court dismissed injunctive relief claims due to a lack of standing because plaintiffs failed to establish the likely risk of future injury. The court also dismissed plaintiffs' New York and New Jersey consumer protection claims because plaintiffs failed to allege an objective value measure of the products that they purchased to support their overpayment price premium theory. However, the court found that plaintiffs had stated a claim under California consumer laws because plaintiffs alleged sufficient facts to show that the displayed reference prices were deceptive and that a reasonable consumer would have been misled by them. As a result, the court denied the motion to dismiss claims under California's Unfair Competition Law, False Advertising Law, and Consumer Legal Remedies Act.

June 10, 2024

Illinois court grants motion to dismiss Gain detergent false labeling lawsuit

The U.S. District Court for the Northern District of Illinois granted defendant The Procter & Gamble Company's motion to dismiss a putative class action alleging that defendant falsely represented the number of loads a single bottle of its Gain-brand laundry detergent can wash. Plaintiff alleged that the label stated that the bottle contained enough detergent for 32 loads of laundry. Plaintiff further alleged that a reasonable consumer would believe that number referred to large, rather than medium, loads of laundry, and consumers would be unlikely to read the back label. The court noted that the complaint undermined plaintiff's assumption that most consumers have uniform expectations regarding the amount of detergent needed to wash a load of laundry. According to the court, the amount of detergent needed to clean a load of laundry would vary greatly depending on the type of washing machine used by a consumer. Additionally, the court found that the back label of the product discloses that the product contains enough detergent for 32 "medium-sized" loads, and that any questions a consumer may have regarding loads could be resolved by referencing the disclosure. As a result, the court found that plaintiff failed to allege that a reasonable consumer would be deceived by the label and granted the motion to dismiss plaintiff's Illinois Consumer Fraud and Deceptive Business Practices Act claims. The court also dismissed claims under other states' consumer fraud statutes.

June 05, 2024

Wisconsin court grants motion to dismiss in Harley-Davidson warranty lawsuit

The U.S. District Court for the Eastern District of Wisconsin granted defendants Harley-Davidson Motor Company Group LLC and Harley Davidson Motor Company Inc.'s motion to dismiss a putative class action alleging defendant's warranty is unfair. Plaintiffs alleged vehicles sold with a bundled limited warranty is only valid if all service and repairs are done by an authorized dealer using only parts from authorized manufacturers chosen by defendant, which are all sold at a premium. The court found that plaintiffs failed to state a claim under the Magnuson-Moss Warranty Act (MMWA). Plaintiffs alleged the warranty violated the MMWA, but defendant demonstrated that the warrant does not cover damage caused by unauthorized modifications and that the MMWA allows a warrantor to limit liability for damage caused by such unauthorized modifications. With regard to plaintiffs' disclosure rule violation claim, the court found that plaintiffs did not allege which additional warranty terms were not included in the documents they received at the time of purchase, or how the lack of that information impacted them. The court also found that regarding the "pre-sale availability rule" of warranties, plaintiffs did not allege that defendant did not include a copy of the warranty to purchasers. As such, the court dismissed all MMWA claims. The court also dismissed plaintiffs' antitrust claims as plaintiffs failed to allege a tying arrangement that violated antitrust laws. Finally, the court dismissed plaintiffs' fraud claims because the warranty did not explicitly state that the restrictions of the warranty were binding and enforceable and plaintiff did not allege that defendant made any misrepresentations or omissions to the contrary.

May 28, 2024

New York court grants in part, denies in part motion to dismiss Supervalu lidocaine patch false labeling lawsuit

The U.S. District Court for the Southern District of New York granted in part and denied in part defendant Supervalu Inc.'s motion to dismiss a putative class action alleging defendant falsely represented that its adhesive lidocaine pain relief patch provided "Up to 8 Hours" of "Maximum Strength" pain relief and "Numbing Relief." Plaintiff alleged that the label statements were misleading because the product cannot adhere to the skin for anywhere close to eight hours and that the product was not "Maximum Strength" because prescription lidocaine patches contain a higher concentration of the active ingredient. Plaintiff also alleged that the "Numbing Relief" claim intimates the product will completely numb and block nerves and pain receptors. The court found that plaintiff adequately pled that a reasonable consumer would believe that the statement "Up to 8 Hours" meant that the product would remain on the body and provide relief for up to that length of time, and therefore declined to dismiss plaintiff's New York General Business Law (GBL) claims arising out of this representation. However, the court dismissed plaintiff's GBL claims as to the "Maximum Strength" representations, finding that a reasonable consumer would not be misled to believe that an OTC product provided the same level of pain relief provided by a prescription product. The court also dismissed plaintiff's GBL claims as to the "Numbing Relief" statements, finding that a reasonable consumer would not believe that the product would completely block pain, as the statement says is the product's use provides only temporary pain relief. Finally, the court found that plaintiff sufficiently pled injury as defendant marketed its product as having a unique ability and that plaintiff paid a price premium for it. The court also dismissed plaintiff's breach of express warranty claims for failure to provide adequate pre-suit notice, as well as plaintiff's fraud and unjust enrichment claims.

May 24, 2024

Wisconsin Court grants in part, denies in part motion to dismiss Generac defective solar power system lawsuit

The U.S. District Court for the Eastern District of Wisconsin granted in part and denied in part defendant Generac Power System, Inc.'s motion to dismiss a putative class action alleging a defect in the SnapRS component of defendant's solar power systems. Plaintiffs alleged the defect in defendant's solar power system was so serious that defendant was obliged to disclose it to all potential buyers. The court found that plaintiffs sufficiently pled fraud by omission claims by alleging that the defect in the SnapRS component was serious enough that potential buyers should have been aware at the time of purchase. However, the court found that plaintiffs did not sufficiently allege fraud by misrepresentation as they failed to identify specific false statements. Concerning the economic loss doctrine, the court deferred ruling at this stage as the current plaintiffs have not suffered loss, but the possibility of a named plaintiff or class member claiming loss remains. The court found the same for state-specific economic loss laws, implied warranty privity claims, as well as common law contract and warranty claims. Regarding plaintiffs' claims brought under other states' laws, the court also

deferred ruling on theories under Georgia and Illinois statutes for deceptive trade practice acts, adequacy of notice under California and Ohio statutes, and personal jurisdiction under California, North Carolina, and Florida law.

May 20, 2024

Kentucky court denies motion to dismiss Ezricare contaminated eye drops lawsuit

The U.S. District Court for the Eastern District of Kentucky denied defendant Ezricare LLC's motion to dismiss a putative class action alleging that defendant's Artificial Tears Lubricant Eye Drops product was contaminated with pseudomonas aeruginosa bacteria. Plaintiffs also alleged that defendant was aware of the contamination and continued to market and sell the product. According to plaintiffs, the CDC had taken samples of the product containing the bacteria as early as May 2022. Consequently, the court found that it was plausible that defendant knew of and failed to warn consumers of the contaminated product and denied the motion to dismiss plaintiffs' failure to warn claims. The court also concluded that plaintiffs adequately pled that Defendant continued to market the product as having "superior quality assurance" and represents that the product does not include the pseudomonas aeruginosa bacteria. Further, the court found that plaintiffs alleged that they relied on Defendant's representations when making purchasing decisions. As a result, the court held that plaintiffs adequately stated a claim for negligent misrepresentation and denied the motion to dismiss.

May 15, 2024

California court grants in part, denies part motion to dismiss Tesla self-driving system lawsuit

The U.S. District Court for the Northern District of California granted in part and denied in part defendant Tesla Inc.'s motion to dismiss a putative class action alleging that defendant falsely represented that its electric vehicles could pilot themselves. Plaintiffs alleged that defendant had privately admitted to regulators that its advanced driver assistance technology was not capable of meeting the expectations set in its marketing. Further, plaintiffs alleged that Tesla had been using consumers as untrained testers of the technology, resulting in reports of drivers being injured and killed in accidents during which the technology was employed. The court dismissed the breach of express warranty claims, finding that defendant's promise that the vehicles would be fully self-driving "within a reasonable time after" purchase was not a promise to preserve or maintain the utility or performance of the vehicle. The court also dismissed the breach of implied warranty claims because plaintiff was aware that the vehicle was not fully self-driving at the time of purchase and, therefore, the vehicle was not unfit for its ordinary purpose. The court also dismissed the injunctive relief claims, finding that plaintiff did not allege that he would like to purchase another Tesla vehicle. However, the court found that plaintiff adequately alleged that defendant's statement that all of its cars would have the "hardware needed for full self-driving capability" was misleading because the vehicles lacked the combination of sensors needed to achieve the accepted standards of High- or Full-Automation. Additionally, the court concluded

that plaintiff sufficiently alleged that defendant's 2016 claim that the vehicles would be able to drive themselves across the country in the next year was also false, given that the vehicles are currently nowhere close to delivering on that promise. As a result, the court largely denied the motion to dismiss plaintiff's California consumer protection claims.

May 08, 2024

Ohio court denies motion to dismiss Kroger teething wafer toxic metal lawsuit

The U.S. District Court for the Southern District of Ohio denied defendant The Kroger Co.'s motion to dismiss a putative class action alleging that defendant advertised its Simple Truth Organic Rice Rusks Baby Teething Wafers as "high quality" and "safe" when in fact they were tainted with heavy metals. The court held that plaintiffs adequately alleged that they suffered an injury because the purported misrepresentation caused them to purchase a product they otherwise would not have. Further, the court held that plaintiffs had adequately alleged that the products were unsafe based on applicable FDA standards and that defendant had therefore misrepresented the product's quality and safety. Therefore, the court ruled plaintiffs had alleged injury-in-fact and denied the motions to dismiss Texas, Indiana, and Washington consumer deception claims.

May 07, 2024

New York court grants motion to dismiss with prejudice in suit challenging advertising of at-home ovulation test kits

The U.S. District Court for the Eastern District of New York granted defendants SPD Swiss Precision Diagnostics GMBH (represented by Kramer Levin), Church & Dwight Co. Inc., Target Corporation, CVS Pharmacy Inc., Walgreen Co. and Walmart Inc.'s motion to dismiss a putative class action alleging defendants falsely labeled their at-home ovulation test kits as "ovulation test kits" and "99% accurate" because the kits did not directly detect ovulation, but instead the surge in luteinizing hormone (LH) that precedes ovulation. The court agreed with defendants that no reasonable consumer could be misled in the manner alleged, including because disclosures on the packaging confirmed that the products detect an LH surge. The court granted the motion to dismiss New York and California consumer protection claims, with prejudice, for failure to state a claim.

May 07, 2024

California court dismisses Honda defective power steering lawsuit

The U.S. District Court for the Central District of California granted defendant American Honda Motor Company Inc.'s motion to dismiss a putative class action alleging that defendant's Honda Civic vehicles contained a defective electronic power steering (EPS) system. Plaintiffs alleged that the EPS systems were prone to momentary failures during normal operations, potentially leading to loss of vehicle control and crashes. The court found that the complaint failed to adequately define the defect and merely

referred to a defect present in the wiring harness with no further explanation. Consequently, the court granted the motion to dismiss the claims in their entirety but gave leave to amend the defect allegations. The court also addressed the other grounds for the motion, dismissing state consumer protection claims because plaintiffs failed to allege that defendant had pre-sale knowledge of the defect. Additionally, the court dismissed fraudulent concealment claims without leave to amend because such claims were barred by the economic loss rule. In regard to California, Florida and Illinois breach of implied warranty claims, the court found that plaintiffs failed to allege the required privity of contract and granted the motion to dismiss without leave to amend. Likewise, the court dismissed other state implied warranty claims without leave to amend because plaintiffs failed to provide adequate pre-suit notice. Since the state-level warranty claims failed, the court also dismissed Magnuson-Moss Warranty Act claims.

May 02, 2024

California court grants motion for judgment on pleadings in Ricola false labeling lawsuit

The U.S. District Court for the Northern District of California granted defendant Ricola USA Inc.'s motion for judgment on the pleadings in a putative class action alleging that defendant misrepresented that its lozenges functioned as a cough suppressant. Plaintiff alleged that the product's front label stated the product was "Made with Swiss Alpine Herbs," while the back label revealed the product's only active ingredient was menthol. Plaintiff alleged that defendant's failure to include the drug ingredient of menthol on the front label of the product rendered the labeling misleading. The court found that while the front label did tout that the product was made with herbal ingredients and includes illustrations of those herbs, the front label did not specify whether the herbs were active ingredients. Further, the back label confirmed that menthol was the sole active ingredient and listed the mentioned herbs as inactive ingredients. Consequently, the court ruled the product's labels were not misleading to a reasonable consumer and granted defendant's motion for judgment on the pleadings in regard to plaintiff's California consumer protection claims.

April 23, 2024

Illinois court dismisses Lenovo smart clock defective display lawsuit

The U.S. District Court for the Southern District of Illinois granted defendant Lenovo (United States) Inc.'s motion to dismiss a putative class action alleging that defendant's smart clock products contained a defect that caused parts of the LED display to fade or burn out prematurely, rendering them unreadable. The court found that plaintiff failed to adequately allege the name of the clock she purchased or the model number, nor did she allege any facts as to when or where she was exposed to the purported misleading statements. Further, the court found that the statements made by defendant regarding the clock's abilities were unrelated to plaintiff's claim that she believed the clock would not suffer from premature display failures. Additionally, the court found that plaintiff failed to identify any statements made by defendant that contained a material omission. Consequently, the court granted the motion to dismiss

the Illinois Consumer Fraud and Deceptive Business Practices Act claims. The court also dismissed the breach of implied warranty claims, finding that plaintiff purchased her clock from a third-party vendor and, thus, failed to satisfy the privity requirement for such a claim.

April 18, 2024

Illinois court grants in part, denies in part Dr. Squatch 'natural' shampoo lawsuit

The U.S. District Court for the Northern District of Illinois granted in part and denied in part defendant Dr. Squatch LLC's motion to dismiss a putative class action alleging that defendant deceptively labeled its shampoo products as "natural." Plaintiff alleged that the labels were misleading because the products contained numerous synthetic and chemically modified or manufactured ingredients. Defendant claimed the non-natural components were clearly noted in the products' back label and on defendant's website, but the court determined that whether plaintiff had reviewed this information was a question of fact that would be explored during discovery. The court accordingly declined to dismiss plaintiff's Illinois consumer fraud and unjust enrichment claims, finding that plaintiff adequately alleged a reasonable consumer could be deceived by the product's label. However, the court dismissed plaintiff's state and federal breach of warranty claims because plaintiff failed to provide defendant with adequate pre-suit notice. The court also dismissed plaintiff's negligent misrepresentation claims, finding that such claims were barred by the economic loss doctrine. Additionally, the court dismissed injunctive relief claims because plaintiff is now aware of defendant's alleged deception and any future harm she may suffer is speculative.

April 09, 2024

New Mexico court grants in part, denies in part motion to dismiss Walmart defective tablet lawsuit

The U.S. District Court for the District of New Mexico granted in part and denied in part defendant Walmart Inc.'s motion to dismiss a putative class action alleging that defendant's Surf Tablet Pro product was defective. Plaintiff alleged that defendant used substandard materials in manufacturing the product's touchscreen and casing, which resulted in the touchscreen being more susceptible to scratches, fractures and cracks. Plaintiffs alleged that the defect contradicted defendant's representations that the product offered a "crystal-clear display." The court found that the challenged representations were vague generalities and exaggerated statements of which no reasonable consumer would rely upon. Therefore, the court determined those statements were considered non-actionable puffery and dismissed claims under New Mexico's Unfair Practices Act. However, the court declined =to dismiss breach of express warranty claims, finding that plaintiff adequately alleged that the exclusion of display defects from the product's Limited Warranty was unconscionable because defendant was aware of the defect, making the warranty sufficiently one-sided. The court also denied the motion to dismiss breach of implied warranty of merchantability claims because plaintiff plausibly alleged that the product had a design defect that rendered it unfit for its ordinary purpose. The court declined to dismiss fraudulent

concealment claims, finding that plaintiffs alleged with adequately particularity that defendant had superior knowledge of the defect, which was not available to plaintiffs and, therefore, they had a duty to disclose it. Lastly, the court declined to dismiss unjust enrichment claims.

April 08, 2024

New York dismisses Dodge Ram defective rearview camera lawsuit

The U.S. District Court for the Southern District of New York granted defendant FCA U.S. LLC's motion to dismiss a putative class action alleging that the rearview camera systems installed in its Dodge Ram trucks were defective. Plaintiff alleged that defendant was aware of the defect, which caused the camera system to function intermittently or fail altogether. The court noted defendant offered a National Highway Traffic Safety Administration-backed recall, providing vehicle owners with free repairs as well as reimbursement for any prior repairs. The court explained that the recall and repair essentially provided plaintiffs with the refund they sought through the lawsuit. Therefore, plaintiffs failed to sufficiently allege any concrete injury based on the vehicles' decreased value or alleged diminished use. As a result, the court ruled that plaintiffs lacked standing to pursue claims under New York's General Business Law, and dismissed the complaint.

April 04, 2024

California court dismisses air purifier UV-C antimicrobial lawsuit

The U.S. District Court for the Northern District of California granted defendants Guardian Technologies LLC and Lasko Products LLC's motion to dismiss a putative class action alleging that defendants falsely represented that their UV-C air purifier products provided more antimicrobial capabilities than air purifiers that used only HEPA filters. The court dismissed California consumer protection claims, finding that plaintiffs failed to plead with particularity and identify which statements they saw and relied on prior to making their purchases. The court also dismissed injunctive relief claims for lack of standing because plaintiffs failed to adequately allege risk of future injury. Additionally, the court dismissed breach of express warranty claims because plaintiffs failed to identify any fact, promise or description made by defendants on which such a claim could be based.

April 01, 2024

Illinois court grants motion to dismiss school uniform PFAS lawsuit

The U.S. District Court for the Northern District of Illinois granted defendant The Children's Place Inc.'s motion to dismiss a putative class action alleging that defendant concealed the presence of polyfluoroalkyl substances (PFAS) in its school uniforms. The court found that based on the allegations in the complaint, PFAS chemicals were legal and in common use in the textile and apparel industry. Further, the court noted that such information has been widely published in mainstream media. Consequently, the court found that a reasonable consumer was unlikely to interpret defendant's failure to

disclose the presence of PFAS in its products to mean that its school uniforms were 100% PFAS-free. Additionally, although plaintiffs alleged that they would purchase the products again if they were PFAS-free, the court dismissed the injunctive relief claims because an injunction would only require that defendant stop misrepresenting its products and not manufacture them without PFAS.

April 01, 2024

California court dismisses Christian Dior SPF false labeling lawsuit

The U.S. District Court for the Northern District of California granted defendant Christian Dior Perfumes LLC's motion to dismiss a putative class action alleging that defendant deceptively labeled the sun protection factor (SPF) benefits of certain cosmetic products. Plaintiff alleged that the products' label misleads consumers into believing they would provide up to 24 hours of SPF 15 protection. However, the back label directs users to reapply to products at least every 2 hours, which would indicate that the SPF benefits last only that long. The court found that the "24H" representation on the front label was ambiguous as to whether it was referencing the products' SPF benefits or merely its cosmetic benefits. Further, the court found that the instructions printed on the products' back labels, directing users to reapply the product every two hours, removes any ambiguity caused by the front label representations. Additionally, the court ruled that the survey results offered by plaintiff in support of its argument do not show that consumers would be deceived by the label representations and, instead, were consistent with the court's conclusion that the label was, at best, ambiguous. As a result, the court granted defendant's motion to dismiss.

March 29, 2024

California court grants in part, denies in part motion to dismiss Ford defective engine lawsuit

The U.S. District Court for the Eastern District of California granted in part and denied in part defendant Ford Motor Company's motion to dismiss a putative class action alleging that the EcoBoost engine installed in defendant's vehicles was defective. Plaintiffs alleged that the defect caused the engine coolant to leak into the engine's cylinders, resulting in overheating. The court dismissed the breach of implied warranty claims under California, Illinois, North Carolina and Tennessee laws, as those plaintiffs failed to allege privity of contract with the defendant. The court also dismissed the Minnesota and Nebraska implied warranty claims because the defect manifested for those plaintiffs after their express warranties had expired. Similarly, the court dismissed the Magnuson-Moss Warranty Act claims for those plaintiffs because they could not sufficiently allege a state-level warranty claim. Conversely, the court largely denied the motion to dismiss state-level consumer protection claims because plaintiffs adequately alleged that defendant had pre-sale knowledge of the defect. However, the court dismissed the Arkansas consumer protection claims because plaintiff failed to allege a special relationship with defendant. The court also dismissed Illinois consumer protection claims for one plaintiff because the vehicle was purchased from a third-party dealership. The court also dismissed the New Jersey consumer protection claims

because that plaintiff failed to allege an ascertainable loss because their vehicle operated normally for the duration of the warranty period. Finally, the court dismissed the Georgia injunctive relief claims because plaintiff failed to allege that they were at risk for future injury.

March 29, 2024

Kentucky court largely dismisses EzriCare defective artificial tears lawsuit

The U.S. District Court for the Eastern District of Kentucky largely granted defendant EzriCare LLC's motion to dismiss a putative class action alleging that defendant failed to inform consumers that its artificial tears products were compromised and unsafe. The court granted the motion to dismiss one named plaintiff's claim because her injuries stemmed from the purchase of another artificial tears product made by a different manufacturer, and thus, she lacked standing to bring claims against defendant. The court also granted the motion to dismiss injunctive relief claims for the remaining plaintiff, finding that plaintiff failed to allege that he was at risk for future harm. Additionally, the court dismissed the Kentucky consumer protection claims, finding that plaintiff failed to establish the required privity of contract because he purchased the product from a Walmart and not directly from defendant. Finally, the court granted the motion to dismiss the failure to warn claims because plaintiff failed to allege that he suffered any physical harm from his use of the product.

March 29, 2024

North Carolina court grants in part, denies in part motion to dismiss defective fire extinguisher lawsuit

The U.S. District Court for the Middle District of North Carolina granted in part and denied in part defendant Walter Kidde Portable Equipment Inc.'s motion to dismiss a putative class action alleging that defendant's fire extinguisher products contained a defect that caused their nozzles to frequently clog, detach or require excessive force to discharge. The court denied the motion to dismiss the Florida breach of implied warranty claim, finding that plaintiff sufficiently alleged that he falls within the third-party beneficiary privity exception under Florida law because he alleged when he purchased the product and from whom. However, the court dismissed the Magnuson-Moss Warranty Act claims due to plaintiffs' failure to provide adequate pre-suit notice. The court further dismissed the Florida and California fraud claims because plaintiffs failed to allege that they suffered any harm from the defective fire extinguishers. However, the court denied the motion to dismiss fraudulent inducement by concealment claims, finding that plaintiff adequately alleged that he would not have purchased the product had he been aware of the defect.

March 29, 2024

New York court dismisses Lenovo illusory pricing lawsuit

The U.S. District Court for the Southern District of New York granted defendant Lenovo (United States) Inc.'s motion to dismiss a putative class action alleging that defendant

displayed a fictitious original price on its website for its laptop products to mislead consumers into believing their sale prices provided a larger discount than they actually do. The court dismissed the injunctive relief claims for lack of standing, finding that plaintiff's allegation that he would consider purchasing the products again was insufficient to establish a risk of future injury because it was based entirely on his past injury. The court also dismissed the New York General Business Law (GBL) claims because plaintiff merely alleged that consumers would not have purchased the products were it not for defendant's purported misrepresentations, which was insufficient to allege an actual injury under the GBL.

March 29, 2024

Washington court dismisses REI rain jacket PFAS lawsuit

The U.S. District Court for the Western District of Washington granted defendant Recreational Equipment Inc.'s (REI) motion to dismiss a putative class action alleging that defendant falsely represented that its outdoor gear and apparel products were "safe and sustainable." Plaintiff alleged that defendant failed to inform consumers that its rain gear products contained heightened levels of organic fluorine indicative of polyfluoroalkyl substances (PFAS). The court found that plaintiff did not plausibly allege that the products at issue contained PFAS because none of the PFAS test results plaintiff submitted were sufficient to factually support his allegations. Specifically, the court noted that plaintiff's test results showing heightened levels of organic fluorine in the products were not sufficient to show that the products contained PFAS, given that defendant conceded that it used short-chain PFAS treatments on its products and that organic fluorine testing does not conclusively establish the presence of PFAS. Accordingly, the court found that plaintiff failed to allege that he suffered in injury-in-fact, and thus did not have standing to bring this claim. As a result, the court granted the motion to dismiss, because plaintiff failed to plausibly allege that the product he purchased contained PFAS at a level sufficient to cause injury.

March 28, 2024

Illinois court dismissed CVS Dry Mouth Discs false labeling lawsuit

The U.S. District Court for the Northern District of Illinois granted defendant CVS Pharmacy Inc.'s motion to dismiss a putative class action alleging that defendant falsely labeled its Dry Mouth Discs product. Plaintiff alleged that the text on the labels, coupled with the image of a water droplet, misled him to believe that the product would help mitigate salivary gland disorders when it was, in fact, highly acidic and detrimental to oral health. The court found that plaintiff failed to identify any labeling implying the product's ability to stimulate saliva production, or its ability to mitigate salivary gland disorders. Further, the court found that plaintiff's allegations regarding the product's detrimental effects were conclusory. Therefore, the court dismissed plaintiff's Illinois consumer protection and fraud claims. The court also dismissed breach of express warranty claims due to plaintiff's failure to provide adequate pre-suit notice.

March 28, 2024

Missouri court dismisses Louisville Ladder defective ladder lawsuit

The U.S. District Court for the Eastern District of Missouri granted defendant Louisville Ladder Inc.'s motion to dismiss a putative class action alleging that defendant's ladder products had a defective first rung that collapsed into itself when someone stood on the fourth rung. The court first determined that plaintiff had standing to assert claims on behalf of a class as to products she did not purchase. However, the court dismissed plaintiffs' breach of express and implied warranty because plaintiff failed to provide defendant with adequate pre-suit notice. The court also dismissed the Missouri Merchandising Practices Act (MMPA) claims, finding that plaintiff's allegations that defendant willfully and knowingly sold defective products were too broad and nonspecific to adequately state a claim under the MMPA.

March 28, 2024

Missouri court dismisses Nike Sustainability Collection recycled materials lawsuit

The U.S. District Court for the Eastern District of Missouri granted defendant Nike USA Inc.'s motion to dismiss a putative class action alleging that defendant misrepresented that more than 2,000 clothing and apparel items from its Sustainability Collection were made with "recycled and organic materials." Plaintiff alleged that the products did not contain recycled materials and were instead manufactured with virgin synthetic and non-organic materials that are harmful to the environment. Plaintiff paid a premium for these products, which she alleges she would not have done had she known the true composition of the items. The court found that plaintiff failed to plead any factual content to support her claims or make any allegations regarding the supplier of defendant's materials or the manufacturing process. Plaintiff's only supporting factual allegation was that defendant admitted to not using recycled materials in their Sustainability Collection, but the court could not even trace that statement back to defendants. Therefore, the court ruled that plaintiff failed to plausibly allege that defendant made any false or misleading statements and dismissed the Missouri Merchandising Practices Act claims.

March 28, 2024

New Jersey court grants in part, denies in part motion to dismiss Samsung defective laptop lawsuit

The U.S. District Court for the District of New Jersey granted in part and denied in part defendant Samsung Electronics America Inc.'s motion to dismiss a putative class action alleging that defendant knowingly sold laptops with an overheating defect. Plaintiffs alleged the laptops had inadequate venting due to shallow casing and insufficiently raised feet pads that restricted airflow, leading to a buildup of heat in the devices. The court dismissed the Magnuson-Moss Warranty Act claims because the complaint included less than the required 100 named plaintiffs. The court also dismissed the Wisconsin Deceptive Trade Practices Act claims because plaintiff failed to plead with particularity the content of the marketing materials that she relied on when making

purchasing decisions. The court also dismissed the New York General Business Law claims because plaintiff's claims did not reference or arise from the Terms and Conditions of Sale. However, the court declined to dismiss the breach of implied warranty claims, finding that plaintiff adequately alleged that she experienced the defect and defendant failed to repair the issue. Additionally, the court declined to dismiss the unjust enrichment claims.

March 27, 2024

New York court dismisses CVS hydrogen peroxide false labeling lawsuit

The U.S. District Court for the Southern District of New York granted defendant CVS Pharmacy Inc.'s motion to dismiss a putative class action alleging that defendant falsely represented that its CVS Health-brand 3% hydrogen peroxide solution assists in healing wounds or shortens healing time. The product's front label included the phrase "for treatment of minor cuts & abrasions," which plaintiff alleged was misleading because dictionaries define the term "treat" as attempting to heal, improve or cure a condition. The court found that the FDA had previously considered and determined not to prohibit the use of the term "treat" in claims regarding the efficacy of hydrogen-peroxide. Therefore, the court found that plaintiff's state law claims were preempted by the FDCA. Likewise, since plaintiff's state-level claims were dismissed and the amount in controversy did not meet the required value for an individual claim, the court also dismissed the Magnuson-Moss Warranty Act claims.

March 27, 2024

Michigan court dismisses Lenovo defective laptop lawsuit

The U.S. District Court for the Western District of Michigan granted defendant Lenovo (United States) Inc.'s motion to dismiss a putative class action alleging that defendant falsely marketed its laptops as high-performing and suitable for gaming and watching videos. Plaintiff alleged that these representations were misleading because the laptops suffered from numerous hardware and software defects, causing them to frequently crash or freeze. The court dismissed plaintiff's Michigan Consumer Protection Act claims, finding that plaintiff failed to identify any specific advertising claiming the computer wouldn't crash. The court also dismissed the breach of express warranty claims because plaintiff purchased his laptop from a BestBuy and thus lacked privity of contract with defendant. Additionally, the court dismissed the breach of implied warranty claims because plaintiff failed to provide adequate pre-suit notice. Since plaintiff's state-level claims were dismissed, the court also dismissed the Magnuson-Moss Warranty Act claims. Finally, the court dismissed the injunctive relief claims, finding that plaintiff's assertions that he intended to purchase the product again were vague and insufficient to allege standing for injunctive relief.

March 26, 2024

New Jersey court grants in part, denies in part motion to dismiss Subaru defective infotainment system lawsuit

The U.S. District Court for the District of New Jersey granted in part and denied in part defendant Subaru of America Inc.'s motion to dismiss a putative class action alleging that the Starlink infotainment system installed in defendant's vehicles was defective. Plaintiffs alleged that the defect caused the systems to freeze or reboot, among other issues, which potentially affected the backup camera, making the vehicles hazardous to drive. The court denied the motion to dismiss New Hampshire, Washington, New Jersey and Maryland consumer protection claims, finding that plaintiffs adequately alleged that they were promised a vehicle that offered "seamless navigation" and that the problems experienced with the system indicated that such representations were misleading. The court also found that plaintiff adequately alleged that defendant disclosed the defect on its website, suggesting it was aware of the defect prior to purchase. The court also denied the motion to dismiss California consumer protection claims, finding that defendant's argument that those claims were time-barred was premature. However, the court dismissed the New York General Business Law claims because the New York plaintiff was made aware of the defect due to issues with a prior vehicle and elected to purchase the same vehicle. Therefore, the court ruled that the New York plaintiff could not have been misled by defendant's purported misrepresentations.

March 26, 2024

California court denies motion to dismiss NY and Co illusory discount lawsuit

The U.S. District Court for the Central District of California denied defendant NY and Co Ecomm LLC's motion to dismiss a putative class action alleging that defendant displayed false reference prices for sale items on its website, which misled consumers into believing that they were receiving larger discounts than they actually were. The court first addressed defendant's procedural claims, declining to dismiss plaintiff's claims for lack of subject matter jurisdiction or standing. The court then found that plaintiffs reasonably alleged that the price comparisons on the website were false because none of the items were ever sold at the higher reference prices advertised. Further, the court rejected defendant's argument that those reference prices were non-actionable puffery because their falsity could be verified by determining if the items were ever sold at those prices. Consequently, the court denied the motion to dismiss plaintiffs' California consumer protection claims. Additionally, the court declined to dismiss equitable relief claims because plaintiffs sufficiently alleged that they had no adequate remedy at law.

March 22, 2024

New York court dismisses counterfeit URBĀNE hand sanitzer Lanham Act false advertising claim

The U.S. District Court for the Southern District of New York granted defendants' motion to dismiss a Lanham Act false advertising claim alleging that defendants made misrepresentations on the label of their counterfeit version of plaintiffs' URBĀNE hand sanitizer product. Defendants allegedly labeled their counterfeit product as being "Made in Mexico," which plaintiffs alleged misrepresented to consumers that authentic URBĀNE hand sanitizer was made in Mexico, when the authentic product was in fact made only in the United States. Further, plaintiffs alleged that the counterfeit product falsely listed the same ingredients as those of the authentic product. Plaintiffs also alleged that the counterfeit product falsely named a defendant as the distributor, rather than identifying the true distributors of the authentic product. Regarding the ingredient list, the court held that plaintiffs' allegation, upon information and belief, that the counterfeit product did not contain the identical ingredients was pure speculation and did not suffice to make out a plausible basis for the falsity of the ingredient list. The court also held that plaintiffs failed to adequately allege the materiality of the ingredient list, refusing to adopt what it called the "dubious" premise that consumers base their hand sanitizer purchasing decisions on a product's strict adherence to an ingredient list. Regarding the "Made in Mexico" statement, the court held that it was not false on its face, as the counterfeit product was made in Mexico. The court also held that the false advertising claim based on that statement failed because it was merely an attempt by plaintiffs to recast their false designation of origin claim. The court held that the claim based on the product's distributor failed, because as a matter of law, statements about a product's distributor do not involve an inherent or material quality of the product. As a result, the court granted the motion to dismiss the Lanham Act false advertising claim.

March 22, 2024

Massachusetts court denies motion to dismiss Stop & Shop 'flushable' wipes lawsuit

The U.S. District Court for the District of Massachusetts denied defendant The Stop & Shop Supermarket Company LLC's motion to dismiss a putative class action alleging that defendant falsely represented that its Always My Baby-brand cleansing wipes were "flushable." Plaintiff alleged that he purchased the products at a price premium based on those representations, without realizing that disclaimers on the side and back of the packaging warned consumers not to flush the wipes in certain places and stated that "not all systems can accept flushable wipes." The court found that plaintiff adequately alleged that the disclaimer would require a reasonable consumer to have an in-depth knowledge of the sewer or septic system that they are using, as well as local rules. Further, the court noted that the disclaimer was so small and vague that it did not relieve defendant of liability. Additionally, the court found that plaintiff sufficiently alleged injury by showing he paid a premium price for the products compared to non-flushable wipes. Therefore, the court denied the motion to dismiss Massachusetts consumer protection claims. Likewise, the court denied the motion to dismiss plaintiff's

breach of express and implied warranty as those claims were based on the same factual allegations as the consumer protection claims.

March 21, 2024

New York court largey denies motion for summary judgment, denies motion for class certification in GSK 'maximum strength' cough syrup lawsuit

The U.S. District Court for the Southern District of New York granted in part and denied in part defendant GlaxoSmithKline Consumer Healthcare Holdings (U.S.) LLC's motion for summary judgment regarding a putative class action alleging that defendant falsely labeled its Robitussin cough syrup product. Plaintiff alleged that defendant charged more for the "maximum strength" version of the product despite the product containing a lower concentration of active ingredients compared to the less expensive "regular strength" version. The court largely denied the motion for summary judgment on plaintiffs' consumer protection claims, finding plaintiffs sufficiently alleged that a reasonable consumer could interpret the "maximum strength" label as an indication of the concentration of the active ingredients in the product and that the representations did deceive plaintiffs into overpaying for the product. The court also found that all of the named plaintiffs, except one, adequately alleged that they purchased the product during the time period of the alleged deception. However, based on the same allegations, the court denied plaintiffs' motion for class certification finding that the ambiguities in plaintiffs' allegations would create serious concerns as to their credibility at trial.

March 20, 2024

New Jersey court grants in part, denies in part motion to dismiss Ferrari defective brake lawsuit

The U.S. District Court for the District of New Jersey granted in part and denied in part defendants Ferrari North America Inc., Ferrari S.P.A., Robert Bosch LLC and Robert Bosch GMBH's motion to dismiss a putative class action alleging that defendants deceptively concealed a brake defect in Ferrari vehicles sold in the U.S. Plaintiffs alleged that the defect causes the brakes to leak brake fluid, leading to a partial loss of braking capability. The court dismissed nationwide class claims, finding that plaintiffs lacked standing under the laws of states where no named plaintiff was located. The court also dismissed New Jersey Consumer Fraud Act claims because the New Jersey plaintiff failed to allege that he suffered an ascertainable loss, as there was no allegation that his vehicle experienced the defect. However, the court found that plaintiffs adequately alleged that Ferrari's informational materials included statements touting the responsiveness and efficiency of the vehicles' braking systems, which were verifiable facts and more than mere puffery. Additionally, the court also found that plaintiffs sufficiently alleged that defendants had pre-sale knowledge of the defect due to numerous consumer complaints. Consequently, the court declined to dismiss plaintiffs' fraud by concealment or omissions claims. Additionally, the court denied the motion to dismiss Georgia consumer protection claims because plaintiffs sufficiently alleged future harm by showing that defendant's available remedy failed to actually repair the

defect. The court also declined to dismiss Georgia-based breach of implied warranty of merchantability claims because plaintiffs adequately alleged that the defect made the vehicles unfit for their ordinary purpose.

March 19, 2024

New York court grants in part, denies in part motion to dismiss intimate wash false labeling lawsuit

The U.S. District Court for the Southern District of New York granted in part and denied in part defendant Combe Incorporated's motion to dismiss a putative class action alleging that defendant falsely represented that its Vagasil and OMV!-brand feminine hygiene products were suitable as a daily intimate wash for the vulva. Plaintiff alleged that the misrepresentations were false because the products are essentially liquid soaps and that the accepted belief in the medical community is that intimate washes are harmful to women's health. The court denied the motion to dismiss claims for unpurchased products, finding that plaintiffs sufficiently alleged that the unpurchased products were substantially similar to those that were purchased. The court also denied the motion to dismiss claims under the California Consumer Legal Remedies Act because plaintiffs adequately alleged that the defendant's representations could lead a reasonable consumer to believe that the products were safe for daily use even though they were not. Similarly, the court denied the motion to dismiss New York General Business Law claims, finding that plaintiffs identified which representations they saw and relied on when making purchasing decisions. However, the court granted the motion to dismiss the breach of implied warranty of merchantability claims as plaintiffs failed to allege the required privity of contract with defendant.

March 18, 2024

New York court dismisses Bayer Healthcare 'Honey Lemon Zest' cold medication false labeling lawsuit

The U.S. District Court for the Western District of New York granted defendant Bayer Healthcare LLC's motion to dismiss a putative class action alleging that defendant falsely advertised its Alka-Seltzer Plus cold medication contained honey and lemon. Plaintiff alleged that the phrase "Honey Lemon Zest" on the packaging misled consumers into believing the product contained more than a minimal amount of honey and lemon. The court dismissed the New York General Business Law claims, finding that the packaging did not include any explicit statements that the product was "made from" or "made with" honey, lemon or lemon zest. Further, the court noted that the complaint acknowledged that the product's ingredient list disclosed that it contains "flavors" but not more than a minimum amount of honey or lemon. Likewise, the court dismissed the breach of express warranty and implied warranty of merchantability claims because plaintiff did not allege that the product did not conform to the statements on the label. Since plaintiff's state-level warranty claims failed, the court also dismissed Magnuson-Moss Warranty Act claims.

March 15, 2024

California court dismisses FCA defect tracklight lawsuit

The U.S. District Court for the Northern District of California granted defendant FCA U.S. LLC's motion to dismiss a putative class action alleging that defendant's Dodge Durango vehicles had a defective tracklight that allowed water to intrude through the gaskets and seals of the vehicle's tailgate. The court dismissed plaintiff's breach of implied warranty claims, finding that plaintiff failed to allege the required privity of contract for such a claim. The court also dismissed the breach of express warranty claims, finding that by the time the defect manifested, the express warranty on plaintiff's vehicle had expired. Further, the court determined that plaintiff failed to allege that he lacked other viable options to purchase a similar product or a product with a more extensive warranty and thus could not show that the warranty was unconscionable. Since plaintiff's state-level warranty claims failed, the court also dismissed his Magnuson-Moss Warranty Act claims. As to the negligent misrepresentation and concealment claims, the court found that plaintiff failed to allege a transactional relationship with defendant, as he purchased his vehicle secondhand from a Kia dealership rather than directly from defendant. Consequently, the court dismissed the negligent misrepresentation claims with leave to amend.

March 15, 2024

New York court dismisses Sephora 'Clean at Sephora' false labeling lawsuit

The U.S. District Court for the Northern District of New York granted defendant Sephora USA Inc.'s motion to dismiss a putative class action alleging that defendant falsely represented that its cosmetic products did not contain synthetic or harmful ingredients. The products' packaging included a "Clean at Sephora" seal, which defendant describes as "formulated without parabens, sulfates SLS and SLES, phthalates, mineral oil, formaldehyde, and more." However, plaintiff alleged that the labeling was false because the products contained synthetic ingredients. The court dismissed plaintiff's New York General Business Law and fraud claims, finding that plaintiff failed to allege that the packaging included any representations that the products were free of all synthetic or harmful ingredients. The court also dismissed the consumer protection claims brought under other states' laws because plaintiff failed to mention the statutes which defendant had purportedly violated and thus, failed to provide defendant with the notice required to defend itself. Further, the court dismissed the breach of warranty claims due to plaintiff's failure to provide adequate pre-suit notice.

March 11, 2024

Illinois court grants in part, denies in part motion to dismiss Walmart thread count false labeling lawsuit

The U.S. District Court for the Northern District of Illinois granted in part and denied in part defendant Walmart Inc.'s motion to dismiss a putative class action alleging that defendant overstated the thread count on the packaging of its Hotel Style brand bedsheets. Plaintiffs alleged that the packaging stated that the product had an 800-

thread count, despite independent testing indicating the thread count to be less than half of that amount. First, the court dismissed plaintiffs' injunctive relief claims because plaintiffs failed to allege that they planned to purchase the product again and thus were not at risk for future injury. However, the court found that the complaint included extensive allegations describing the methodology used in the independent testing through which the thread count was derived and clearly described the false statement on the product's packaging. Therefore, the court found that plaintiffs plausibly alleged that defendant misrepresented the thread count and accordingly denied the motion to dismiss the Illinois Consumer Fraud and Deceptive Practices Act claims. The court also denied the motion to dismiss the breach of express warranty claims, finding that there was insufficient information in the complaint to determine whether plaintiff provided adequate pre-suit notice and that such a question is better addressed during the summary judgment stage.

March 08, 2024

Massachusetts court grants in part, denies in part motion to dismiss Ford defective transmission lawsuit

The U.S. District Court for the District of Massachusetts granted in part and denied in part defendant Ford Motor Company's motion to dismiss a putative class action alleging that defendant knowingly sold vehicles equipped with a defective transmission. The complaint alleged that the transmission shifted harshly and erratically, causing the vehicles to jerk and hesitate between gears and, in some cases, shut down entirely while accelerating. The court dismissed plaintiffs' breach of express warranty claims, finding that none of the named plaintiffs brought their vehicles to one of defendant's licensed dealers, thus denying defendant the opportunity to repair the defective part. The court also dismissed the Magnuson-Moss Warranty Act claims because the complaint listed only three named plaintiffs, rather than the required 100. However, the court denied the motion to dismiss plaintiffs' breach of implied warranty of merchantability claims, finding that plaintiffs' allegations that the defect could cause vehicles to completely lose power while driving were sufficient to show that they were not capable of providing safe and reliable transportation. The court also found that the existence of numerous complaints to the National Highway Traffic Safety Administration (NHTSA) and technical service bulletins (TSBs) were sufficient to indicate that defendant was aware of the defect. Further, the complaints and TSBs were sufficient to allege that defendant knew its representations that the transmission provided for "smooth" or "quick" gear changes were not true. Finally, the court dismissed plaintiffs' fraudulent omissions claims, finding that plaintiffs failed to allege a fiduciary relationship requiring defendant to disclose the defect.

March 08, 2024

California court grants in part, denies in part motion to dismiss Honda defective brakes, infotainment system lawsuit

The U.S. District Court for the Central District of California granted in part and denied in part defendant American Honda Motor Inc.'s motion to dismiss a putative class action

alleging that defendant's vehicles contained defective infotainment systems and automatic braking systems. The complaint alleged that the defects in the infotainment systems caused intermittent loss of access to the navigation systems and false negatives on the braking and collision mitigation warning, among other issues. Plaintiffs also alleged that the braking defect would cause the steering wheel to shake violently, the brakes to deploy without cause, and automatic brake implementation when there was no hazard. The court dismissed claims relating to the infotainment system defect, finding that plaintiff had yet to take advantage of the recall offered by defendant that would resolve the defect and, thus those claims were not ripe. As to the braking system defect, the court found that plaintiff failed to show that defendant had pre-sale knowledge of the defect and accordingly dismissed California and nationwide consumer protection claims. The court also dismissed the South Carolina consumer protection claims because plaintiff failed to allege a fiduciary relationship with defendant and, thus defendant had no duty to disclose the purported defect. However, the court declined to dismiss the South Carolina breach of implied warranty of merchantability claims, finding that plaintiff provided adequate pre-suit notice of the defect.

March 06, 2024

Second Circuit affirms dismissal in Craftsman vacuum 'Peak HP' false labeling lawsuit

The U.S. Court of Appeals for the Second Circuit affirmed a district court's dismissal of a putative class action alleging that defendant Stanley Black & Decker Inc. falsely represented the achievable horsepower of its Craftsman-brand vacuum cleaners. In its initial decision, the district court noted that the product packaging included a dagger symbol next to the challenged "Peak HP' claim, which directed consumers to fine print explaining that "Peak HP" was achieved during laboratory testing, not ordinary use. Consequently, the district court ruled that no reasonable consumer would be misled by the statements if the entire packaging was reviewed as a whole. The panel agreed, noting that plaintiffs did not allege any misrepresentation in the fine print itself but, rather, took issue with the inconspicuous size and placement of the fine print. The panel held that the size and placement of the disclosure was the definition of "fine print," which may clarify an ambiguous label on the packaging. As a result, the panel affirmed the dismissal of plaintiffs New York and Virginia consumer protection claims, as well as their breach of warranty claims.

March 05, 2024

New York court grants in part, denies in part motion to dismiss The Launderess cleaning product 'non-toxic' lawsuit

The U.S. District Court for the Southern District of New York granted in part and denied in part defendant The Laundress LLC's motion to dismiss a putative class action alleging that defendant falsely marketed its cleaning and laundry products as "non-toxic." In 2022, defendant issued a voluntary recall due to the discovery of three types of bacteria known to be harmful to human health. Plaintiffs alleged that defendant's products were contaminated or at risk of contamination prior to the recall and

defendant was aware of those risks. First, the court denied the motion to dismiss California consumer protection claims, finding that plaintiffs alleged that they purchased defendant's products after reviewing and relying upon the marketing of those products as "non-toxic," only to later discover that the products were contaminated. However, the court dismissed the California breach of implied warranty claims due to a lack of privity. The court further denied the motion to dismiss as to plaintiffs' New York and California misrepresentation claims, finding that the "non-toxic" labeling was likely to deceive a reasonable consumer. Additionally, the court denied the motion to dismiss plaintiffs' omissions-based claims, finding that plaintiffs sufficiently alleged that defendant was aware that the products' unique attributes would make them susceptible to bacterial contamination and that it only issued a recall after the Consumer Product Safety Commission intervened.

March 05, 2024

New York court grants in part, denies in part motion to dismiss C+ Collagen skincare product false labeling lawsuit

The U.S. District Court for the Southern District of New York granted in part and denied in part defendant Dr. Dennis Gross Skincare LLC's motion to dismiss a putative class action alleging that defendant misrepresented that its C+ Collagen-brand skincare products contained collagen. Plaintiffs alleged that aside from the products' name, the term "collagen amino acids" is also featured prominently on the labels. Plaintiff further alleged that the labels also include a symbol indicating that the product is vegan and because collagen is sourced exclusively from animals, products that include it cannot be vegan. The court found that plaintiffs adequately alleged that the labels were misleading because a reasonable consumer would understand the challenged labeling as promising that the product contained collagen, which it does not. The court also found that plaintiff adequately alleged injury by pleading that they paid a price premium for the product. Accordingly, the court declined to dismiss plaintiffs' claims brought under New York's General Business Law. However, the court dismissed plaintiffs' breach of express and implied warranty claims due to plaintiffs' failure to provide pre-suit notice.

March 01, 2024

New York court dismisses Honey Pot feminine wash false advertising lawsuit

The U.S. District Court for the Southern District of New York granted defendant The Honey Pot Company LLC's motion to dismiss a putative class action alleging that defendant falsely represented that its feminine care foaming wash products were "gynecologist-approved" and that they were safe for vulvar use on a daily basis. Plaintiffs alleged that the statements were false and misleading because the products were unsafe for vulvar use due to certain ingredients that could cause infections and make women more susceptible to disease. Plaintiff also alleged that the products were unnecessary because the vagina and vulva are self-cleaning. In support of its claims, plaintiff provided five articles stating that warm water was sufficient to cleanse the vulva. However, the court noted that none of the articles plaintiff provided specifically

discussed the challenged products. Further, while the articles all discouraged the use of soaps on the vulva, plaintiff failed to plausibly allege that defendant's products were equivalent to the soaps discussed in the articles. Consequently, the court could not conclude that the articles' cautions about soaps rendered the product's challenged statements false or misleading. As a result, the court found plaintiff failed to plausibly allege that the challenged statements were likely to deceive a reasonable consumer and accordingly dismissed plaintiff's New York General Business Law claims.

February 23, 2024

California court denies motion for class certification in Bayer Flintstones multivitamin false labeling lawsuit

The U.S. District Court for the Central District of California denied plaintiffs' motion for class certification in a lawsuit alleging that defendant Bayer Healthcare LLC falsely represented its Flintstones multivitamin gummies as being "complete." Plaintiff alleged that the representations were false because the product lacked four essential vitamins, including Vitamin K, Vitamin B1, Vitamin B2 and Vitamin B3. Plaintiff sought to represent a nationwide class of individuals who purchased the products, as well as two California subclasses. The court denied the motion for class certification because named plaintiff was not a typical member of the putative classes. The court noted that plaintiff testified that she had not thought about defendant's use of the term "complete" until answering a questionnaire posted by plaintiff's counsel on Facebook. The court found that this testimony indicated that plaintiff may not have been misled or injured by defendant's use of the term "complete." Further, the court noted that plaintiff also testified that since joining the lawsuit, she has repeatedly purchased Equate brand multivitamins which also lacked the aforementioned vitamins. The court found that plaintiff's knowledge and priorities at the time of purchase made her an inadequate representative of the putative classes and that granting certification would lead class counsel to devote much of their time to her individual claims rather than those for the larger class. As a result, the court denied the motion for class certification.

February 22, 2024

California court dismisses Gilead remdesivir false advertising lawsuit

The U.S. District Court for the Eastern District of California granted defendant Gilead Sciences Inc.'s motion to dismiss a putative class action alleging that defendant exaggerated the benefits and downplayed the dangers of its antiviral COVID-19 medication, remdesivir. Firstly, the court denied plaintiff's motion to remand, determining the court had CAFA jurisdiction over the case. Next, it considered defendant's motion to dismiss. Defendant argued that the Public Readiness and Emergency Preparedness Act (PREP Act) immunized it from suit and liability because remdesivir was either authorized for emergency use or approved for use by the FDA, and its manufacturer, defendant was protected under the law. The court agreed, finding that the category of acts covered by the immunity was extensive and included any claim for loss that had a "causal relationship with the design, development, clinical testing or investigation, manufacture, labeling, distribution, formulation, packaging,

marketing, promotion, sale, purchase, donation, dispensing, prescribing, administration, licensing, or use of such countermeasure." The court determined that the PREP Act's broad language immunized defendant from liability, despite the serious adverse effects caused by the drug. As a result, the court granted defendant's motion to dismiss without leave to amend.

February 21, 2024

California court grants in part, denies in part motion to certify class in Williams-Sonoma thread count lawsuit

The U.S. District Court for the Northern District of California granted in part and denied in part plaintiff's motion for class certification in a lawsuit alleging that defendant Williams-Sonoma, Inc. falsely represents the thread count in its bedding products. Plaintiffs sought certification of a nationwide injunctive relief class and a California subclass. The court granted plaintiff's motion to certify the California subclass, finding the class satisfied all of the Rule 23(a) criteria for class certification. However, the court declined to certify the proposed nationwide injunctive relief class, finding it would serve no separate purpose from the California subclass. The court also denied defendant's motion to strike plaintiff's consumer survey evidence, as well as defendant's motion to exclude the opinions of two of plaintiff's expert witnesses.

February 15, 2024

California court dismisses DIY lash extension Lanham Act false advertising claim

The U.S. District Court for the Central District of California granted defendant Lashify Inc.'s motion to dismiss a Lanham Act false advertising claim alleging defendant falsely represented that its products were the "first" or "only" do-it-yourself (DIY) lash extension system. Plaintiff further alleged that defendant falsely claimed that it was the inventor of the DIY lash extension system. Plaintiff argued that the challenged statements were false because there were numerous companies and individuals that manufactured DIY lashes long before defendant did. However, the court noted that the complaint did not identify any of those companies or allege when they manufactured DIY lashes. Therefore, the court held that plaintiff's false advertising claim was barred to the extent it was premised on inventorship claims. The court also held that defendant's statements that its products were "easy" or "simple" to use were non-actionable puffery. Further, with respect to statements that the products were "so light they literally stick to your lashes" and that they do not damage a wearer's natural lashes, the court held that plaintiff failed to sufficiently allege falsity. While plaintiff alleged that a user review contradicted those statements, the court held that the review on its own was not sufficient to show that the challenged statements were false. Additionally, the court held that plaintiff failed to allege how the challenged statements were likely to deceive a substantial number of customers. As a result, the court granted the motion to dismiss the Lanham Act false advertising claim with leave to amend.

February 14, 2024

New York court denies motion to dismiss Alcon eye drop false labeling suit

The U.S. District Court for the Southern District of New York denied defendant Alcon Laboratories Inc.'s motion to dismiss a putative class action alleging that defendant's eye drop product label is false and misleading. Plaintiff alleged that defendant's product label states the bottle contains a "30 Day Supply." However, when using the product as directed, it lasted only approximately 20 days. The court declined to dismiss the claim, finding that plaintiff adequately alleged an injury based on a price premium theory, as he would have paid less for the product or not purchased it at all had he been aware that the label was false. The court also rejected defendant's argument that plaintiff's claims were preempted by the FDCA. Finally, the court found that plaintiff sufficiently alleged a breach of express warranty claim as a reasonable consumer could interpret the statement as a promise of the product lasting for 30 days.

February 13, 2024

California court grants in part, denies in part Haier gas stove suit

The U.S. District Court for the Northern District of California granted in part and denied in part defendant Haier US Appliance Solutions Inc.'s motion to dismiss a putative class action alleging that defendant misled consumers into believing that gas stoves are inherently safe. Plaintiff alleged that all gas stoves in the U.S. are "defective" as they emit air pollutants that are linked to various illnesses and that defendant omitted warnings which in turn artificially inflated the price of such stoves, causing overpayment. The court rejected defendant's argument that plaintiff's claims are preempted by the Energy Policy and Conservation Act (EPCA). Next, The court found that while plaintiff had sufficiently alleged injury under California law, the court dismissed plaintiff's omissions-based fraud claims because plaintiff failed to allege that defendant had a duty to disclose the emissions, or that he relied on defendant's concealment in making his purchase. The court also dismissed plaintiff's California False Advertising Law (FAL) claim as FAL claims cannot be based on omission, as well as plaintiff's breach of implied warranty claims under California state law. The court further found that plaintiff did not sufficiently allege injury under other states' consumer protection laws, and accordingly dismissed plaintiff's Connecticut, Illinois, Maryland, Missouri, and New York consumer protection claims.

February 13, 2024

Texas court grants in part, denies in part Samsung omission case R&R

The U.S. District Court for the Southern District of Texas granted in part and denied in part defendant Samsung Electronics America, Inc.'s motion to dismiss a putative class action alleging that defendant misrepresented the finish of its black stainless-steel appliances. Plaintiff alleged defendant sold appliances with a black stainless-steel finish, but did not inform consumers that the finish was a temporary plastic coating rather than a colored metal finish. First, the court first adopted the magistrate judge's Report & Recommendation to dismiss one plaintiff's NY GBL claim as barred by the

statute of limitations and another plaintiff's unconscionability claim under Texas law claims as insufficiently pled. The court then found that plaintiff's allegations of causation were sufficient to put defendant on notice of the nature of the fraud claim. The court also found that plaintiff sufficiently alleged defendant had a duty to disclose the material of the black stainless-steel finish to plaintiff Danilova. Finally, the court granted defendant's motion to dismiss Plaintiffs Roscoe and Einiger's claims for fraud based on omission under South Carolina and Nevada law, respectively. However, the court allowed these plaintiffs' fraud claim based on affirmative misrepresentations to proceed. The court also declined to dismiss plaintiffs' claims for omission-based fraud under Massachusetts, California, Texas, New York, and Florida law.

February 06, 2024

California court denies motion to dismiss Colgate recyclable toothpaste tube lawsuit

The U.S. District Court for the Northern District of California denied defendant Colgate-Palmolive Company's motion to dismiss a putative class action alleging that defendant falsely marketed its Colgate and Tom's of Maine toothpaste packaging as recyclable. Plaintiff alleged that the representations were false or deceptive because virtually all recycling programs and materials recovery facilities in California and the U.S. reject the products. Defendant argued that the claims were not misleading because the tubes were made from a type of plastic that is capable of being recycled. The court found that plaintiff adequately alleged that recycling centers rejected the tubes due to their shape – which can often cause confusion with non-recyclable tubes – and the fact that the tubes cannot be fully emptied of product, which can contaminate the recyclable waste stream. Consequently, the court ruled that plaintiff sufficiently pled that the representations were misleading due to the intrinsic characteristics of the tubes that prevent them from being recycled. The court also found that the disclaimers added to the packaging stating consumers could learn more about the recyclable tubes on a website were not sufficient to render the challenged statements not misleading. Additionally, the court denied the motion to dismiss injunctive relief claims because plaintiff alleged that she would purchase the products again if she could rely on the recyclable claims.

February 02, 2024

New York court denies motion to dismiss PediaSure false labeling lawsuit

The U.S. District Court for the Southern District of New York denied defendant Abbott Laboratories' motion to dismiss a putative class action alleging that defendant falsely represented that its PediaSure Grow and Gain product was "clinically proven to help kids grow." Plaintiff alleged the existence of other clinical studies, which refuted the results of similar studies posted by defendant on its website in support of its claims. Further, plaintiff alleged that defendant was aware of these critiques and evidence when it made the challenged statement. The court found that there were factual questions regarding the methodologies of defendant's studies and whether the results adequately supported the challenged claim that could not be resolved at the motion to dismiss stage. Further, the complaint cited several studies funded by defendant that

did not find a connection between the product and growth in height. According to the court, these studies contradicted the challenged claim, reinforcing the plausibility of the complaint's allegations that the product's labels were misleading. As a result, the court denied the motion to dismiss claims under New York's General Business Law.

February 02, 2024

Missouri court dismisses Wet Ones antibacterial wipes false labeling lawsuit

The U.S. District Court for the Western District of Missouri granted defendant Edgewell Personal Care Company's motion to dismiss a putative class action alleging that defendant falsely represented that its Wet Ones non-alcohol antibacterial hand wipes kill 99.99% of germs. Plaintiff alleged that the challenged claim was false and deceptive because the product's active ingredients - Benzethonium Chloride and Benzalkonium Chloride – were less effective than alcohol in killing certain types of bacteria and viruses, such as HPV, C. Difficile, Cryptosporidium and human coronaviruses. The court found that the complaint merely alleged that the product was ineffective against certain pathogenic microorganisms and not that it failed to kill more than 0.01% of all pathogenic microorganisms. The court further noted that it was left to speculate whether the product's alleged failure to prevent HPV, C. Difficile, Cryptosporidium and human coronaviruses was enough to show the 99.99% claim as false. As a result, the court granted the motion to dismiss because plaintiff failed to establish that the challenged claim was false, misleading or deceptive.

January 30, 2024

Georgia court grants in part, denies in part motion to dismiss Mercedes-Benz defective sunroof lawsuit

The U.S. District Court for the Northern District of Georgia granted in part and denied in part defendant Mercedes-Benz USA LLC's motion to dismiss a putative class action alleging that the panoramic sunroofs (PSRs) installed in defendant's vehicles were defective. Plaintiffs alleged the PSRs were defective because they were prone to spontaneously shattering under normal driving conditions, creating a safety hazard for vehicle occupants and surrounding traffic. The court dismissed two plaintiffs' breach of express warranty claims for failure to provide adequate pre-suit notice, although one plaintiff's express warranty claim survived. Similarly, the court denied the motion to dismiss breach of implied warranty claims for two plaintiffs, but dismissed the claims by a third plaintiff for lack of privity. The court also dismissed Magnuson-Moss Warranty Act claims because the number of named plaintiffs was less than the required 100. The court declined to dismiss plaintiffs' fraudulent concealment claims finding that plaintiffs adequately alleged that defendant concealed a defect in their vehicles that a consumer likely would not have discovered in the exercise of reasonable care. Likewise, the court denied the motion to dismiss state consumer protection claims, finding that plaintiffs adequately alleged that defendant engaged in deceptive conduct and that they were at risk for future harm.

January 26, 2024

Michigan court grants motion for judgment on the pleadings in FCA emissions lawsuit

The U.S. District Court for the Eastern District of Michigan granted defendant FCA U.S. LLC's motion for judgment on the pleadings in a putative class action alleging that defendant falsely marketed its Dodge Ram trucks as being environmentally friendly and fuel efficient. Plaintiffs alleged that the trucks emitted illegally high levels of pollutants under real-world driving conditions and were thus not eco-friendly. Citing the Sixth Circuit's decision in *Ford Motor Co. F-150 & Ranger Truck Fuel Econ. Mktg. & Sales Pracs. Litig*, the court determined that plaintiffs' state consumer protection claims were preempted by the Clean Air Act (CAA), because plaintiff's claims arose from defendant's purported violations of the CAA and existed solely because of that statute. Accordingly, the court found plaintiff's claims would overstep the EPA's powers to penalize and prevent fraud and that plaintiffs' claims were therefore impliedly preempted by the CAA.

January 26, 2024

California court denies motion for summary judgment in Rust-Oleum 'non-toxic' lawsuit

The U.S. District Court for the Northern District of California denied defendant Rust-Oleum Corporation's motion for summary judgment in a putative class action alleging that defendant deceptively labeled its Krud Kutter brand cleaning products as being "non-toxic" and "Earth friendly." Plaintiff alleged that the labels were misleading to a reasonable consumer because the products contained ingredients such as alcohol ethoxylates and sodium metasilicate, which can be harmful to both humans and the environment. The court found that plaintiff sufficiently alleged that a reasonable consumer could be misled by the challenged statements and that triable issues of fact remained as to plaintiff's claims. As a result, defendant's motion for summary judgment was denied.

January 25, 2024

New York court dismisses Fujifilm defective X-Pro3 camera lawsuit

The U.S. District Court for the Southern District of New York granted defendant Fujifilm North America Corporation's motion to dismiss a putative class action alleging that defendant falsely advertised the durability and reliability of its X-Pro3 camera despite the product's defective ribbon connector cables. Plaintiff alleged that defendant marketed the product as being made from "durable" titanium and that the "combination of durability and advanced features create a camera that can be relied upon to perform in any situation." Plaintiff alleged that this language led him to believe that none of the product's internal components would ever need repairs. The court found that plaintiff failed to allege that defendant made any deceptive statements about the product, and that when read in their full context, defendant's statements would not lead a reasonable consumer to believe that the camera would function without the need for repairs for the duration of its life. Therefore, the court dismissed

plaintiff's California consumer protection claims. The court also dismissed the breach of express warranty claims due to plaintiff's failure to provide adequate pre-suit notice.

January 18, 2024

New York court dismisses Ricola false labeling lawsuit

The U.S. District Court for the Southern District of New York granted defendant Ricola USA Inc.'s motion to dismiss a putative class action alleging that defendant falsely labeled its "Green Tea with Echinacea" flavored throat drops. Plaintiff alleged that the label was likely to mislead a reasonable consumer because it prominently displayed images of echinacea and green tea, which implied that these ingredients provided the product's therapeutic benefits, rather than the active ingredient menthol. Further, plaintiff alleged that the label should read "Menthol Lozenge – Cough Suppressant" or some variation thereof. The court explained that the FDCA preempted plaintiff's state law claims because defendant's labels complied with FDCA requirements and any relief the court could offer plaintiff would improperly impose additional requirements beyond those established in the FDCA. As a result, the court granted the motion to dismiss with leave to amend.

January 17, 2024

Michigan court grants in part, denies in part motion to dismiss FCA defective eTorque system lawsuit

The U.S. District Court for the Eastern District of Michigan granted in part and denied in part defendant FCA U.S. LLC's motion to dismiss a putative class action alleging that the engines in defendant's Ram 1500 and Jeep Wrangler vehicles were defective. Plaintiffs alleged that a defect in the vehicle's eTorque system caused the engines to turn off, unexpectedly shift into Park, and sometimes apply the emergency brake. According to plaintiffs, defendant was aware of the defect because it issued two Technical Service Bulletins (TSB) related to the defect. The court found that the TSBs related to the purported defect were sufficient at this stage of the proceedings to adequately allege that defendant had knowledge of the defect. Therefore, the court denied the motion to dismiss fraud claims for the four named plaintiffs who purchased their vehicles after the TSBs were issued in March and July of 2022. However, the court dismissed the fraud claims of the remaining named plaintiffs who purchased their vehicles prior to the release of the TSBs. The court also declined to dismiss plaintiffs' breach of implied warranty claims, finding that plaintiffs plausibly alleged that their vehicles were not merchantable because they did not operate in a safe condition and do not provide safe transportation due to the defect.

January 17, 2024

Ninth Circuit affirms in part, reverses in part dismissal of Eddie Bauer illusory pricing lawsuit

The U.S. Court of Appeals for the Ninth Circuit affirmed in part and reversed in part a district court's dismissal of a putative class action alleging that defendant Eddie Bauer

LLC falsely advertised discounts on its clothing items. Plaintiff alleged that the tags and labels misled consumers into believing they were purchasing items for 50% of their normal sale prices, when in actuality, defendant had never sold the items at the purported "normal" sale price. In its initial decision, the district court granted the motion to dismiss monetary damages claims because plaintiff failed to plead an ascertainable loss. Further, the district court dismissed equitable relief claims because plaintiff failed to plead that she lacked an adequate remedy at law. After certifying the ascertainable loss question to the Oregon Supreme Court, the Ninth Circuit panel determined that an ascertainable loss within the meaning of Oregon's Unlawful Trade Practices Act (UTPA) can, under certain circumstances, stem from a consumer's decision to purchase a product after relying on a retailer's misrepresentation as to price history or comparative prices. Therefore, the panel held that plaintiff's purchase price theory was a viable theory of ascertainable loss even though defendant did not misrepresent a characteristic or quality of the product sold. Consequently, the panel reversed the dismissal of plaintiff's monetary damages claims under the UTPA. However, the panel affirmed the dismissal of equitable relief claims, finding that the complaint failed to include any allegations as to why plaintiff lacked an adequate remedy at law. Finally, the court reversed the dismissal of injunctive relief claims because plaintiff adequately alleged threat of future harm by stating she would shop at one of defendant's stores again if she could rely on the accuracy of defendant's labeling.

January 12, 2024

California court grants class certification in beauty products false endorsement lawsuit

The U.S. District Court for the Southern District of California granted plaintiffs' motion to certify class in a lawsuit alleging that defendants Quick Box LLC, Converging Resources Corp., Konnecktive LLC, and others used fake celebrity and magazine endorsements, as well as misrepresentations about price and limited availability, to induce customers into purchasing beauty and skincare products. Based on the shipping and transaction data provided, the court found that it was highly likely that the proposed class would easily consist of the forty members needed to meet the numerosity requirement. The court also found that plaintiffs met the commonality requirement because the evidence showed that the proposed class members likely viewed the same misrepresentations. The court ruled that the typicality requirement was also met because plaintiffs showed that each class member's claim arose from the same course of conduct. The court ruled that common questions - such as whether defendants made certain representations and omissions regarding the products purchased, whether those representations and omissions were material, and whether those representations and omissions were false and misleading - predominated over individual issues. Additionally, the court ruled that plaintiffs adequately alleged that, absent a class action, most of the putative class members would not recover at all because each individual claim was too small to provide sufficient incentive to bring individual suits.

January 12, 2024

California court dismisses Edgewell tampon PFAS lawsuit

The U.S. District Court for the Northern District of California granted defendant Edgewell Personal Care Company's motion to dismiss a putative class action alleging that defendant's Organic and Playtex Gentle Glide tampon products contained harmful per and polyfluoroalkyl substances (PFAS), despite representations that the products were made with "100% Organic Cotton." The court found that plaintiffs failed to plausibly allege that the products contained PFAS, noting that the results of the independent third-party testing provided by plaintiffs did not adequately support allegations that PFAS were part of the product's design. As a result, the court granted defendant's motion to dismiss for failure to state a claim.

January 11, 2024

New Jersey court grants in part, denies in part motion to dismiss Subaru defective engine lawsuit

The U.S. District Court for the District of New Jersey granted in part and denied in part defendant Subaru of America Inc.'s motion to dismiss a putative class action alleging that defendant's Impreza WRX and WRX Sti vehicles contained defective engine components. Plaintiffs alleged that the defect would cause premature cataclysmic engine piston ringlands failure, requiring costly repairs, and that defendant concealed this defect from consumers. The court found that plaintiffs sufficiently alleged that defendant was aware of and concealed the defect, and that defendant should have known that information concerning the defect was material to the marketing and sale of the class vehicles. Consequently, the court ruled that plaintiffs had sufficiently pled the existence of a special relationship that gave rise to a duty to provide plaintiff with the correct information. Therefore, the court denied the motion to dismiss the New York subclass' negligent misrepresentation claims. However, the court dismissed the Illinois subclass' negligent misrepresentation claims, finding that such claims were barred by the economic loss doctrine.

January 10, 2024

California court dismisses CVS, Vi-Jon hand sanitizer false labeling lawsuit

The U.S. District Court for the Central District of California granted defendants CVS Pharmacy Inc. and Vi-Jon LLS's motion to dismiss a putative class action alleging that defendants falsely represented that their Advanced Formula Hand Sanitizer "Kills 99.99% of Germs." Plaintiff alleged that the representations were misleading because many harmful hand-borne germs, such as Norovirus, Cryptosporidium, Clostridioides difficile, Rhinovirus, and Influenza, are not effectively killed by the product. The court found that the product's front label was ambiguous, as the "Kills 99.99% of Germs" statement could have a number of interpretations. However, the back label includes a disclaimer clarifying that the product kills 99.99% of the populations of certain germ types on hands, not 99.99% of the total population of germs commonly found on hands. Due to these varying interpretations and the back label's disclaimer, the court ruled that

plaintiff failed to sufficiently plead that the label would mislead a reasonable consumer. As a result, the court granted the motion to dismiss with prejudice, denying plaintiff leave to amend the complaint.

January 05, 2024

California court grants in part, denies in part motion to dismiss Hyundai defective towing module lawsuit

The U.S. District Court for the Central District of California granted in part and denied in part defendant Hyundai Motor America's motion to dismiss a putative class action alleging that the towing components of defendant's Palisade SUV were defective. Plaintiff alleged that the defect caused wires in the vehicle's towing modules to catch fire, rendering it incapable of towing. The court found that plaintiffs adequately alleged that the ability to tow played a key role in their choice to purchase the vehicles. Further, the court found that the solution offered as part of defendant's voluntary recall, which prevented the tow harness module from operating a trailer's turn and brake signal, rendered the vehicle unfit for its intended use. Consequently, the court denied the motion to dismiss plaintiffs' breach of implied warranty of merchantability claims. The court also denied the motion to dismiss the majority of breach of express warranty claims despite certain plaintiffs not experiencing the defect. Since defendant's recall solution would render the vehicles unable to safely tow at all, the court found that plaintiffs sufficiently alleged that the vehicles they purchased did not live up to defendant's promise that they could tow up to a certain amount. However, the court granted the motion to dismiss the breach of express warranty claims brought under Arizona law due to plaintiffs' failure to establish the required privity of contract with defendant.

January 05, 2024

California court denies motion to dismiss Bayer 'natural' multivitamins lawsuit

The U.S. District Court for the Southern District of California denied defendant Bayer Corporation's motion to dismiss a putative class action alleging that defendant falsely advertised its One A Day brand multivitamins as "natural" despite containing unnatural, synthetic ingredients. Defendant argued that its use of the term "natural" was ambiguous and that reasonable consumers would look to other information to resolve that ambiguity and avoid any potential confusion. The court rejected this argument, however, finding that the singular word "natural" was unambiguous and did not alert reasonable consumers to the possibility that the products may contain synthetic ingredients. As a result, the court determined that plaintiff sufficiently alleged that the product's labeling was likely to mislead a reasonable consumer and denied the motion to dismiss claims brought under California's Consumers Legal Remedies Act.

January 04, 2024

California court grants motion to compel arbitration in defective LG dishwasher lawsuit

The U.S. District Court for the Eastern District of California granted defendant LG Electronics USA Inc.'s motion to compel arbitration in a putative class action alleging that defendant's dishwasher appliances had defective LED control panels. Plaintiff alleged that the defect made the appliance's controls unresponsive, causing them to stop during a cycle or fail to restart, which prevented consumers from using the dishwasher as intended. First, the court found that plaintiff failed to establish that defendant waived their right to compel arbitration. Next, the court found that plaintiff had adequate notice of defendant's arbitration agreement as it appeared in the owner's manual of the product and featured the words "arbitration agreement" in bold, capitalized typeface. Further, a similar notice appeared on both the outside and inside of the appliance's packaging, as well as on defendant's website. The court also rejected arguments that the arbitration provision was invalidated by the *McGill* rule, and that the agreement was unconscionable. Lastly, the court found that all of plaintiff's claims were covered by the arbitration provision. Deeming the agreement valid and enforceable, the court granted defendant's motion to compel arbitration.

January 03, 2024

New York court grants summary judgment, decertifies class in Tom's of Maine 'natural' deodorant lawsuit

The U.S. District Court for the Southern District of New York granted defendants Colgate-Palmolive Co. and Tom's of Maine Inc.'s motion for summary judgment in a lawsuit alleging that defendants falsely represented that their toothpaste and deodorant products were "natural." Plaintiffs alleged that the representations were deceptive because the products contained synthetic ingredients such as aluminum chloralhydrate, glycerin, propylene glycol, sodium lauryl sulphate, sorbitol, and xylitol. The court found that plaintiffs failed to adequately allege that a reasonable consumer would be likely to be deceived by defendant's use of "natural" on its packaging, because a reasonable consumer would likely not understand the term "natural" to mean that the products do not contain any synthetic ingredients. The court found there was no triable issue of fact as to defendant's purported deception and thus granted defendants' motion for summary judgment with respect to plaintiffs' California, Florida and New York consumer protection claims and breach of express warranty claims. Additionally, the court granted defendants' motion to decertify the class, finding that common issues did not predominate.

December 28, 2023

New York court dismisses Tide detergent '64 loads' lawsuit

The U.S. District Court for the Southern District of New York granted defendant The Procter & Gamble Company's motion to dismiss a putative class action alleging that defendant falsely represented that bottles of its Tide-brand laundry detergent contained enough detergent for "64 loads" loads of laundry. Plaintiff alleged that the

label deceived consumers because it included a disclosure indicating that the bottle contained enough detergent for 64 medium-sized loads rather than full loads. The court found that plaintiff failed to allege that the label was misleading because a reasonable consumer would understand that loads of laundry may be different sizes. Moreover, to the extent the "64 load" representation was ambiguous, the back label clarified that the product contained enough detergent for 64 medium loads. Consequently, the court dismissed plaintiff's New York General Business Law claims. Likewise, because plaintiff's GBL claims failed to meet the reasonable consumer standard, the court also dismissed claims under other states' consumer protection laws. The court also dismissed the breach of express warranty claims due to plaintiff's failure to provide adequate pre-suit notice. Additionally, the court dismissed breach of implied warranty claims because plaintiff failed to allege that the product was unfit for use as a laundry detergent.

December 20, 2023

California court grants in part, denies in part motion to dismiss ionization-only devices false labeling lawsuit

The U.S. District Court for the Northern District of California granted in part and denied in part defendants Walter Kidde Portable Equipment Inc. and BRK Brands Inc.'s motion to dismiss a putative class action alleging that defendants falsely represented that their Kidde-brand and Wolken-brand ionization-only devices were smoke alarms. Plaintiff alleged that, under certain conditions, ionization-only devices can detect flame and related heat, but are ineffective at detecting smoke from smoldering fires in a timely fashion, and therefore are not functioning smoke alarms. The court denied the motion to dismiss claims pertaining to the Woken devices, finding that plaintiffs adequately alleged that they relied on the "Smoke Alarm" descriptor on the packaging and reasonably believed that the product would provide timely detection of all common types of home fires. However, the court granted the motion to dismiss injunctive relief claims because plaintiffs failed to allege that they would consider purchasing the ionization-only devices again. Consequently, plaintiffs failed to plead they were at risk for future harm and therefore lacked standing.

December 19, 2023

California court grants in part motion to dismiss Porsche defective Taycan class action

The U.S. District Court for the Central District of California granted in part defendant Porsche Cars North America Inc.'s motion to dismiss a putative class action alleging that defendants' Taycan automobiles were defective. According to plaintiff, the challenged vehicles were equipped with a number of functions that did not work as advertised, including the cockpit display, ApplePlay infotainment system, the air conditioning and heating system, and wireless phone charger. The court denied the motion to dismiss plaintiff's Song-Beverly Consumer Warranty Act Claim. However, the court dismissed plaintiff's consumer protection claims because, although plaintiff had standing to pursue these claims, plaintiff failed to allege any misrepresentations or omissions with sufficient particularity but dismissed plaintiff's other state law claims for

failure to plead with adequate particularly. Finally, the court denied plaintiff's motion to remand the case to state court.

December 14, 2023

New York court grants in part, denies in part motion to dismiss Lasko defective space heater lawsuit

The U.S. District Court for the Southern District of New York granted in part and denied in part defendant Lasko Products LLC's motion to dismiss a putative class action alleging that defendant's portable space heater products were defective. Plaintiff alleged that defective design or manufacturing of the product's temperature control board caused the product to overheat or shut off prematurely. The court denied the motion to dismiss New York General Business Law claims, finding that plaintiff adequately alleged injury under the premium price theory and that defendant's representations were materially misleading. The court also declined to dismiss plaintiff's consumer fraud statutes brought under other states' laws. However, the court dismissed plaintiff's breach of express warranty claims due to a failure to provide adequate pre-suit notice, as well as the breach of implied warranty claims due to lack of privity with defendant. Plaintiff's remaining Magnuson-Moss Warranty Act, unjust enrichment, and fraud claims were similarly dismissed.

December 11, 2023

Michigan court grants in part, denies in part motion to dismiss FCA defective hybrid battery MDL

The U.S. District Court for the Eastern District of Michigan granted in part and denied in part defendant FCA U.S. LLC's motion to dismiss a multidistrict class action alleging that defendant's Chrysler Pacifica Plug-in Hybrid minivan vehicle was defective. Plaintiffs alleged that the battery plant incorporated into the vehicle's powertrain contained a defect that caused it to enter a "thermal runaway" state, resulting in combustion or explosion of the vehicle. The court dismissed nationwide fraudulent concealment and fraudulent omissions claims because plaintiffs failed to identify any source of law or federal forum for such claims. The court further found that plaintiffs pled with sufficient particularity that the vehicles at issue were released between 2017 and 2018, that those vehicles had a defect, and that the defect was admitted to by defendant in a recall notice. Accordingly, the court denied the motion to dismiss plaintiffs' state statutory consumer protection claims, except for those brought under Indiana, Ohio, Wisconsin, and Texas law, as plaintiffs did not oppose their dismissal. Additionally, the court denied to dismiss most of plaintiffs' breach of implied warranty claims but dismissed those brought under Arizona, Idaho, and Wisconsin law for lack of privity. The court found plaintiffs adequately alleged that the defect made them unable to safely charge their batteries, thus making the vehicles unfit for their intended use.

December 08, 2023

New York court dismisses Tom's of Maine 'antiplaque' toothpaste lawsuit

The U.S. District Court for the Northern District of New York granted defendant Tom's of Maine Inc.'s motion to dismiss a putative class action alleging that defendant falsely represented that its fluoride-free toothpaste prevented gingivitis and periodontal diseases. Plaintiff alleged that defendant's use of statements such as "antiplaque" and "prevent[s] tartar buildup" on the product packaging and on its website misled him into believing the product would prevent gingivitis and that the reduction in plaque would be therapeutically significant. The court found that the label did not include any language that represented the product as antigingivitic or that it prevented periodontal disease. Further, the court found that plaintiff failed to allege that the "antiplaque" and "prevent[s] tartar buildup" statements would mislead a reasonable consumer into believing that the product would prevent gingivitis and periodontal diseases. Therefore, the court dismissed plaintiff's New York General Business Law claims. The court also dismissed the multi-state consumer protection claims because plaintiff failed to identify which consumer fraud statutes defendant purportedly violated. Additionally, the court dismissed plaintiff's breach of express warranty, breach of implied warranty and Magnuson-Moss Warranty Act claims because plaintiff failed to provide adequate pre-suit notice and failed to allege the required privity of contract with the defendant.

December 08, 2023

California court grants in part, denies in part motion to dismiss L'Oréal 24-hour sun protection lawsuit

The U.S. District Court for the Northern District of California granted in part and denied in part defendant L'Oréal USA Inc.'s motion to dismiss a putative class action alleging that defendant falsely represented that its L'Oréal Infallible Pro-Glow and Teint Idole Ultra foundation products provided up to 24 hours of sunscreen protection. Plaintiff alleged that the drug facts panel on the back label indicated that the product must be reapplied at least every two hours for sunscreen use, which is contrary to the statements on the front of the label claiming up to 24 hours of protection. Regarding the Pro-Glow foundation claims, the court found that the disclosure indicating that the product needed to be reapplied every 2 hours for sunscreen use was located under a peel-back label, and a reasonable consumer would be unlikely to see the disclosure prior to purchase. Consequently, the court ruled that the 24-hour sunscreen claims on the Pro-Glow foundation label could deceive a reasonable consumer and denied the motion to dismiss. However, the court granted the motion to dismiss the Teint foundation claims, finding that the back-label instruction was located directly on the back label and was not under a peel-back sticker. As a result, the court ruled that a reasonable consumer would not likely have been deceived by the front-label statements and granted the motion to dismiss.

December 04, 2023

California court dismisses Roundup carcinogen lawsuit

The U.S. District Court for the Northern District of California granted defendant Monsanto Company's motion to dismiss a putative class action alleging that defendant knowingly sold its Roundup weed killer product even though it contained the known carcinogen N-Nitrosoglyphosate (NNG). Plaintiffs alleged that ordinary use of the product would cause NNG levels to rise above 1 ppm, the level at which the ingredient becomes carcinogenic. The court found that the complaint failed to adequately allege that the products produced NNGs in amounts greater than 1 ppm or that 1ppm was the level at which NNGs become carcinogenic. Accordingly, the court granted defendant's motion to dismiss plaintiff's breach of express and implied warranty claims and any claims based on an alleged misstatement or omission. The court also denied plaintiffs' request for further leave to amend their complaint.

November 30, 2023

California court dismisses NatureStar compostable storage bags lawsuit

The U.S. District Court for the Eastern District of California granted defendants NatureStar North America LLC and Target Corporation's motion to dismiss a putative class action alleging that defendants falsely represented their single-use tableware and food storage bags products as "compostable," despite containing significant amounts of perfluoroalkyl and polyfluoroalkyl substances (PFAS), which are not compostable. The court did not reach the arguments in defendant's motion to dismiss, instead dismissing plaintiff's claims for lack of subject matter jurisdiction. Plaintiff's complaint failed to allege a federal cause of action or demonstrate complete diversity under Rule 23, or to invoke the court's jurisdiction under the Class Action Fairness Act (CAFA). The court granted plaintiff leave to file an amended complaint to adequately plead the basis for the court's subject matter jurisdiction.

November 30, 2023

NAD recommends Royal Oak discontinue '50% bigger' and 'best grilling experience' claims for charcoal briquets

Following a challenge from Kingsford Products Company, NAD recommended that Royal Oak Enterprises, LLC discontinue or modify certain advertising claims for its Super Size charcoal briquets products. The challenged advertising claimed that the products were 50% larger than competing briquets and that they provided the "best grilling experience" because they burned hotter and longer than the competition. In support of its claims, Royal Oak provided third-party testing results and certificates from Applied Technical Services regarding the comparative size of the product. NAD determined that the sample size of the testing was too small to support the claim. Tests were conducted on only one to five briquettes from a single bag, which raised a possibility that the results were caused by chance and did not adequately show typical results. Therefore, NAD recommended that Royal Oak discontinue the "50% bigger" comparative claims. NAD also recommended that Royal Oak discontinue the claim "A

Bigger Briquet is a Better Briquet" because the evidence provided did not adequately show that a larger briquet size provided an overall advantage over smaller briquettes in either burn time or combustion speed. NAD determined "The Best Grilling Experience" claims were unsupported because they appeared in the context of the "50% bigger claims" and did not address other factors that provide a superior grilling experience, such as the ability to light fast and burn for a long time. NAD recommended that Royal Oak modify these claims to avoid conveying the message that the products provide the "best grilling experience" due to hotter burn temperatures and longer burn times than competing briquets. Royal Oak stated that it will comply with NAD's recommendations.

November 28, 2023

New York court dismisses L.L. Bean waterproof boots lawsuit

The U.S. District Court for the Western District of New York granted defendant L.L. Bean Inc.'s motion to dismiss a putative class action alleging that defendant falsely represented that its Women's Storm Chaser Boots were waterproof. Defendant argued there were no sales records of plaintiff purchasing the boots on the date mentioned in the complaint. According to the court, the lack of sales records coupled with the fact that plaintiff did not retain her receipt and purportedly donated the boots to a charitable organization, meant that plaintiff failed to establish she suffered an injury-in-fact. Consequently, the court ruled that without evidence of an injury, plaintiff failed to adequately allege standing to pursue her claims and the court granted defendant's motion to dismiss.

November 17, 2023

New York court grants in part, denies in part motion to dismiss Stop & Shop lidocaine patch false labeling lawsuit

The U.S. District Court for the Southern District of New York granted in part and denied in part defendant The Stop & Shop Supermarket Company LLC's motion to dismiss a putative class action alleging that defendant falsely represented that its adhesive lidocaine pain relief patch provided "Up to 8 Hours" of "Maximum Strength" pain relief. Plaintiff alleged that the label statements were misleading because the product cannot adhere to the skin for anywhere close to eight hours, and because prescription lidocaine patches contain a higher concentration of the active ingredient. The court found that plaintiff adequately alleged that a reasonable consumer would believe that the statement "Up to 8 Hours" meant that the product would remain on the body and provide relief for up to that length of time, and therefore declined to dismiss plaintiff's New York General Business Law (GBL) claim. However, the court dismissed plaintiff's claims as to the "Maximum Strength" statements, finding that a reasonable consumer would not be misled to believe that an OTC product provided the same level of pain relief provided by a prescription product. The court also dismissed plaintiff's breach of express warranty claims for failure to provide adequate pre-suit notice, as well as plaintiff's fraud and unjust enrichment claims.

NAD

August 29, 2024

NAD refers HiSmile comparative efficacy claims to FTC following Fast-Track SWIFT challenge

Following a Fast-Track SWIFT challenge from The Procter & Gamble Company (P&G), NAD referred advertising claims made by HiSmile PTY for its toothbrushes to the FTC and other regulatory authorities. P&G alleged that the challenged video advertisements made unsupported comparative efficacy claims disparaging P&G's competing Oral-B toothbrushes. This included claims that competing products had "1 million useless extras that you don't need" and that the HiSmile product was "here to replace your dodgy electric toothbrush." Although HiSmile notified NAD that it had removed one of the two challenged videos from TikTok, the other remains on the platform and HiSmile has yet to notify NAD that the challenged claims have been permanently discontinued. Since HiSmile has opted not to participate in the self-regulatory process, NAD referred the matter to the FTC and other regulatory bodies for review and possible enforcement action. Additionally, NAD will refer the matter to platforms on which the challenged advertising appeared.

August 21, 2024

SharkNinja voluntarily discontinues '500x less dust exposure' claims following Fast-Track SWIFT challenge

Following a Fast-Track SWIFT challenge from Dyson, Inc., SharkNinja Operating, LLC voluntarily discontinued certain advertising claims for its Shark Clean & Empty Cordless Stick Vacuum & Auto Empty System. The challenger argued that SharkNinja's claim that the product offered "500x less dust exposure" reasonably conveyed an unsupported comparative superiority message and that its disclosure, which read "Based on third-party plume testing while emptying vs. manual emptying," was inadequate. In addition to discontinuing the challenged claim, SharkNinja stated that all future claims of comparative dust exposure would include a modified disclosure clearly outlining that the basis for the comparison was the Shark Navigator product. As a result, NAD did not review the challenge on the merits and, for compliance purposes, will treat the advertising as though NAD recommended that it be discontinued.

August 20, 2024

NAD recommends Happy Mammoth discontinue heath-related claims for Hormone Harmony supplement

Following a challenge as part of its routine monitoring program, NAD recommended that Happy Mammoth discontinue certain advertising claims for its Hormone Harmony dietary supplement product. The challenged advertising made several health-related claims, including that the product relieves symptoms of menopause, alleviates hot flashes, improves sleep quality and reduces bloating and gas. NAD determined that the

studies provided by Happy Mammoth did not adequately support the menopause symptoms and hot flashes claims because they tested individual ingredients in amounts that varied from those in the product formula. NAD, therefore, recommended that the claims be discontinued. Likewise, NAD determined that the studies Happy Mammoth provided to support sleep quality claims were insufficient because the participants were not representative of the consumers who would be using the product. Consequently, NAD recommended that Happy Mammoth also discontinue that claim. Finally, NAD recommended that Happy Mammoth discontinue the bloating and gas claims because the studies failed to test the ingredients' effects on bloating and gas and did not involve humans. Happy Mammoth stated that it would comply with NAD's recommendations.

August 13, 2024

NAD recommends ASO discontinue 'up to 2x faster healing claims' for hydrocolloid bandages

Following a challenge from Johnson & Johnson Consumer Inc., NAD recommended that ASO LLC discontinue the advertising claims that its hydrocolloid bandages provide "up to 2x faster healing." The claim appeared on product packaging, media platforms, and retailer websites next to the advertiser's "SMART-HEAL" trademark and a disclosure reading, "*Hydrocolloids have been shown to heal minor cuts, scrapes, abrasions, lacerations, blisters, and scalds up to 2x faster than a simple dry bandage. Journal of Athletic Training 2007; 42(3):422-424." NAD determined that the claims could reasonably convey the unsupported messages that ASO's Smart-Heal technology promotes faster healing than competing hydrocolloid bandages and that hydrocolloid bandages can heal wounds two times faster than dry bandages. Although ASO provided evidence showing that hydrocolloid bandages improve healing times, the company failed to show that wounds heal twice as fast when using hydrocolloid bandages as opposed to dry bandages. Further, because ASO failed to provide any evidence of its own bandages' healing times, NAD concluded that the evidence did not support the "up to 2x faster healing" claims and recommended they be discontinued. However, NAD found that the claims did not, as Johnson & Johnson argued, convey an implied message that the products had premarket approval from the FDA as Class III medical devices because consumers are likely unfamiliar with the FDA's rules on accelerated healing claims, which classify bandages that can be purchased off the shelf or online without a prescription as Class III devices. ASO stated that it would comply with NAD's recommendations.

July 29, 2024

NAD recommends SharkNinja modify '30% lighter' and '50% better dirt pickup' claims for Cordless Detect Pro product, finds other claims supported

Following a challenge from Dyson, Inc., NAD determined that SharkNinja Operating Company LLC provided a reasonable basis for certain advertising claims made for its Shark Cordless Detect Pro Auto-Empty System base but recommended that certain claims be discontinued or modified. NAD determined that claims that the product

"holds dirt and debris for up to 30 days" were supported by the combined results of a pair of debris studies conducted on consumer homes. NAD concluded that, given the studies' parameters, most consumers could achieve the 30-day benefit. NAD also determined that the claim that the product is "30% Lighter than the Shark Vertex Pro" was supported but recommended that SharkNinja modify the claims to clearly and conspicuously disclose the specific Shark cordless stick that forms the basis of the comparison. NAD, however, determined that the claim "Take on any spot in your home with full-sized* cordless power in a 30% lighter** frame" conveyed the unsupported message that the object of comparison for both weight and performance was the same vacuum and, therefore, recommended that SharkNinja modify the claim. Additionally, NAD determined that the claim "up to 50% better dirt pickup" conveyed the unsupported message that the product achieves up to 50% better dirt pickup than competing vacuums. As a result, NAD recommended that SharkNinja discontinue the claim or modify it to make clear that the product achieves 50% better dirt pickup in "Boost Mode" than in "Eco Mode." SharkNinja stated that it would comply with NAD's recommendations.

July 24, 2024

NAD recommends Dr. Luke Healthcare discontinue nail fungus treatment claims

Following a challenge from Advantice Health, NAD recommended that Dr. Luke Healthcare discontinue certain advertising claims for its Dr. Luke Fungal Nail Renewal product. The challenged advertising made various health-related claims, including that the product treats nail fungus, is natural, and is doctor-recommended. NAD determined that the claims related to the product's ability to treat nail fungus were not supported by reliable scientific evidence. According to NAD, the studies provided by Dr. Luke Healthcare tested products that, like the Fungal Nail Renewal product, contained acetic acid but differed compositionally in terms of dosage and mode of administration and thus did not support the claims. Further, NAD found that the FDA's OTC monograph regarding 1% Tolnaftate, another ingredient in the product, did not support the claims because the FDA has listed 1% Tolnaftate as safe and effective for skin fungus but not nail fungus. NAD, therefore, recommended that Dr. Luke discontinue the treatment claims. NAD also determined that the "natural formula" claim reasonably conveyed the message that the product was made without artificial ingredients. Because the active ingredient in the product is a synthetic compound, NAD held that the natural claims were unsupported and recommended that they be discontinued. Finally, NAD determined that the challenged advertising's use of imagery of a man in a white coat with a stethoscope conveyed the message that the product is doctor-recommended or that it treats a medical condition. Although Dr. Luke voluntarily discontinued its doctor-recommended claim, NAD recommended that the advertising be modified to avoid conveying such a message in the future. Dr. Luke Healthcare stated that it disagrees with NAD's assessment but will comply with the recommendations.

July 17, 2024

NAD finds flag image on Kendamil infant formula packaging supported, recommends website disclosures in Fast-Track SWIFT challenge

Following a Fast-Track SWIFT challenge from Mead Johnson & Company, LLC, NAD recommended that Kendal Nutricare modify certain advertising claims for its Kendamil infant formula but found other claims supported. Mead Johnson challenged Kendal's use of a blue circular logo with nine gold stars on its packaging and website, arguing that it conveyed the misleading message that the products were made in the European Union when they are actually made in the United Kingdom ("UK"). NAD determined that the flag logo on the product's packaging, which appeared alongside other statements and images on the package, including claims that the product is "European Made," "made from love in Europe," and originated from the UK, was not misleading because it created a net impression that the product is made in continental Europe, which includes the UK. However, NAD determined that Kendal's website advertising for the product was misleading because it made references to Europe generally without identifying a specific country of origin. As a result, NAD recommended that Kendal modify the advertising on its website to disclose the product's country of origin. Kendal agreed to comply with the recommendations.

July 16, 2024

GuruNanda voluntarily discontinues influencer claims for coconut pulling oil products following Fast-Track SWIFT challenge

Following a Fast-Track SWIFT challenge from Oral Essentials, Inc., GuruNanda, LLC notified NAD that it would permanently discontinue certain advertising claims for its coconut pulling oil products. The challenged advertising claimed that GuruNanda's Coconut + Mint Pulling Oil and Cocomint Pulling Oil with 7 Essential Oils, can "naturally reverse a cavity" and "reverse cavities." These claims appeared in videos posted on the social media accounts of TikTok and Instagram influencers, with some re-posted on GuruNanda's social media accounts. GuruNanda stated that it did not authorize the claims made by the influencers and that it would discontinue the content. As a result, NAD did not review the claims on their merits and will treat the claims, for compliance purposes, as though NAD had recommended they be discontinued.

June 28, 2024

Alfloia voluntarily discontinues HEPA, H13 compliance claims following NAD challenge

Following a challenge from Vesync Corporation, Homintell Inc. (d/b/a Afloia Direct) voluntarily discontinued certain advertising claims for its air purifier products. The challenged advertising included claims that Afloia's products were compliant with HEPA and/or H13 standards, which Vesync argued were unsubstantiated. Although Alfolia provided testing it believed substantiated the claims, it stated that it would voluntarily discontinue the HEPA and H13 claims. As a result, NAD did not review the claims on their merits and, for compliance purposes, will treat the claims as though it recommended they be discontinued.

June 27, 2024

NAD finds Native brand personal care products' "simple" and safety claims supported; recommends discontinuation or modification of certain others

Following a Complex Track Challenge from SC Johnson & Son Inc., NAD determined that The Procter & Gamble Company had supported its use of the word "simple" in the tagline "Clean. Simple. Effective" for P&G's Native brand of personal care products. NAD recognized that simple formulas with fewer ingredients are relevant for today's consumers, with many searching for minimalist beauty products, and that P&G had substantiated its claims that Native product formulations are "simple" and contain few ingredients. NAD also concluded that P&G's monadic safety claims, such as "safe & simple products made without harsh ingredients," were supported by evidence of P&G's robust safety protocol. NAD recommended that P&G modify or discontinue its use of the phrase "simple ingredients" on the Native website for certain products to avoid conveying that those ingredients were minimally processed. NAD also recommended that P&G discontinue a website claim that Native was "Born in the USA" and "founded in San Francisco", concluding it could be read to refer to where the products were manufactured. In its Advertiser's Statement, P&G expressed its appreciation for NAD's determination that P&G's use of "simple" and "safe" to describe Native products is substantiated and noted that while it "respectfully disagrees" with certain of NAD's other determinations, it would comply with NAD's recommendations.

May 30, 2024

NAD refers TWiiSH skincare advertising claims to FTC

Following a challenge as part of its routine monitoring program, NAD referred advertising claims made by TWiiSH, a skincare company targeting teens, to the FTC for review after the company failed to provide a substantive response to NAD. The challenged claims include "The secret to clear, bump-free skin is TWiiSH", Peachy Clean and Zit Ain't Cute products use "powerhouse ingredients such as salicylic acid and colloidal silver" that "effectively tackle pimples without stripping or drying out your skin", and "TWiiSH formulas meet an extra level of scientific validity making them friendly for adolescent skin types when analyzed for overarching pediatric dermatology criteria". NAD alleged that the claims implied that TWiiSH has been tested on and is safe for adolescent skin. NAD also challenged TWiiSH's lack of disclosures of a material connection to TWiiSH in influencer-promoted advertising content.

May 23, 2024

NAD recommends Glad discontinue, modify trash bag claims, NARB reverses as to claims on product packaging

The Glad Products Company appealed NAD's decision in a Fast-Track SWIFT challenge initiated by Reynolds Consumer Products. NAD determined that Glad's "25% more durable" claims for its ForceFlex MaxStrength trash bags conveyed an unsupported comparative superiority message and recommended that Glad modify the claims to clearly and conspicuously disclose that the basis of comparison was other Glad

ForceFlex bags and not competing brands of tall kitchen bags. Glad accepted NAD's recommendations for its online advertising, but appealed the decision with respect to its product packaging. On appeal, the NARB panel determined that Glad's "25% more durable" claim was not misleading as presented on the ForceFlex product packaging but stated that this determination did not extend to the claim as presented in other forms of advertising.

May 21, 2024

NAD recommends Reckitt discontinue, modify dishwasher tablet claims

Following a challenge from The Procter & Gamble Company, NAD recommended Reckitt Benckiser modify or discontinue certain advertising claims for its Finish Powerball Ultimate Dishwasher Tablets products. Though Reckitt argued that the challenged advertising conveys the message that Finish Ultimate cleans better than all Finish-brand cleaning products and delivers excellent cleaning performance on tough dish stains, NAD determined that, depending on the context, these claims could convey a superiority message with respect to competing products. NAD recommended that Reckitt discontinue these claims or modify them to avoid conveying a comparative superiority message. NAD also recommended that Reckitt discontinue its advertisements that tie "Ultimate Clean" to "the toughest conditions" because the advertising depicted burnt-on stains that were far tougher to remove than the tested stains. In the decision, NAD noted that a cross-promotional advertisement between Finish Ultimate and Bosch Dishwashers was discontinued during the challenge, but advised Reckitt to avoid conveying the message that Finish Ultimate is recommended by Consumer Reports in future advertising. Reckitt stated that it will comply with NAD's recommendations.

May 16, 2024

NAD recommends HoldOn Bags discontinue, modify compostable trash bag claims

Following a challenge from The Glad Products Company, NAD recommended that HoldOn Bags Inc. modify or discontinue certain advertising claims for its trash bag products, but found other claims supported. The challenged advertising claimed the products were plant-based, nontoxic and capable of breaking down without producing microplastics or toxic residue. In support of the claims, HoldOn provided expert evidence and certifications from the Biodegradable Products Institute and TÜV Austria, which indicated the product's suitability for composting in both commercial and home environments. NAD determined that the evidence provided a reasonable basis for the claim that the products would break down in a composting environment. However, NAD concluded that the evidence did not support the claim that the products would break down in non-composting environments, such as landfills, and recommended that HoldOn modify its composting claims to disclose this fact. Additionally, NAD recommended that HoldOn discontinue or modify its general environmental benefits claims, noting that "generalized environmental claims are particularly difficult to substantiate because they can convey to consumers that a product provides wide-ranging benefits that are unlikely to be supported given the

inherent impact on the environment that product manufacturing entails." Additionally, NAD concluded that the evidence did not support the implied claims that the products were not plastic and recommended that HoldOn discontinue or modify the advertising to avoid conveying such a message. HoldOn stated that it will comply with NAD's recommendations.

May 15, 2024

Aerove voluntarily discontinues HEPA compliant air purifier claims in response to NAD challenge

Following a challenge from Vesync Corporation, Antadi LLC, d/b/a Aroeve Direct voluntarily discontinued certain advertising claims for its HEPA air purifiers. The challenged advertising claimed that certain models of Aroeve's air purifiers were compliant with HEPA and/or H134 standards. In response to the challenge, Aroeve notified NAD that it would permanently discontinue the claims for reasons unrelated to the challenge. Additionally, Aroeve advised NAD that it would not introduce new claims making similar representations that it was in the process of removing existing similar claims from its advertising. As a result, NAD did not review the claims on their merits and the claims will be treated, for compliance purposes, as though NAD had recommended their discontinuance.

May 09, 2024

NAD recommends Amyris Clean Beauty modify, discontinue 'clinically proven' claim for Biossance eye cream

Following a challenge as part of its routine monitoring program, NAD recommended that Amyris Clean Beauty, Inc. modify certain advertising claims for its Biossance Squalane & Marine Algae Eye Cream. In support of its claim that the eye cream is "Clinically-proven to quickly and visibly lift, firm and diminish the appearance of fine lines for a revitalized eye area," Amyris provided the results of a clinical study that included instrumental measurements of skin hydration and elasticity, digital photographs, and participant questionnaires. NAD recommended that Amyris discontinue the "clinically-proven" portion of the claim because the subjective participant questionnaire portion of the study did not support the claim. NAD found that the remaining portions of the claim were supported by the evidence and recommended that Amyris modify its advertising to reflect that the "quick" and "visible" results pertain only to hydration and the appearance of fine lines. NAD also recommended that Amyris add disclosures to the advertising clarifying Reese Witherspoon's material connection to Amyris as a Biossance brand ambassador. Additionally, NAD cautioned Amyris to evaluate its relationships with publishers and determine whether its posts on various platforms are considered advertising or unbiased editorial content. Finally, during the proceedings, Amyris notified NAD that it had voluntarily discontinued the "#1 Best-Selling eye cream at Sephora" claim, which will be treated for compliance purposes as though NAD recommended its discontinuance. Amyris stated that it will comply with NAD's recommendations.

May 08, 2024

NAD recommends Unilever modify, discontinue advertising claims for Degree Advanced antiperspirant

Following a challenge from The Procter & Gamble Company (P&G), NAD recommended that Unilever United States Inc. discontinue or modify certain advertising claims for its Degree Advanced Antiperspirant product. NAD held that Unilever's commercials and social media videos in its "Gray T-Shirt Challenge" advertising campaign convey the message that Degree Advanced antiperspirant completely prevents underarm sweat and sweat marks throughout intense exercise, and these claims were unsupported by the scientific studies that Unilever provided. Consequently, NAD recommended that Unilever modify its advertising to avoid conveying that unsupported message and that Unilever discontinue the express claims "moving for hours. Still dry," "no sweat marks," "while your workout will leave your gray t-shirt soaked, Degree will protect those pits at all costs," and other similar claims. NAD also recommended that Unilever discontinue a commercial comparing Degree Advanced to P&G's Old Spice products that communicated the unsupported messages that the Degree Advanced lineup provides superior wetness protection and that users of Old Spice antiperspirants will experience visible underarm sweat marks during intense exercise before Degree Advanced users will experience any visible underarm sweat marks. Unilever stated that it would comply with NAD's recommendations.

April 12, 2024

NAD finds Fenty Skin makeup cleanser claims supported, recommends modifications to influencer disclosures

Following a challenge as part of its routine monitoring program, NAD determined that Fenty Skin LLC provided a reasonable basis for certain advertising claims for its Melt AWF Jelly Oil Makeup-Melting Cleanser product, but recommended that the company discontinue or modify other claims. The challenged advertising made express and implied claims regarding the product's efficacy in removing makeup, dirt and other impurities from users' skin "without the stripping or drying." In support of the claim, Fenty Skin provided the results of independent clinical testing and consumer use surveys evaluating the product. NAD determined that the study's methodology was reliable and that the consumer use survey provided additional support that the product's performance was relevant to consumers and met expectations for removing longwear and waterproof makeup. NAD also inquired about certain product demonstrations by influencers Sarah Novio and Crème Fatale that were re-posted on Fenty Skin's Instagram page. Fenty Skin notified NAD during the proceedings that Crème Fatale's Instagram page had been updated to include a "paid partnership" disclosure, as well as "#ad" and "#sponsored" disclosures in the caption. While the disclosure informs consumers of the material connection between Fenty Skin and the influencer, NAD recommended that Fenty Skin require Crème Fatale to modify the challenged product demonstration to clearly and conspicuously disclose her material connection to Fenty Skin in the content of the posted video itself. Likewise, NAD recommended that a re-post of the video on Fenty Skin's own Instagram page include a similar disclosure. Additionally, Fenty Skin notified NAD that it requested that Ms. Novo update her

demonstration posts to include a clear disclosure that she received the product for free. For compliance purposes, NAD will treat the claim as though it recommended the modification. Fenty Skin stated that it will comply with NAD's decision.

April 11, 2024

NAD recommends HiSmile discontinue teeth whitening product advertising claims

Following a challenge from The Procter & Gamble Company, NAD recommended that HiSmile PTY discontinue certain advertising claims for its PAP+ Strips and V34 Color Correcting Serum tooth whitening products. The challenged advertising claimed that peroxide-based teeth whiteners are "painful" to use and "damage" gums and teeth. The advertising also claimed that HiSmile's products offer at-home whitening treatments that are "just as effective" as peroxide-based treatments "without the nasty side effects." In support of the claims, HiSmile submitted documents it claimed demonstrated that peroxide-based whiteners cause risk of pain, sensitivity or damage to gums and teeth. NAD determined that this evidence failed to support HiSmile's claims, noting that though the evidence showed that peroxide-based whiteners may cause short-term tooth sensitivity, it did not demonstrate they are painful or cause gums and teeth to "break down." Therefore, NAD recommended that the safety claims be discontinued. NAD also held that there was no evidence on record showing that HiSmile's Phthalimidoperoxycaproic acid method of teeth whitening was as effective as peroxide treatments and also recommended that these claims be discontinued. HiSmile stated that it intends to appeal NAD's decision.

April 04, 2024

NAD refers HEPA, H13 standards claims for Afloia air purifiers to FTC for review

Following a challenge from Vesync Corporation, NAD will refer advertising claims made by Homintell Inc. (d/b/a Afloia Direct) about its various Air Purifier products to the FTC and other regulatory authorities for review. The challenged advertising claimed that Afloia products passed HEPA and/or H13 standards, which Vesync argued was unsubstantiated based on independent third-party testing. Because Afloia declined to participate in the NAD self-regulatory process, NAD referred the claims to the FTC and other regulatory bodies for possible enforcement action. NAD will also request that social media platforms review the challenged claims to determine if they are consistent with their advertising standards or policies.

April 04, 2024

NAD recommends Glad modify '25% more durable' garbage bag claims in Fast-Track SWIFT challenge

Following a Fast-Track SWIFT challenge from Reynolds Consumer Products LLC, NAD recommended that The Glad Products Company modify claims that its Glad ForceFlex MaxStrength garbage bags are "25% more durable." The challenged claim included a disclosure indicating that the basis for comparison was the Glad 13-gallon ForceFlex bag. NAD determined that the claim was misleading because the disclosure was

difficult to read without magnification and recommended that Glad clearly and conspicuously disclose the basis of comparison in close proximity to the "25% more durable" claim. NAD also recommended that Glad modify the disclosure, which was hyperlinked in online advertisements, to incorporate it into the main claim. Glad stated that it will comply with NAD's recommendations.

March 26, 2024

NAD recommends Naked & Thriving discontinue, modify claims on Bare Beauty Babes blog

Following a challenge as part of its routine monitoring program, NAD recommended that Naked & Thriving Inc. discontinue certain advertising claims published on its Bare Beauty Babes blog and social media. The challenged claims, appearing on both the blog and Instagram, included an article authored by dermatologist Dr. Gabriela Vee titled "Does Hyaluronic Acid Help to Fight Signs of Aging? I've Tested Hundreds of Hyaluronic Acid Serums – Here are 5 That Actually Work." The article included the claim "Peter Thomas Roth Drench Hyaluronic Cloud Serum – This product has a very high amount of hyaluronic acid [75%] in addition to silk proteins, zinc, copper, manganese, iron, and silicon to increase moisture levels and soften skin." NAD recommended that Naked & Thriving discontinue the expert endorsement on the blog, noting that there was no evidence on record establishing Dr. Vee's expertise or qualifications. Further, NAD determined that there was no evidence on the record demonstrating objective criteria used to rank or rate the products mentioned in the article. In addition, NAD expressed concerns that the article blurred the lines between editorial content and advertising, as the Bare Beauty Babes blog was owned and sponsored by Naked & Thriving. As a result, NAD recommended that Naked & Thriving's endorsers clearly and conspicuously disclose their connection to the Naked & Thriving brand when that connection is not reasonably communicated through the blog or social media post. During the inquiry, Naked & Thriving added a disclosure to the Bare Beauty Babes website regarding its connection to Naked & Thriving. Additionally, Naked & Thriving notified NAD that the website no longer promotes or recommends products. Those changes will be treated for compliance purposes as though NAD recommended modification. Naked & Thriving stated that though it disagrees with certain aspects of NAD's decision, it will comply with the recommendations.

March 21, 2024

NourishMax voluntarily discontinues Diamond Infused Eye Cream advertising claims in response to NAD challenge

Following a challenge as part of NAD's routine monitoring program, NourishMax voluntarily discontinued certain advertising claims for its Diamond Infused Eye Cream. NAD challenged claims that appeared on the Skincarebrandsreviews website, which was operated by NourishMax, suggesting that the site researched and tested hundreds of eye care products and gave the NourishMax high ratings in various categories. NAD challenged the implied claim that the Skincarebrandsreviews site was an independent review site. During the pendency of the inquiry, NourishMax notified NAD that it had

permanently discontinued the challenged claims and that it intended to take down the Skincarebrandsreviews webpage. As a result, NAD did not review the claims on their merits and will treat them, for compliance purposes, as though it recommended their discontinuance.

March 14, 2024

Ginger Health voluntarily modifies, discontinues advertising claims for Wonderbelly Antacids in response to NAD challenge

Following a challenge from Haleon plc, Ginger Health Company voluntarily modified certain claims for its Wonderbelly Antacid products. Ginger Health notified NAD that it modified its influencer posts to include "#ad" and "#WonderbellyPartner" hashtags and required its influencers to add a verbal notice of their partnership with the company in all future video content. In response, NAD recommended that Ginger Health clearly and conspicuously disclose any material connection with an influencer in advertising content. Ginger Health also stated that it modified its advertising to avoid conveying the message that competing products cause cancer or are otherwise harmful. For compliance purposes, NAD will treat the modified and discontinued claims as though it recommended their modification or discontinuance. Additionally, NAD determined that the claims that the product is "Free from talc, dyes, artificial sweeteners, parabens and genetically modified ingredients" and that "Wonderbelly is committed to happy bellies," is "belly quelling," and ensures "no more bad belly" did not convey any misleading messages. Ginger Health stated that it will comply with NAD's recommendations.

March 07, 2024

NAD recommends Amyris Clean Beauty modify, discontinue beauty products sustainability claims

Following a challenge as part of its routine monitoring program, NAD recommended that Amyris Clean Beauty, Inc. modify or discontinue certain advertising claims for its Biossance beauty products, but found other claims supported. NAD recommended that Amyris modify or discontinue the claim "Clean ingredients and clean formulas – we ban over 2000 ingredients that are known to be toxic to you and the environment," because it was not clear whether the 2,000 ingredients referenced in the claim are typically used in cosmetic products. NAD also recommended that Amyris modify or discontinue the claim "keeping 2 million sharks every year safe from liver harvesting." Because Amyris did not provide a reliable calculation of the number of sharks killed per year and amount of shark liver oil harvested by the cosmetics industry, there was no way to reliably determine how many sharks Amyris had saved. NAD further recommended that Amyris modify or discontinue the claim "All of our ingredients are also ethically and sustainably sourced" because the evidence on record did not reliably show that the ingredients used in the Biossance products were actually ethically and sustainably sourced. Finally, NAD determined that the three studies provided by Amyris reasonably supported the claim "a hero ingredient in *every* Biossance

formula? This miracle multitasker locks in weightless moisture, calms and protects, and improves elasticity." Amyris stated that it will comply with NAD's recommendations.

February 26, 2024

Calico Brand voluntarily discontinues '#1 Selling Multi-Purpose Lighter' claims following NAD challenge

Following a challenge from Bic USA Inc., Calico Brands, Inc. voluntarily discontinued certain advertising claims for its Scripto Aim 'n Flame MAX Lighter. The challenged advertising claimed that the product was the "#1 Selling Multi-Purpose Lighter." During the proceedings, Calico informed NAD that it had permanently discontinued the challenged claims. As a result, NAD did not review the claims on their merits and will treat the claims, for compliance purposes, as though NAD had recommended their discontinuance.

February 22, 2024

NAD recommends Stihl modify, discontinue 'Made in America' advertising claims

Following a challenge from Milwaukee Electric Tool Corporation, NAD recommended that Stihl Incorporated USA discontinue or modify certain claims for its outdoor power equipment products. The challenged advertising stated that Stihl's products were "Made in America" and included images of the American flag with a disclosure stating, "A majority of STIHL products sold in America are made in America of U.S. and global materials." NAD determined that despite the disclosure, a reasonable consumer would believe that all or virtually all of Stihl's products and components were made in the United States. In support of its claims, Stihl provided NAD with a description of the process by which it determines whether a product is made in the United States. Stihl stated that the majority of its products were manufactured in the United States but noted that some of its products include foreign components or are entirely made overseas. As a result, NAD recommended that Stihl discontinue its unqualified "Made in America" claims. Further, NAD recommended that Stihl modify its qualified claims to clarify that some of its products are manufactured, or contain parts that are manufactured, outside the United States. Stihl agreed to comply with NAD's recommendations.

February 13, 2024

Performance Designed Products voluntarily modifies, discontinues video game motion control claims following Fast-Track SWIFT challenge

Following a Fast-Track SWIFT challenge from ACCO Brands USA, LLC, Performance Designed Products LLC (PDP) voluntarily modified or discontinued certain advertising claims for its video game controller. The challenged advertising claimed that the controllers have motion control functionality, despite lacking that feature. In response to the challenge, PDP voluntarily discontinued the claims that its products have motion control functionality. Further, PDP voluntarily modified its product labels and website statements for its non-motion control products to add the disclosure "Motion Controls

Not Supported." As a result, NAD did not review the claims on their merits and will treat the discontinued and modified claims, for compliance purposes, as though NAD had recommended their discontinuance or modification. PDP stated that it had previously communicated to NAD that it had corrected the labels on its non-motion control products, which it attributed to a packaging error, prior to receipt of the challenge. As such, PDP stated that it disagrees with the assertion that it voluntarily discontinued the challenged claims as a result of the proceedings.

February 08, 2024

NAD recommends Kimberly-Clark discontinue '#1 Best Fitting Diaper' claims

Following a challenge from The Procter & Gamble Company (P&G), NAD recommended that Kimberly-Clark Inc. (K-C) discontinue or modify certain advertising claims for its Huggies Little Movers and Little Snugglers diapers. NAD recommended that K-C discontinue its "#1 Best Fitting Diaper" claim. NAD found that that consumers could reasonably understand the claim to apply to all Huggies diapers, which was not supported. Additionally, NAD determined that K-C was unable to substantiate the claim even with respect to its Little Snugglers and Little Movers products because it provided only a summary of the studies and left out key data points, including the size and weight of the babies, the quantified results and any statistical analysis of the results. P&G also challenged variations of the #1 claim that appeared in the context of side-by-side comparisons with P&G's competing Pampers products, which used animated dotted lines to accentuate the differences in the shape of the products. NAD concluded that while the side-by-side display did not convey a message of superiority that required substantiation, it recommended that the comparison be modified so that the dotted lines are used to depict equivalent parts of each diaper. NAD also recommended that K-C modify side-by-side comparisons in Little Snugglers commercials to avoid conveying the message that Huggies have a superior fit because they have more curves. Finally, NAD determined that the "#1 Fitting Diaper" claims, coupled with imagery of a baby in a diaper bouncing on a man's head, did not reasonably convey a superior leakage protection message. K-C stated that while it disagrees with some of NAD's conclusions, it will comply with the recommendations.

January 11, 2024

NAD recommends SharkNinja discontinue, modify 'America's #1 Floorcare Brand' claims in Fast-Track SWIFT challenge

Following a Fast-Track SWIFT challenge from Bissell Homecare, Inc., NAD recommended that SharkNinja Operating LLC discontinue or modify certain advertising claims for its vacuum cleaner products. The challenged advertising claimed that SharkNinja was "America's #1 Floorcare Brand" and was accompanied by a disclosure stating, "Source: The NPD Group/Retail Tracking Service, brand level U.S. dollar sales, 12 ME December 2022 (Floorcare is defined as Full Size Vacuums, Hand/Stick Vacuums, Specialty Cleaning, Non-Electric Carpet Sweepers)." NAD determined that the data referenced in the disclosure showed that although SharkNinja led Bissell in overall dollar sales, it actually sold four million fewer units than Bissell. According to NAD, a consumer

would reasonably expect that the "#1 brand" in the category is the brand with the highest number of units sold, even if a competing brand has higher dollar sales. As a result, NAD concluded that the challenged claim was not supported and recommended that SharkNinja discontinue or modify the claim to disclose, as part of the main claim, that it is the #1 brand in terms of dollar sales. SharkNinja stated that it will comply with NAD's recommendations.

January 10, 2024

Shuye Technology voluntarily discontinues 'fastest' hair dryer advertising claims in response to Fast-Track SWIFT challenge

Following a Fast-Track SWIFT challenge from Dyson, Inc., Shuye Technology Ltd. opted to permanently discontinue claims that its Swift, Swift SE, Swift Special, and Swift Premium hair dryers are the "fastest" on the market. Because Shuye voluntarily and permanently discontinued the challenged claims, NAD did not review them on their merits and will treat them as though NAD recommended their discontinuance for compliance purposes.

December 22, 2023

NAD recommends IntelliBrands discontinue health-related claims for LegXercise products

Following a challenge from Actegy Health, Inc., NAD recommended that IntelliBrands, LLC discontinue certain advertising claims for its LegXercise products but found other claims supported. NAD determined that the passive exercise studies provided by IntelliBrands did not support the claims that the product provided a number of health benefits, including soothing leg pain, calming restless legs, and alleviating foot cramps. Consequently, NAD recommended that the health benefits claims be discontinued. NAD also recommended that IntelliBrands discontinue the claim "it's like having a physical therapist right in your own home" because it conveyed the unsupported message that using the product was equivalent to having a physical therapist for the treatment of a number of conditions. NAD also concluded that IntelliBrands failed to provide any evidence supporting the implied claim that using the product provided a health benefit equivalent to walking a certain number of steps. As a result, NAD recommended that these claims also be discontinued. However, NAD determined IntelliBrands provided adequate support for claims that the product provided continuous automatic leg movement and flex at the knee and ankle joints but cautioned it to avoid conveying the message that such movement or flex provides any health benefits. IntelliBrands stated that it will comply with NAD's recommendations.

December 20, 2023

Pretty Litter voluntarily discontinues comparative superiority claims in response to NAD challenge

Following a NAD challenge from The Clorox Company, Pretty Litter, Inc. voluntarily discontinued certain advertising claims for its cat litter products. The challenged advertising made denigrating claims about Clorox's competing product, Fresh Step clay litter, including that it "doesn't absorb odor, making your home stink" and that clay litter "drives allergies absolutely crazy." Clorox also argued that the challenged advertising made the implied claim that clay litter was ineffective at controlling odor and posed health and safety risks for users. During the proceedings, Pretty Litter conducted a review of its website and notified NAD that it would discontinue the challenged claims. The discontinued claims will be treated, for compliance purposes, as though NAD had recommended their discontinuance and Pretty Litter agreed to comply.

December 14, 2023

B-Stock Solutions voluntarily discontinues pre-owned mobile device claims in response to NAD challenge

In response to a challenge issued by Assurant, B-Stock Solutions, LLC voluntarily discontinued certain advertising claims for its pre-owned mobile devices. The challenged claims included express claims about B-Stock Solution's competition, including "Low recovery rates. They lowball sellers and negotiate down," "Low operational efficiency. Reliance on manual processes kills scalability," and "No control over where/how items are resold." During the proceedings B-Stock Solutions informed NAD that in lieu of substantiation, it opted to permanently discontinue all challenged claims. As a result, NAD did not review the claims on their merits and the discontinued claims will be treated for compliance purposes as though NAD recommended their discontinuance.

December 08, 2023

NAD recommends SharkNinja discontinue, modify Wandvac Self-Empty System claims

Following a challenge from Dyson, Inc., NAD recommended that SharkNinja Operating Company LLC discontinue or modify certain advertising claims for its Shark Wandvac Cordless Self-Empty System. NAD recommended that the advertiser discontinue claims that the product "holds up to 30 days of dust & debris" because they conveyed the unsupported message that the product's dust bin can hold all of the dust and debris collected in a 30-day span. NAD found that the study that SharkNinja provided in support of the claim was not a good fit because the sample size was too small given the significant variation in dust and debris accumulation in different households. NAD found the claim that auto-emptying the Wandvac vacuum allows for up to 100x less dust exposure compared to manually emptying was adequately supported by the evidence. However, NAD concluded that the 100x less dust exposure claims were not supported when compared to competing products. Therefore, NAD recommended

that SharkNinja modify the advertising to clearly and conspicuously disclose that the basis for the comparison was auto-emptying versus manual emptying. Further, NAD determined that imagery depicting a large dust cloud during manual emptying, when paired with the 100x claim, reinforced the unsupported comparative message about how much dust is created when using competing vacuums and recommended that SharkNinja avoid depicting dust cloud imagery alongside the 100x claims. NAD also recommended that SharkNinja modify HEPA-sealed claims to make clear that it was the Wandvac's base and not the vacuum itself that was HEPA-sealed. SharkNinja stated that while it disagreed with NAD's assessment, it would comply with the recommendations.

December 06, 2023

NAD refers Dr. Teal's melatonin sleep products claims to FTC for review

Following a challenge from The Procter & Gamble Company (P&G), NAD referred advertising claims made by PDC Brands for its Dr. Teal's-branded melatonin sleep products to the FTC for further review. The challenged advertising appeared on product packaging, social media posts and on the Dr. Teal's website. P&G argued that the challenged advertising made unsupported express and implied claims regarding melatonin's ability to provide sleep benefits to consumers and that Dr. Teal's Melatonin Sleep Line bath soaks, scrubs, moisturizers, balms and sprays were an effective alternative to orally ingested melatonin supplements. During the inquiry, PDC Brands informed NAD that, for reasons unrelated to the challenge, it was in the process of modifying or permanently discontinuing some of the challenged claims but refused to participate in the self-regulatory process for the remaining claims. As a result, NAD referred the matter to the FTC for review and possible enforcement action.

December 05, 2023

NAD recommends Dr. Squatch discontinue comparative superiority claims for deodorant products

Following a challenge from Unilever U.S., Inc., NAD recommended that Dr. Squatch LLC discontinue certain advertising claims for its personal care products but found other claims supported. NAD concluded that Dr. Squatch's use of skull and crossbones imagery, coupled with claims that the product contained "No harmful ingredients" conveyed the message that the ingredients found in competing personal care products were potentially harmful. According to NAD, the evidence did not support the claim that the ingredients excluded from Dr. Squatch's products would bring about the type of harm usually associated with the skull and crossbones image. Therefore, NAD recommended the imagery be discontinued. NAD also determined that Dr. Squatch discontinue the claim that "traditional mass market brands have been avoiding using natural ingredients in personal care products to make production cheaper and faster" because it failed to provide a reasonable basis for the claim. NAD also determined that the claims "I'm never going back to aluminum deodorant again!" and "No X ALUMINUM X TRICLOSAN X PHTHALATES . . . can't go back to that other junk" conveyed the message that other deodorant products are unsafe. NAD held there was no

evidence that the conventional deodorants made by competitors contain harmful chemicals such as triclosan or phthalates, or that products containing these ingredients are dangerous. Consequently, NAD recommended that Dr. Squatch discontinue these claims. However, NAD found that the claim "the personal care industry needs cleaning" would be understood by a reasonable consumer to be a reference to Dr. Squatch's commitment to manufacturing products with natural ingredients and did not convey a superiority message. Dr. Squatch stated that it will comply with NAD's recommendations.

November 29, 2023

NAD recommends Cariuma Central disclose material connection for social media endorsement posts

Following a challenge through its routine monitoring program, NAD recommended that Cariuma Central Pte., Ltd. modify certain advertising claims for its sneakers. NAD inquired about three social media posts appearing on the Instagram and Facebook accounts for Travel + Leisure, U.S. Weekly and The Quality Edit. The posts were labeled as "Sponsored" and included images of Cariuma's sneakers with links for consumers to purchase or learn more about the products. NAD took issue with the format used in the posts and questioned whether the posts were clearly presented as advertising rather than as editorial content. While the posts were labeled "Sponsored," NAD determined that it was not clear enough whether the sponsors were the publishers of the posts or Cariuma. Therefore, NAD concluded that a reasonable consumer may not be aware that the posts were paid endorsements by Cariuma. As a result, NAD recommended that Cariuma modify the posts to clearly and conspicuously disclose the material connection between it and the publisher of the social media posts. Cariuma stated that it will comply with NAD's recommendations.

November 22, 2023

NARB recommends Dr. Squatch discontinue Juke Box soap detergent claims

Following a challenge from Unilever U.S. Inc., NARB recommended that Dr. Squatch, LLC discontinue certain advertising claims for its Jukebox Soap products but found other claims supported. The challenged advertising claimed that competing products consisted of or contained detergents, that the Jukebox Soap products were "natural," and that the company's leadership was comprised entirely of women. In regard to the detergent claims, NARB agreed with NAD's assessment that, while technically accurate, the statements were still misleading because they reasonably conveyed the message that competing products are harsh and damaging to the skin. Therefore, NARB recommended that the claims be discontinued. NARB also agreed with NAD's conclusion that Dr. Squatch's "natural" claims were supported. According to NARB, the evidence provided showed that a reasonable consumer would consider the saponification process used in the soap's manufacture to be minimal processing and that the products were made almost entirely from natural or naturally derived ingredients. Finally, NARB concluded that NAD reached the proper conclusion in recommending that the statement "Who runs the world? Girls" in connection with the

statement “From our world-class natural perfumers and in-house artisan soap makers to our bubbly leadership, we’re a band of music & soap-lovin’ ladies” be discontinued or modified to avoid conveying the message that Jukebox was a women-run brand. However, during the review process, Dr. Squatch presented NARB with modified advertising that replaced the “Who runs the world? Girls” statement with “Meet the Band.” The panel concluded that the modified advertising communicated a different message and was adequately supported. Dr. Squatch stated that it will comply with NAD and NARB’s recommendations in future advertising.

November 21, 2023

Glow Fairy removes advertisements from Beauty website following NAD inquiry

In response to an inquiry through NAD’s routine monitoring program, Glow Fairy voluntarily removed certain advertising for its eye cream product on the Beauty and Style Daily website. NAD investigated whether the claim “2023’s ‘5 Best’ Eye Creams on the Market” conveyed the message that the recommendations for Glow Fairy’s product on the Beauty and Style Daily website were independent editorial endorsements or advertisements. NAD determined that there were no disclosures stating that the Beauty and Style Daily website was advertising Glow Fairy’s products. However, NAD noted that the top recommended product on the site was a Glow Fairy product and the “About Us” hyperlink on the website directed consumers to Glow Fairy’s own website. NAD cautioned Glow Fairy to include disclosures to avoid presenting advertising content as independent editorial endorsements. Glow Fairy stated that it will comply with NAD’s recommendations.

Telecommunications Cases

NAD

August 08, 2024

NAD recommends Verizon modify fixed wireless access internet service advertising claims Following a challenge from Charter Communications Inc., NAD recommended that Verizon Communications Inc. modify or discontinue certain advertising claims for its Verizon Home Internet Service but found other claims supported. NAD determined that claims that Verizon's fixed wireless access (FWA) service was "reliable" were supported because Verizon's uptime measurements provided a reasonable basis that consumers would receive uninterrupted service. NAD determined, however, that claims the FWA service was "fast" were unsupported because they equated the service, which operates on a wireless signal, with its wired broadband services. According to NAD, while Verizon provided evidence the FWA service provided download speeds needed for streaming, gaming and work, they did not meet the FCC's definition of broadband. Consequently, NAD recommended that Verizon modify the claims to clearly and conspicuously disclose the service for which the "fast" claim is being applied, in this case, its Fios Home broadband service. NAD also recommended Verizon modify the claim "Verizon 5G Home is fast, reliable home internet so you can game, stream and connect the way you want" to disclose the limitations of the service, such as the inability to stream in 4K. NAD also recommended Verizon modify the unqualified "no data limits" or "data caps" claims to disclose that the service limits streaming quality for high-data users. Verizon stated that it will comply with NAD's recommendations.

August 08, 2024

NARB recommends AT&T discontinue or modify Supplemental Coverage from Space advertising claims
Following a challenge from T-Mobile US Inc., NARB recommended that AT&T Services Inc. discontinue or modify an advertising claim that its Supplemental Coverage from Space (SCS) service is currently available. The specific commercial, which was initially challenged under NAD's Fast-Track SWIFT process, depicted an AT&T call connecting through a satellite relay alongside the claim "Making a satellite connection." As part of its initial decision, NAD determined that the challenged claim conveyed the implied message that the SCS service is currently available, despite the fact that AT&T has yet to fully implement such a system. NAD recommended that the claim be discontinued or modified to explicitly communicate that the technology depicted in the advertising was not presently available. On appeal, NARB affirmed NAD's decision and recommended that the claim be discontinued or modified to clearly and conspicuously disclose that the depicted service is future technology and not yet available to consumers. AT&T stated that while it disagrees with NARB, it will comply with the recommendations.

July 30, 2024

NAD determines Xfinity Internet ‘fast,’ ‘reliable,’ and ‘powerful' claims supported

Following a challenge brought by AT&T Services, Inc., NAD determined that Comcast Cable Communications Management, LLC provided a reasonable basis for certain advertising claims. According to AT&T, the challenged advertising made implied claims that Comcast’s Xfinity Internet service has superior speed, reliability and power than its competitors. NAD determined that the challenged advertising made a general statement that “not all internet providers are the same,” which did not convey a comparative superiority message. According to NAD, the statement reasonably conveyed the message that Xfinity Internet was itself fast, reliable and powerful and that consumers should consider these factors when deciding on which internet service to purchase. Further, NAD determined that the evidence provided, which included FCC reports, showed that Comcast’s service delivered 107% to 116% of its advertised download speeds to consumers, as well as consistent speeds and latency. Based on the evidence provided, NAD determined that Comcast substantiated the claims that Xfinity Internet was fast, reliable and powerful.

July 11, 2024

NAD recommends AT&T discontinue, modify SCS service claims following Fast-Track SWIFT challenge

Following a Fast-Track SWIFT challenge from T-Mobile US, Inc., NAD recommended that AT&T Services, Inc. discontinue or modify certain advertising claims for its cellular network. The challenged advertising claimed that AT&T’s Supplemental Coverage from Space (SCS) was available to its customers in areas with limited cell coverage. T-Mobile argued that the advertising was misleading because the SCS service is not yet available. NAD agreed, determining that the use of present tense messaging suggested that the SCS service was already accessible from AT&T. Therefore, NAD recommended that the advertising be discontinued or modified to clearly disclose that the SCS service is not available at this time. AT&T stated that it intends to appeal NAD’s decision.

April 03, 2024

NAD recommends Charter modify connectivity, reliability claims for Spectrum backup internet service

Following a challenge from AT&T Services, Inc., NAD recommended that Charter Communications, Inc. modify certain claims for its Spectrum Business Wireless Internet Backup Service. AT&T challenged the express claims that the service offers “Complete Connectivity & Reliability” during power outages. AT&T also alleged that Charter’s claims implied that subscribers would never lose their internet connection even during power outages and that their internet connections would not degrade or slow down during power outages. NAD determined that the challenged advertising conveyed the message that the service provides a continuation of service in the event of a power outage with the same reliability that subscribers would receive under normal operating

conditions. NAD found that Charter's disclosure - which informed viewers that the service was limited to approximately eight hours of battery life, was only available for a maximum of four devices, and did not guarantee uninterrupted service - was insufficient because it flashed on screen for just five seconds and was not displayed prominently. As a result, NAD recommended that Charter modify the claims to avoid conveying the message that the backup service would not degrade or slow down during a power outage. Charter stated that it will comply with NAD's recommendations.

April 01, 2024

NAD finds Cox 'Unbeatable 5G Reliability' claims supported

Following a challenge from AT&T Services, Inc., NAD determined that Cox Communications Inc. provided reasonable support for the claim that its Cox Mobile service provides its customers with "Unbeatable 5G Reliability." Cox relied on data from RootMetrics' Nationwide 5G testing, which measured the reliability of AT&T, T-Mobile and Verizon, to support its claims. Cox also relied on additional RootMetrics testing on devices used by Cox Mobile customers, as well as head-to-head 5G reliability testing of the Mobile Virtual Network Operator (MVNO), Cox Mobile, and its host network, Verizon. NAD determined that Cox's status as a "light" MVNO, combined with testing of Cox Mobile and Verizon Wireless in the same markets, as well as the evidence showing that Cox configures users' phones to operate on Verizon's network when they are "on the go," provided a reasonable basis to claim that Cox Mobile provides unbeatable 5G reliability. NAD also concluded that the challenged advertising did not convey an implied message that Cox Mobile offers superior 5G reliability than its all competitors. Rather, it conveyed a message that Cox Mobile is at parity with other providers.

March 21, 2024

NAD refers Spectrum home internet advertising claims to FTC for review

NAD referred advertising claims made by Charter Communications Inc. regarding its Spectrum home internet service to the FTC after Charter declined to participate in NAD's self-regulatory process. T-Mobile US, Inc., represented by Kramer Levin, issued two separate challenges against Charter alleging its advertising falsely denigrated T-Mobile's competing 5G Home Internet Service (T-HINT). In a Fast-Track SWIFT challenge, T-Mobile alleged that Charter's characterization of T-HINT as "Cell Phone Internet" falsely disparaged T-HINT, a dedicated home internet service. In another challenge, T-Mobile alleged that Charter's "Walls" commercial, which aired during a broadcast of Super Bowl LVIII, falsely denigrated T-HINT by claiming that the service was "blocked" by walls within the home. Because Charter opted not to participate in NAD's self-regulatory process, NAD referred the claims to the FTC and other regulatory authorities for review and possible enforcement action. Additionally, NAD indicated that it will ask platforms publishing the advertising to review the claims to determine if they are consistent with the platforms' advertising standards and policies.

February 21, 2024

NAD recommends Charter discontinue, modify 'save over $1,500' claims for Spectrum Mobile service in Fast-Track SWIFT challenge

Following a Fast-Track SWIFT challenge from Verizon Communications Inc., NAD recommended that Charter Communications, Inc. discontinue or modify advertising claims that customers will "save over $1,500 in their first year" if they switch to Spectrum Mobile. NAD determined that the advertising was misleading because it compared Spectrum's lowest-priced service tier with a plan that was not Verizon's lowest-priced service tier. NAD also noted that the challenged advertising failed to inform consumers that they must have the Spectrum Internet service to be eligible for the $1,500 cost savings. As a result, NAD recommended that Charter discontinue the claims or modify them to clearly and conspicuously disclose the Spectrum Internet requirement and the basis of its price comparison. Charter stated that while it disagrees with NAD's assessment, it will comply with the recommendations.

View the press release

February 08, 2024

NARB recommends Mint Mobile discontinue wireless service claims

Following a challenge from Verizon Communications Inc., NARB recommended that Mint Mobile, LLC discontinue or modify certain advertising claims for its mobile phone service plans. NARB agreed with NAD's determination that the claim Mint's Unlimited Plan was "now just $15/mo." failed to conspicuously disclose that for consumers to qualify for such a rate, they must prepay $45 for three months of service. Likewise, the panel recommended that Mint clearly and conspicuously disclose the upfront payment. However, NARB disagreed with NAD that the disclosure must be part of the main claim or in a similar font in order to be sufficiently conspicuous. As to the claim that Mint "cut out the cost of retail service and passed those sweet savings directly to you," the panel agreed with NAD's conclusions that the evidence on record did not support the claim and recommended that it be discontinued. Additionally, NARB found that social media hashtags such as "#verizonsucks" and "Bundlef*!" could be viewed as mere opinions or puffery. When taken in context with the social media posts as a whole, however, the panel found that the advertisements conveyed the message that Verizon "rips off" customers. Because Mint provided no substantiation for these disparaging claims, NARB recommended they also be discontinued. Mint stated that while it disagrees with the panel's assessment, it will comply with NARB's recommendations.

January 31, 2024

NARB recommends Comcast discontinue use of '10G' in network name

Following a challenge from Verizon Communications Inc., NARB recommended that Comcast Cable Communications, LLC discontinue certain advertising claims for its Xfinity 10G Network. NARB agreed with NAD's assessment that the term "10G," when used as both the name for the service and as a descriptor for the Xfinity Network, conveyed the message that all consumers would experience significantly faster speeds

on the 10G network than they would on the standard 5G network. Further, NARB agreed that the "10G" claim was unsupported because the evidence on record did not include data showing that users experienced faster speeds on Xfinity's "10G" network than on 5G networks. Additionally, the panel determined that, without market usage data, the recent availability of 10G speeds on Xfinity's Gigabit Pro service tier did not support the superior speed claim for the Xfinity network as a whole. However, NARB did not agree with NAD's assessment that the term "10G" indicated that the service provides 10th generation mobile technology rather than 10 gbps speeds. Comcast stated that while it disagrees with NARB's assessment, it will modify its advertising to comply with the recommendations. NARB made similar recommendations in a parallel challenge to Comcast's advertising initiated by T-Mobile US, Inc. in which T-Mobile was represented by Kramer Levin.

January 29, 2024

Verizon voluntarily discontinues 5G Home Internet claims following Fast-Track SWIFT challenge

Following a Fast-Track SWIFT challenge from Charter Communications, Verizon Communications, Inc. notified NAD that it voluntarily discontinued certain advertising claims for its 5G Home Internet Service. Charter argued that Verizon's claims that non-Verizon routers "only work close to the router" falsely implied that competing services, including Charter's, were outdated and could not provide Wi-Fi to multiple rooms. Because Verizon opted to permanently discontinue the challenged claims, NAD did not review them on their merits, and they will be treated as though NAD recommended their discontinuance for compliance purposes.

December 19, 2023

Cincinnati Bell voluntarily discontinues altafiber comparative superiority claims in response to NAD challenge

Following a challenge from Charter Communications, Inc., Cincinnati Bell, Inc. voluntarily discontinued certain advertising claims for its altafiber service. The challenged advertising claimed that fiber optic service is superior to cable service in terms of reliability, speed and other performance metrics. Cincinnati Bell initially argued that NAD lacked jurisdiction over the matter because the challenged advertising was targeted at just two regions rather than a nationwide audience. NAD disagreed, holding that the challenged claims were national in scope because they appeared on Cincinnati Bell's website and in a YouTube video. Further, NAD determined that the challenged advertising made comparative claims regarding Charter's telecommunication services, which is a national service. Therefore, NAD concluded that it retained jurisdiction over the challenged claims. In response to NAD's decision, Cincinnati Bell opted to voluntarily discontinue the challenged claims. As a result, NAD did not review the challenged claims on their merits and they will be treated for compliance purposes as though NAD recommended their discontinuance.

November 30, 2023

NAD recommends Comcast discontinue claims denigrating Verizon 5G services

Following a challenge from Verizon Communications Inc., NAD recommended that Comcast Cable Communications, LLC modify or discontinue certain advertising claims for its Xfinity home internet service. The challenged advertising claimed that the Xfinity service was superior in terms of speed, latency and consistency compared to Verizon's competing service. NAD determined that certain claims conveyed the message that Verizon 5G users experienced lags, signal distance and network congestions. According to NAD, the evidence provided by Comcast did not indicate that Verizon users receive subpar internet speeds or experience network reliability issues. Therefore, NAD recommended that Comcast discontinue or modify the advertising to avoid conveying the message that Verizon's service was unreliable and prone to subpar performance. However, NAD determined that the comparative performance testing conducted by SamKnowsBest.com showed that Xfinity provided faster and more consistent speed with less latency and lag than Verizon's competing service. As a result, NAD concluded that Comcast provided a reasonable basis for the claim "It's time for better internet. Switch to Xfinity." Comcast stated that it will comply with NAD's recommendations.

November 28, 2023

NAD recommend Charter modify, discontinue comparative superiority claims for Spectrum internet service

Following a challenge from T-Mobile US, Inc., represented by Kramer Levin, NAD recommended that Charter Communications Inc. modify or discontinue certain advertising claims for its Spectrum home internet service. The challenged advertising made express and implied claims suggesting the Spectrum service was superior to T-Mobile's competing service. The challenged claims appeared in television commercials and on various sections of Charter's webpage. In support of its claims, Charter provided Ookla Speed Consistency Data, market research on Netflix's downstream internet traffic, internet connection speed recommendations from Netflix and various press releases and articles punished by the FCC as well as the regulator's Home Broadband Guide. NAD determined that the provided evidence was not a good fit to support express claims that T-Mobile's home internet service was "spotty" and "glitchy" during peak times. According to NAD, there was no evidence that users of T-Mobile's service could not reliably stream live events even during peak hours. Further, the evidence offered did not provide any information as to the situations in which the T-Mobile service becomes unusable. Therefore, NAD recommended that the Charter discontinue the express claims that T-Mobile provided "spotty" or "glitchy" service or modify them to avoid conveying the message that the service was unusable and user must switch to Spectrum for a better streaming experience. NAD also recommended that Charter modify claims that T-Mobile's service was not a suitable home internet option for a family of five. NAD felt the included disclosure "Slower speeds based on Spectrum's analysis of Ookla Speed Test Intelligence data for median download speeds delivered during peak hours of 7pm-11pm Monday-Friday in Spectrum serviceable areas for Q4 2022," was not clear or conspicuous enough. Therefore, NAD recommended the

advertising be modified to limit the message to T-Mobile home internet during peak congestion times. NAD also recommended that Charter discontinue or modify a series of claims found on the Spectrum website that denigrated T-Mobile's home internet services. Charter stated that it will comply with NAD's recommendations.

November 28, 2023

NARB recommends Mint Mobile discontinue, modify 'now just $15/mo.' claims for Unlimited mobile plan service

Following a Fast-Track SWIFT challenge from AT&T Services, Inc., NARB recommended that Mint Mobile, LLC discontinue or modify certain advertising claims that its Unlimited plan was "now just $15/mo." NAD initially recommended that the claim be discontinued or modified to clearly and conspicuously disclose that that the advertised price was a promotional offer for three months of the service. On appeal, Mint Mobile argued that it provided a prepaid service for various lengths of time between three and 12 months, with the advertised price being for only a three-month term. Therefore, Mint argued, NAD's assessment that consumers would be surprised by a rate increase was incorrect because the service is prepaid for in full for the complete length of each plan. NARB determined that the use of the term "now" in the advertisements reinforced the message to a reasonable consumer that the advertised price reduction was applicable to all its Unlimited phone plans for all available durations. Further, NARB found that the information regarding the limitations of the $15/month offer was material for consumers because switching to a different Mint Mobile plan at the conclusion of the initial three-month term would result in a significant price increase. As a result, NARB recommended that Mint discontinue the "now just $15/mo." claim or clearly and conspicuously disclose that the offer was applicable only for the first three months of service either as part of the main claim or in a similar size text and font in close proximity to the main claim. Mint Mobile stated that it disagreed with NARB's assessment but that it will comply with the recommendations in future advertising.