Simpson Thacher

# The Ad Standard: Monthly Update

*May 2026*

In a busy month at the FTC, there was continued enforcement activity on misleading fees, including a settlement alleging StubHub deceptively advertised ticket prices in violation of the FTC's Fee Rule, and the announcement of a proposed rulemaking that could result in fines for deceptive fees for online food and grocery delivery services. In an enforcement action invoking the FTC's Review Rule, the FTC reviewed false advertising for a dietary supplement maker and examined the company's use of fake reviews to market its product. Additionally, FTC enforcement activity continues to target misleading earnings claims as well as fraud in the healthcare industry. And the FTC renewed its enforcement activity on Made in USA claims, an area the FTC has identified as a priority.

This month, NAD also provided guidance on the FTC's "Made in USA" standards, holding that if key ingredients in a product are imported, Made in USA claims are not supported.

Class action litigation over strike-through pricing has been active for years. This month, a federal district court dismissed claims that a strike-through price was misleading absent a showing that, by some objective measure, the plaintiff paid a price premium for the product. Similar claims were allowed to proceed under California law, however, due to its statutory provisions prohibiting misleading statements of fact concerning the reasons for, existence of, or amounts of, price reductions. Class action litigation on 100% claims has also been active for years. This month, a federal district court dismissed an action alleging that 100% chocolate claims were misleading, holding that "[c]hocolate is a composite product" that "contains other ingredients, by definition."

## TOPICS

# FTC Focus

## FTC Enforcement Activity

1. Made in the U.S.A. claims were the focus of three FTC enforcement actions alleging companies deceived consumers by falsely claiming, in advertising and labeling, that their products were American-made. As part of these actions, the FTC reached settlements with sellers of American flags and flagpole display kits, electronic dartboards, and footwear products, resolving allegations in separate federal court complaints that they violated the law by making unqualified and unsubstantiated "Made in USA" claims. These actions follow an Executive Order issued in March entitled "Ensuring Truthful Advertising of Products Claiming to be Made in America."

   FTC Announces "Made in the USA" Sweep, Including Three Law Enforcement Actions to Protect American Consumers and Businesses | Federal Trade Commission

2. The FTC announced a settlement with Publishing.com LLC and its two principals in an enforcement action alleging respondents misled consumers with claims that the company's programs and services would allow them to earn a substantial income publishing e-books and audiobooks online when most customers did not achieve the promised income. Consumers who sought refunds under the company's "no questions asked" guarantee allegedly discovered that the company imposed many additional conditions—often buried in fine print or lengthy terms of service—that made it difficult or impossible for them to get their money back. The FTC further alleged that the company frequently highlighted positive consumer reviews and testimonials without disclosure that some were incentivized or written by individuals with connections to the company. Under the settlement Publishing.com LLC and its two principals will pay $1.5 million and be required to substantiate earnings claims in the future.

   Publishing.com to Pay $1.5 Million for Misleading Consumers about How Much Income They Could Earn Using the Company's Products and Services | Federal Trade Commission

3. A federal court has ordered Christopher Carroll, one of the key operators of a timeshare exit scheme, to pay $140 million and has permanently banned him from marketing similar services over allegations that the scheme defrauded consumers—mostly older adults—out of more than $90 million. The court granted summary judgment to the DOJ and state of Wisconsin against Carroll, who was the last remaining defendant in the case. The scheme used direct mail and in-person presentations to make deceptive claims to pressure consumers into paying for timeshare exit services. Among other things, defendants falsely claimed to be associated with timeshare companies, falsely told consumers that they could not exit a timeshare without paying defendants' high fees, failed to provide promised refunds, and forced consumers to sign contracts they were told they could not cancel, which violated the FTC's Cooling-Off Rule.

   Court Orders Operator of Timeshare Exit Scheme to Pay $140 Million Related to FTC Allegations the Scheme Took Millions from Consumers | Federal Trade Commission

4. The FTC has obtained a temporary restraining order against NERD Solutions Inc., ED REF Inc., and their operators Natalie Rodriguez and Pablo Ortiz concerning allegations that they ran a student loan debt relief scheme that collected at least $8.8 million in violation of the FTC Act, the Telemarketing Sales Rule, the Impersonation Rule, and the Gramm-Leach-Bliley Act. The complaint alleged that defendants cold called consumers and pretended to be affiliated with the Department of Education or loan servicers and falsely promised them nonexistent student loan debt relief in exchange for illegal upfront monthly fees as high as $1,400.

FTC Stops Operation that Allegedly Targeted People Seeking Student Loan Debt Relief | Federal Trade Commission

5. At the FTC's request, a federal district court has temporarily halted an allegedly fraudulent telemarketing scheme that operated by impersonating the government and large insurance carriers to deceive consumers who were seeking health insurance into buying supposedly comprehensive PPO plans that did not in fact offer the promised coverage, exposing consumers to potentially significant and unexpected medical costs. The scheme also allegedly targeted already-insured consumers by claiming that they needed to pay to maintain or renew coverage. Noting the FTC's recent launch of its Healthcare Task Force, FTC Chairman Andrew N. Ferguson, commented that "Targeting unlawful conduct that drives up Americans' costs, especially healthcare costs, is one of my top priorities."

   FTC Sues to Stop Deceptive Health Care Scheme | Federal Trade Commission

6. Under a proposed administrative order, TruHeight, and its two principals, have agreed to settle FTC charges that they deceptively advertised the effectiveness of a range of supplements that purport to boost height growth in children and teens, and relied on reviews that were written by their own employees and vendors, or by consumers who were offered free products or discounts in return for writing 5-star reviews. According to the FTC's complaint, the growth claims were unsubstantiated because TruHeight lacked the competent and reliable scientific evidence required to back them up. The proposed order imposes a $4 million judgment on TruHeight and its principals, which will be partially suspended based on their inability to pay and, among other things, prohibits them from making false or unsubstantiated height and growth claims.

   FTC Takes Action Against TruHeight for Deceptive and Unsubstantiated Advertising of Supposed Height-Enhancing Supplements for Kids and Teens | Federal Trade Commission

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## Multilevel Marketing

1. In a proposed order settling FTC allegations, Stormy Wellington, a high-level participant in a multilevel marketing (MLM) company, will be prohibited from misrepresenting how much money new recruits can earn from various business ventures, and is required to notify her downline participants about the order's prohibition on making deceptive and unsubstantiated earning claims. By way of background, in MLMs, individual participants market and sell the MLM's products or services and recruit new participants, who themselves will sell the MLM's products or services and recruit new participants. The FTC's complaint alleged that Wellington made false or baseless earning claims on social media that new participants could make millions of dollars, but that most recruits made little to no money.

   FTC Takes Action Against High-Level MLM Participant who Deceived Workers About the Amount of Money They Can Earn | Federal Trade Commission

2. Under a settlement with the FTC, operators of MLM company Forever Living will be permanently prohibited from making deceptive earnings claims to resolve allegations that the company deceived consumers into believing that they could earn substantial profits from selling the company's health and wellness products and from recruiting new participants, when most participants made no money or lost money. The FTC alleged that Forever Living used images of luxury cars and giant checks, and claims of profits ranging from extra income to replacing a full-time job to tout the potential earnings.

FTC Order to Prohibit Forever Living and its Operators from Deceiving Consumers about Potential Earnings | Federal Trade Commission

3. In an order settling FTC allegations, Steven and Gina Merritt, senior-level participants in a MLM called LifeWave, will be prohibited from misrepresenting how much money others can earn from various business ventures. The FTC alleged that defendants deceived consumers in person and through social media about the amount of money they could earn from selling products and recruiting new participants for the company, but LifeWave's own income disclosure statements show that most participants made little to no money.

   FTC Takes Action Against High-Level MLM Participants who Deceived Workers About the Amount of Money They Can Earn | Federal Trade Commission

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## Deceptive Ticket Pricing

1. Ticket exchange and resale provider StubHub Holdings, Inc. will pay $10 million to settle FTC charges that it deceptively advertised ticket prices on its website without clearly and conspicuously disclosing their total prices up front, including all mandatory fees, in violation of the FTC Act and the Rule on Unfair or Deceptive Fees (the Fees Rule). Under the Fees Rule, it is deceptive to offer, display, or advertise the price of a live-event ticket without clearly, conspicuously, and prominently disclosing the total price, which is defined as "the maximum total of all fees or charges a consumer must pay for any good(s) or service(s) and any mandatory ancillary good or service." Christopher Mufarrige, Director of the FTC's Bureau of Consumer Protection commented that "Price transparency is essential to a free and competitive marketplace. Today's settlement underscores the Commission's commitment to ensuring that consumers pay the price they are promised."

   StubHub Refunding $10 Million in Fees to Consumers After Deceptive Ticket Pricing | Federal Trade Commission

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## FTC Activity on Fees

1. The FTC is seeking public comment on an Advance Notice of Proposed Rulemaking (ANPRM) concerning whether a rule is needed to address unfair or deceptive fee practices by online food and grocery delivery platforms. Specifically, the FTC is seeking written comments, including data, evidence, analyses, and arguments, to help determine how best to prevent unfair or deceptive acts or practices and to ensure industry and consumer concerns are addressed. Hidden and misleading fees and charges related to online delivery platforms have been an area of focus for the FTC in recent years.

   FTC Seeks Public Comment on Unfair and Deceptive Fee Practices in Online Food and Grocery Delivery Services | Federal Trade Commission

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## FTC Data

1. New FTC data show that, in 2025, nearly 30% of people who reported losing money to a scam said that it started on social media, with reported losses reaching $2.1 billion. According to the new data, social media scams produced far more in losses—an eightfold increase since 2020—than any other contact method, such as text or email scams. All age groups (except for those 80 and over) reported losing more money to scams that started on

social media than any other contact method. Common social media scams include investment scams, shopping scams, and romance scams.

New FTC Data Show People Have Lost Billions to Social Media Scams | Federal Trade Commission

# Class Actions

## Ingredient-Based Claims

Walmart, Inc., and Walmart Apollo, LLC were sued in a putative class action alleging that advertising and labeling for Bettergoods® "Plant-Based" Milk products mislead consumers because the products contain ingredients that do not come from plants, including Calcium Carbonate, Dipotassium Phosphate, and Vitamin A Palmitate. Plaintiff asserts violations of Florida's Deceptive and Unfair Trade Practices Act and Florida Statute Section 817.41, which prohibits false advertising.

*Bauer v. Walmart, Inc.*, No. 8:26-cv-01021 (M.D. Fla. Apr. 8, 2026)

Olly Public Benefit Corp. was sued in a putative class action alleging that it misleadingly labels its OLLY "METABOLISM GUMMY RINGS" as supporting "healthy metabolism" and "lean body mass," and "MADE WITH ACV WITH THE MOTHER" because the products contain such a small amount of acetic acid, which is the active ingredient in ACV that they do not provide ACV's benefits, that the products' production process denatures the beneficial enzymes and bacteria that would otherwise be found in the "mother," and the products are principally comprised of sugar. Plaintiff asserts violations of California's Consumer Legal Remedies Act, False Advertising Law, and Unfair Competition Law.

*Rodriguez v. Olly Public Benefit Corp.*, No. 3:26-cv-02034 (S.D. Cal. Mar. 31, 2026)

Eleeo Brands was sued in a putative class action alleging that it falsely advertised its various Dapple Baby Farms products, which include among other things, soaps and laundry detergent as "powered by plants" and containing "No Harsh Chemicals" and "Hypoallergenic " when the products in fact contain several synthetic and industrially processed ingredients, such as citric acid, sodium citrate, glycerin, xanthan gum, benzisothiazolinone. Plaintiff asserts violations of California's Consumer Legal Remedies Act, False Advertising Law, and Unfair Competition Law.

*McCanless v. Eleeo Brands*, No. 2:26-cv-03489 (C.D. Cal. Apr. 1, 2026)

Trader Joe's Company was sued in a putative class action alleging that its Low Acid Dark French Roast Coffee is misleadingly labeled because it contains nearly the same acid content as regular coffee. Plaintiff asserts violations of New York General Business Law Sections 349 and 350.

*McIntosh v. Trader Joe's Co.*, No. 1:26-cv-03521 (S.D.N.Y. Apr. 28, 2026)

## Recyclable Claims

Keurig Dr. Pepper, Inc. has been sued in two putative class action alleging that it labels and advertises its K-Cup single-use beverage pods as "recyclable," but they cannot be reliably recycled through ordinary curbside systems due to their small size, multi-material construction, contamination from coffee grounds and liquids, and incompatibility with automated sorting equipment.

*Dixon v. Keurig Dr Pepper, Inc.*, No. 3:26-cv-02172 (S.D. Cal. Apr. 7, 2026) (asserting violations of California's Consumer Legal Remedies Act, False Advertising Law, and Unfair Competition Law)

*Sulli v. Keurig Dr Pepper, Inc.*, No. 26-cv-6420 (W.D.N.Y. Apr. 10, 2026) (asserting violations of New York General Business Law Sections 349 and 350)

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## Quality Claims

MatchaBar, Inc. was sued in a putative class action alleging that it mislabels its MatchaBar Ceremonial Grade Matcha Powder products as "ceremonial grade" when they were not of that grade or quality based on independent testing. Plaintiffs assert violations of California's Consumer Legal Remedies Act, False Advertising Law, and Unfair Competition Law.

*Morris v. MatchaBar, Inc.*, No. 3:26-cv-02161 (S.D. Cal. Apr. 6, 2026)

The Procter & Gamble Company was sued in California state court in a putative class action alleging that it deceptively markets its Charmin toilet paper products by representing its products as "MEGA" by comparing them to its "Charmin Regular roll," which while technically available through defendant's website, is effectively unavailable. Plaintiff also alleges that Charmin Regular was created so defendant can surreptitiously reduce the size of its MEGA products through "shrinkflation," *i.e.*, Charmin Regular can be reduced in size alongside its Mega products while maintaining the 6x larger comparison. Plaintiff asserts violations of California's Consumer Legal Remedies Act, False Advertising Law, and Unfair Competition Law.

*Kreutter v. The Procter & Gamble Co.*, No. TC26-E910069516 (Cal. Super. Apr. 15, 2026)

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## Unexpected Membership Renewals

Costco Wholesale Corp. was sued in a putative class action alleging that it engaged in an automatic membership renewal scheme and that its autorenewal notices were misleading because they omitted material information regarding the terms and amount to be charged in upcoming autorenewals and omitted any methods to cancel the automatic renewal. Plaintiff asserts violations California's Automatic Renewal Law, Consumer Legal Remedies Act, False Advertising Law, and Unfair Competition Law.

*George v. Costco Wholesale Corp.*, No. 3:26-cv-02369 (N.D. Cal. Mar. 18, 2026)

## Recent Decisions

**Supreme Court: Denies Cert. Allowing Oil-Free False Advertising Class Action to Proceed**

Recently, the Supreme Court denied a petition for certiorari and left standing a Ninth Circuit decision affirming class certification in a suit alleging that Kenvue Brands LLC's Neutrogena® Oil-Free Moisture for Sensitive Skin product in fact contained oils and oil-based ingredients and that the label was false and misleading under California law. After the district court certified a class of California consumers, Kenvue appealed to the Ninth Circuit, which rejected its argument that the expert's damages calculation was faulty. Seeking certiorari, Kenvue argued that there was a circuit split about whether the expert testimony was sufficient for class certification. According to the petition, some circuits (the Third, Fifth, Sixth, Seventh, and Eleventh Circuits) have found that a class cannot be certified based on expert evidence that does not withstand scrutiny under Rule 702 and *Daubert*, while the Eighth and Ninth Circuits hold that expert testimony need not be admissible under Rule 702 and *Daubert* to satisfy Rule 23 and use a "limited" approach, in which a district court is not required to evaluate the ultimate admissibility of an expert's opinion. Kenvue is also facing a similar suit alleging false advertising of its "oil-free" products in Illinois federal court (for more on this, see The Ad Standard: Monthly Update - April 2026).

*Johnson & Johnson Consumer Inc. v. Noohi*, No. 25-874 (U.S. Apr. 20, 2026)

**Motions to Dismiss Granted**

**Ninth Circuit: Affirms Dismissal of Brita Water Filter Class Action**

The Ninth Circuit affirmed the dismissal of a putative class action alleging that The Brita Products Co. fails to clearly state on the packaging and labels for its tap water filter products that they will not remove or reduce contaminants to "below lab detection limits" in violation of California's consumer protection statutes. The Ninth Circuit concluded that the "district court properly held that no reasonable consumer would expect Brita's Products to perform as Brown alleges he subjectively expected that they would." The Ninth Circuit continued that "[a]s a matter of law, no reasonable consumer would expect Brita's low-cost filters to completely remove or reduce to below lab detectable levels *all* contaminants present in tap water, particularly in light of Brita's extensive disclosures to the contrary." The Ninth Circuit also concluded that the district court properly denied plaintiff leave to amend because amendment would be futile.

*Brown v. The Brita Prods. Co.*, No. 24-6678, 2026 U.S. App. LEXIS 10874 (9th Cir. Apr. 16, 2026)

**Western District of Washington: Dismisses Class Action Alleging Failure to Disclose Lead in Drinkware**

A federal district court dismissed with leave to amend a consolidated putative class action alleging that Pacific Market International, LLC used lead in the manufacture of its well-known Stanley cups and failed to disclose its presence, in violation of various states' consumer-protection laws. Noting that all the claims now re-alleged had previously been dismissed, in whole or in part, the court concluded that plaintiffs still failed to plead a specific and plausible risk of harm because neither the authorities nor the facts pleaded suggest that the mere presence of lead in a person's surroundings or in consumer goods is dangerous, or that lead can cause harm without being ingested or inhaled. The court pointed out that plaintiff did not allege that the lead sealing in the base of the cups can contaminate its contents or come into contact with consumers at all, noting that even if the stainless steel lining over the lead were to be damaged and the lead is exposed, plaintiffs did not allege that exposed lead causes physical harm.

*In re Pac. Mkt Int'l, LLC, Stanley Tumbler Litig.*, No. 2:24-cv-00191 (W.D. Wash. Apr. 3, 2026)

**Northern District of Illinois: Dismisses Class Action Alleging "100% Real Chocolate" Label Was Deceptive**

A federal district court dismissed a putative class action alleging that Nestle USA, Inc., violated the Illinois Consumer Fraud and Deceptive Business Practices Act and other states' consumer-protection laws by labeling its various varieties of Nestle's Toll House Morsels as "100% real chocolate" when they contained natural flavors and soy lecithin, but that 100% real chocolate should only contain unsweetened chocolate and cocoa butter, which come from cacao beans. Noting that the complaint did not cite anything for the notion that chocolate only contains ingredients that come from cacao beans, did not cite a source for its "idiosyncratic" understanding of chocolate, or cite a consumer survey, the court concluded that "[n]o reasonable consumer would read the phrase '100% real chocolate' as a representation that the bag contains only the byproducts of cacao beans." The court explained that "[c]hocolate is a composite product" that "contains other ingredients, by definition" and that the FDA accepts that chocolate can include "natural and artificial flavorings" and "emulsifying agents" such as soy lecithin.

*Foster v. Nestle USA, Inc.*, No. 1:24-cv-08536, 2026 U.S. Dist. LEXIS 70370 (N.D. Ill. Mar. 31, 2026)

**Northern District of Georgia: Grants Dismissal As Plaintiffs Cannot Establish Objective Measure of Overpayment Where They Failed to Establish Products' Base Market Price**

A federal district court granted in part and denied in part dismissal in a putative class action alleging that Home Depot advertises false strikethrough reference prices because Home Depot rarely listed or sold the item at the reference price. The court concluded that plaintiffs failed to allege an injury under the Georgia Fair Business Practice Act, explaining that to "establish an overpayment price premium theory, a plaintiff must allege that he overpaid by some objective measure, and not just that he felt, subjectively, that he overpaid." The court stated that plaintiffs cannot establish such an objective measure because they failed to establish the products' base market price against which to measure the alleged overpayment or failed to allege that Home Depot used deceptive reference prices to charge consumers a higher price for the same merchandise. However, the court concluded that a plaintiff, who alleged that between March 2023 and February 2024, Home Depot regularly online advertised a dishwasher with a sale price of $598 or $628 and a regular strikethrough price of $949, sufficiently alleged violations of California's Consumer Legal Remedies Act, False Advertising Law, and Unfair Competition Law.

*Berger v. Home Depot U.S.A. Inc.*, No. 1:24-cv-01435, 2026 U.S. Dist. LEXIS 71660 (N.D. Ga. Mar. 31, 2026)

**Supreme Court of Washington: Dismisses Class Action Alleging "False Discounting" Scheme**

Following the Ninth Circuit certifying the question of whether a consumer, who has paid an apparently lower price for a product because of a misrepresentation about its discounted price, comparative price, or price history, suffers an economic injury "in his or her business or property" under the Washington Consumer Protection Act (CPA), the Supreme Court of Washington held that an injury to "business or property" means that a consumer must allege an objective economic loss, not subjective disappointment, noting that plaintiff "got what she paid for except for the satisfaction of knowing that she had scored a bargain." Plaintiff in the case alleged that she bought $6 leggings at their advertised price and because the seller advertised that they were on sale for $6 from a regular price of $12.50 but in fact the leggings had rarely sold for $12.50. Pointing out that a consumer could allege economic loss if the product received was objectively different from or less valuable than what was advertised, the court stated that plaintiff received and retained the leggings she wanted at the price she agreed to pay. Notably, Chief Justice Stephens dissented stating that she would find that plaintiff states a CPA claim because plaintiff alleged that she would not have otherwise purchased the leggings but for defendant's misrepresentations and that she did not receive leggings that had actually been discounted.

*Montes v. SPARC Grp. LLC*, No. 104162-4, 2026 Wash. LEXIS 223 (Wash. Apr. 2, 2026)

**Motions to Dismiss Denied**

**Northern District of California: Denies Dismissal of Skin Care Preservative Class Action**

A federal district court denied dismissal in a putative class action alleging that Pierre Fabre USA Inc. and Pierre Fabre Dermo-Cosmetique USA, Inc. violated California's consumer protection statutes by advertising and labeling their Avène "Preservative-Free" and/or "0% Preservative" skin care products as Preservative-Free and/or 0% Preservative despite the fact that they contain citric acid—a "well known and well-documented preservative." The court held that plaintiff has plausibly alleged that the challenged representations are—at best—misleading under the reasonable consumer standard. The court rejected defendants' argument that any reasonable consumer reviewing the label would correctly discern that there are no ingredients used in the products for preservative purposes, explaining that it did not find the labels to be ambiguous and that a reasonable consumer would not be expected to review an ingredient list to discern whether it contradicts a straightforward declaration that a product is free of preservatives.

*Vales v. Pierre Fabre Dermo-Cosmetique USA, Inc.*, No. 25-cv-10523, 2026 U.S. Dist. LEXIS 79504 (N.D. Cal. Apr. 10, 2026)

**Northern District of Illinois: Denies Dismissal of Class Action Alleging "100% Whole Fish Fillets" Is Misleading**

A federal district court denied dismissal of a putative class action alleging that ConAgra Brands, Inc. misleading labels its frozen fish products as "100% Whole Fish Fillet" because, in fact, the products are fish combined with sodium tripolyphosphate and water. Plaintiffs assert violations of California's Consumer Legal Remedies Act, False Advertising Law, and Unfair Competition Law, the New York General Business Law and Massachusetts General Laws Chapter 93A. As to whether a reasonable consumer would be deceived, the court stated that "plaintiffs offer a plausible reading of the label, which they allege is false. That is sufficient to state a claim." The court stated that "the Seventh Circuit's decision in *Bell* [*v. Publix Super Markets, Inc.*, 982 F.3d 468 (7th Cir. 2020)] controls." In *Bell*, plaintiffs alleged that the label "100% Grated Parmesan Cheese" was deceptive because the products contained not only Parmesan, but also cellulose powder and potassium sorbate. The Seventh Circuit stated that a "possible reading" of the label was that the cheese in the product is all Parmesan because "100%" could apply to all three words (cheese, Parmesan, grated). Extending that reasoning, the court stated that a possible reading of the label is that the fillet in the product is all fish.

*Pappert v. ConAgra Brands, Inc.*, No. 24-cv-04835, 2026 U.S. Dist. LEXIS 94201 (N.D. Ill. Apr. 29, 2026)

**Eastern District of Washington: Denies Dismissal of Email Subject Line Class Action Against Hanes**

A federal district court denied dismissal of a putative class action alleging that HanesBrands, Inc. violated Washington's Commercial Electronic Mail Act (CEMA) by sending emails with urgent subject lines that misrepresent the timing of promotions on free shipping and discounted items and violated the Consumer Protection Act (CPA) based on this alleged violation of CEMA. The court held that plaintiff alleged sufficient facts to support the CEMA and CPA claims. The court pointed out that plaintiff asserted that defendant initiates the sending of emails to consumers it has reason to know are owned by Washington residents and those emails contain misleading information regarding the urgency of deals in the subject line. The court noted that whether defendant was on notice of plaintiff's status as a Washington resident and whether the email subject headings were false or misleading are factual issues best suited for resolution by a trier of fact. As to whether a violation of CEMA is a *per se* violation of the CPA, the court concluded that plaintiff sufficiently alleged facts to state a plausible claim of relief under the CPA.

*Jackson v. HanesBrands, Inc.*, No. 2:25-cv-00440, 2026 U.S. Dist. LEXIS 93444 (E.D. Wash. Apr. 28, 2026)

**Eastern District of Washington: Denies Dismissal of Email Subject Line Class Action Against Ulta**

A federal district court denied dismissal of a putative class action alleging that Ulta Salon Cosmetics and Fragrance, Inc. violated Washington's CEMA and CPA by sending emails with subject lines falsely representing offers as "free gifts" without disclosing required conditions, such as minimum purchase amounts and emails with subject lines falsely representing unqualified discounts on purchases without disclosing material exclusions. Ulta argued that plaintiffs failed to allege that Ulta failed to honor any advertised offer or that anyone was denied a gift or percentage discount upon satisfying the disclosed conditions. For purposes of the motion to dismiss, the court explained that it accepts as true the "free gift" and "percentage discount" email subject lines identified by plaintiffs are false or misleading as alleged based on the limitations and restrictions contained in the bodies of the emails. The court concluded that Ulta's argument fails "because CEMA does not require a showing that the Plaintiff was induced to make a purchase by or detrimentally relied upon the email subject line in order to establish a false or misleading subject line."

*Repperger v. Ulta Salon Cosmetics and Fragrance, Inc.*, No. 2:25-cv-00526, 2026 U.S. Dist. LEXIS 93456 (E.D. Wash. Apr. 28, 2026)

# NAD Focus

## Supplement Claims

Following a challenge from competitor Pharmavite LLC, NAD recommended that supplement company Nature's Truth, LLC modify its advertising for its Magnesium Glycinate Gummies, including the claims "200 mg per serving" and "Magnesium Glycinate Gummies 200 mg per serving," and discontinue the express claim "200 mg magnesium per serving." While the product's front label states "Magnesium Glycinate Gummies 200 mg Per Serving" the Supplement Facts label states that the product contains only 22 mg of magnesium, or 5% Daily Value. As the product does not contain 200 mg of elemental magnesium per serving, the front label claim is unsubstantiated and NAD recommended it be discontinued. NAD also recommended that Nature's Truth modify its advertising to avoid conveying the messages that the product provides a material amount of magnesium per serving, or provides more than 22 mg of magnesium per serving.

Nature's Truth, LLC (Magnesium Glycinate Gummies), Report #7547, *NAD/CARU Case Reports* (Apr. 2026)

## Future Price Increase Adequately Disclosed

In a Fast-Track SWIFT challenge brought by T-Mobile US, Inc., NAD determined that Verizon Communications Inc. provided adequate disclosure of a future price increase in connection with its "four lines for $25/line" wireless service offer and that the challenged advertising required no modification to the disclosures. Specifically, at issue was whether Verizon's ads adequately disclosed that its $25 per line pricing is a 36-month promotional rate that increases to $30 per line after the promotional period. NAD found that, unlike short-term "teaser" offers that lead to dramatic price hikes after only a few months, Verizon's three-year price and future increase aligns with reasonable consumer expectations that wireless rates may adjust over the long term.

Verizon Communications Inc. (Verizon Four-Line Pricing Offer), Report #7555, *NAD/CARU Case Reports* (Mar. 2026)

## Comparative Superiority Claims

Following a challenge brought by competitor Prestige Consumer Healthcare, Inc., NAD reviewed advertising claims made by eosera Inc. for its Ear Wax MD product, finding certain establishment and mechanism-of-action claims were supported, while recommending that other comparative superiority and disparaging claims be discontinued or modified. Prestige markets Debrox, which is an FDA-approved OTC ear wax removal brand. By contrast, eosera markets Ear Wax MD, a patented cosmetic formulation. As to eosera's claims that its Ear Wax MD "Beats the Competition!" and that in head-to-head studies, it dissolves ear wax in as little as 15 minutes while the leading competitor had "very little, if any, effect," NAD found that the evidence provided a reasonable basis for comparative superiority claims against Debrox under specific laboratory test conditions. However, NAD determined that the evidence did not support unqualified claims that the leading competitor is ineffective or has "very little, if any, effect" in real-world use. Therefore, NAD recommended eosera discontinue or modify these claims to avoid conveying these unsupported messages about Debrox. NAD also recommended that eosera discontinue its claims that Ear Wax MD dissolves ear wax "in one dose" or "in 15 minutes," or modify the claims to avoid the unsupported message that all or most consumers will achieve such results in that

timeframe, finding that the broad phrasing overstated the study findings as the record did not establish that consumers will typically experience meaningful ear canal clearance within 15 minutes, or that dissolution occurs "in one dose."

eosera Inc. (Ear Wax MD Ear Wax Cleaning Products), Report #7536, *NAD/CARU Case Reports* (Apr. 2026)

Following a challenge brought by competitor Alcon, Inc., NAD recommended that Johnson & Johnson Vision Care, Inc. (JJVC) discontinue or modify its superiority and "2X" comparative claims for its ACUVUE® Oasys Max 1-Day contact lenses. As to claims that Oasys Max provides superior comfort and superior all-day comfort versus DAILIES TOTAL1® (DT1), NAD found that JJVC's study was not a good fit for these claims because its design did not adequately control for factors that could affect subjective comfort assessments and recommended that the claims be discontinued or modified to avoid conveying the unsupported message that typical users of Oasys Max lenses will notice meaningful and consistently perceivable comfort benefits over DT1 lenses. As to the claims that Oasys Max wearers are "2x more likely" to be satisfied with end-of-day comfort and to wear lenses comfortably as long as desired, versus DT1 wearers, NAD found the same study was not a good fit for the challenged comparative comfort claims because JJVC's odds-ratio analysis did not establish that the proportion of Oasys Max wearers experiencing the stated comfort benefits was twice the proportion of DT1 wearers, and, therefore, recommended that the claims be discontinued or modified to avoid conveying the unsupported message that the 2x claims relating to end of day comfort and length of wear were based on actual clinical results.

Johnson & Johnson Vision Care, Inc. (ACUVUE® OASYS MAX 1-DAY Contact Lenses), Report #7526, *NAD/CARU Case Reports* (Apr. 2026)

Competitor The Farmer's Dog, Inc., challenged certain claims by Sundays for Dogs (SFD) for its dog food regarding the benefits of air-drying, ingredient quality, and the cost-effectiveness of the product compared to frozen alternatives. NAD found that the claim, "Uses gentle air drying to keep the nutrients from the real meat, fruit, and veggies intact. Sundays doesn't need to add a bunch of fake stuff back in because the good stuff from wholesome all-natural ingredients is still there" was supported. However, because the lab reports submitted were not comparative with any other product, NAD recommended that SFD discontinue the claims that its process preserves more nutrients or flavor than other cooking methods or preserves the "maximum" amount of nutrients. As to the "all natural ingredients," "100% meat and superfoods," "the same ingredients you'd put in your salad," claims that were accompanied by imagery suggesting the inclusion of whole fruits and vegetables, NAD determined that, in context, these claims and images could reasonably convey the message that whole fruits and vegetables are included in the final product. However, NAD recommended that these claims be discontinued or modified because SFD uses nutrient extracts rather than whole foods. NAD further determined that the claim "what we think is the world's healthiest, and most convenient dog food" conveys an objective

message of superiority in specific attributes—health and convenience—and recommended it be discontinued because SFD did not provide evidence demonstrating superiority over a significant portion of the market.

Sundays for Dogs (Pet Products), Report #7523, *NAD/CARU Case Reports* (Apr. 2026) (See below for challenged Made in USA claims)

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## Made in USA Claims

The Farmer's Dog, Inc., further challenged unqualified "Made in USA" claims by SFD for its dog food. Although most ingredients are sourced domestically, certain key ingredients, including beef bone and fish oil, are sourced from New Zealand. Consistent with FTC guidance, NAD determined that because these ingredients are essential to the product's function, an unqualified "Made in USA" claim is not appropriate, even if the amount of foreign content is small. NAD recommended that SFD discontinue the unqualified claim and modify it to include appropriate qualifications.

Sundays for Dogs (Pet Products), Report #7523, *NAD/CARU Case Reports* (Apr. 2026) (See above for additional challenged claims, including competitive superiority)

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## Voluntarily Discontinued Claims

After PurposeBuilt Brands voluntarily discontinued claims that it "dissolves grease and "liquifies grease" claims for its Green Gobbler Dissolver, a pour-in drain-opening product, in a reopened challenge, NAD agreed to review new testing, however, during the proceeding, PurposeBuilt informed NAD that it had permanently discontinued the challenged claims.

PurposeBuilt Brands (Green Gobbler Drain Clog Dissolver), Report #6982RO, *NAD/CARU Case Reports* (Apr. 2026)

Following a challenge brought by competitor GuruNanda, LLC, oral care company Writesy LLC d/b/a Dr. Dent voluntarily discontinued claims for its Purple Whitening Strips. The challenged express and implied claims appeared on product packaging, in TikTok videos, on the Dr. Dent website and Amazon.com regarding, among other things, the benefits, efficacy, and safety of Dr. Dent's Purple Whitening Strips. During the inquiry, Dr. Dent informed NAD that it had permanently discontinued the challenged claims.

Writesy LLC d/b/a Dr. Dent (Dr. Dent Whitening Products), Report #7552, *NAD/CARU Case Reports* (Apr. 2026)

Simpson
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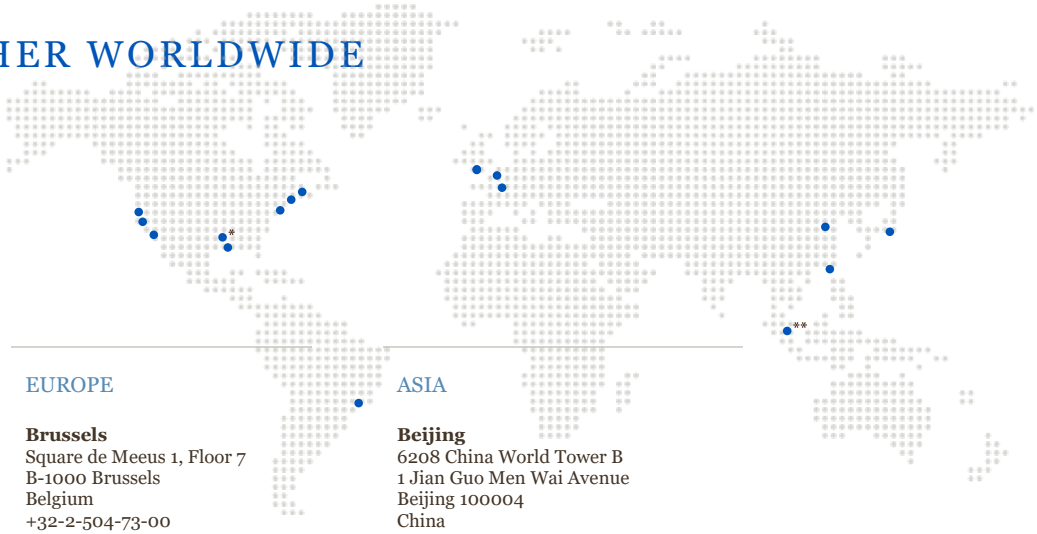


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** In February 2026, Simpson Thacher announced plans to expand its presence in Texas with an office in Dallas.*

*** In April 2026, Simpson Thacher announced plans to expand its presence in Asia with an office in Singapore.*