CLAIM SUBSTANTIATION AT NAD AND THE ROLE OF THE ASTM GUIDE

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WHAT IS THE ROLE OF ADVERTISING SELF-REGULATION?



- Promote confidence in advertising by adhering to high standards of truth and accuracy.
- Discourage restrictive government regulation.
- Cost effective resolution of disputes between competitors.
- Provide Guidance on Claim Substantiation and other advertising issues.

NAD APPROACH TO CLAIM SUBSTANTIATION

- What are the Express Claims?
- What are the Implied Claims?
- Has the Advertiser provided a "reasonable basis" for the claim?
  - Type of product
  - Type of claim
  - Benefits of the claim if it is true
  - Consequences if the claim is false
  - Ease and cost of developing substantiation
  - Level of substantiation experts in the field would agree is reasonable
- Does the Challenger have stronger or more persuasive evidence to rebut the advertiser's reasonable basis?

ASTM AND ISSUES IN CLAIM SUBSTANTIATION

- What are the Claims?
- When is ASTM the appropriate method?
- What is the difference Between an Parity Claim and a claim that consumers can't perceive a difference between 2 products.
- Disputes when both parties use ASTM 1958
- "No Difference" option.

APPLICATION OF ASTM

- "Domino's oven baked sandwiches beat the taste of Subway's 2 to 1"



IS THE CLAIM A SENSORY CLAIM?

- "Eliminates Household Odors"
- "Odor Eliminating Technology"



PARITY VS. "NO DIFFERENCE

"just as effective as prescription ibuprofen in treating arthritis pain."



McNeil, PPC, Inc., (Tylenol Arthritis Pain) Case #4248 (November 2004)



NO PREFERENCE OPTION

Frito Lay (lays Stax), Case #4270 (December 2004

PREFERENCE QUESTIONS

579 of 605 had a preference

- "Now, I'd like you to tell which potato crisps, if either, tasted better – the potato crisps you tried first or the potato crisps you tried second?"

No significant difference

- "Which, if either, of these snack products do you prefer for taste: the one you tried first, the one you tried last, or do you like them both the same?"

CLAIM SUBSTANTIATION ISSUES AT NAD

- Consumer Testing vs. Descriptive Panels vs. Laboratory Testing
- Disparaging Claims
- Comparing “apples to “oranges”
- “Up To” Claims
- Ratio Claims (i.e. “Works twice as fast”, “3 out of 4 consumer prefer”
- Consensus Industry Standards vs. Proprietary Testing

WHAT IS THE PURPOSE OF ADVERTISING SELF-REGULATION?

- To Foster Trust in the Marketplace
- To Protect Consumers from Misleading Advertising
- Cost Effective Resolution of Disputes
- To Provide Guidance to Industry on Claim Substantiation and Advertising issues.
- **Is Self-Regulation Working?**

SUMMARY

- Look to NAD's Guidance as Tool for Developing Claim Substantiation
- Be Cognizant of Implied Claims
- Justify your Testing Choices
- Consider How Your Testing Fits With the Larger Body of Evidence
- If You are Before NAD, Take Advantage of the Meeting: Use the Opportunity to Educate and to Learn