

Puffery in Advertising

The concept of puffery generally allows an advertiser to state, without any substantiation, that, for example, its mints give you “ultimate fresh breath” (Breath Savers), or that its beverage is “made from the best stuff on earth” (Snapple). As the NAD has repeatedly articulated, the line between puffery and a substantiable claim is heavily dependent on the total context of the advertising.

KRAFT FOODS, INC., MAXWELL HOUSE COFFEE, NAD CASE REPORT, APRIL 25, 1995

Kraft Foods, Inc. (“Kraft”) ran a series of television advertisements for its Maxwell House brand coffee which included the phrase, “The coffee perking in this pot is America’s best -loved coffee.” Procter and Gamble Company (“P&G”), makers of Folger’s House coffee, challenged the commercials, arguing that the phrase “America’s best -loved coffee” communicated an objective claim of market supremacy in the United States among ground coffees. P&G presented evidence that indicated that Maxwell House was not the leading volume seller of ground coffee in America. P&G also conducted a communication study. The questions posed to respondents in the study included: “What was the main idea of the commercial you just saw, other than to get you to buy the product?”; and “What other ideas, if any, is the commercial trying to say or show?” The data resulting from that study indicated that 20% of all respondents believed the Kraft advertising communicated that

Maxwell House was the “best selling,” “favorite,” or “most popular” coffee. On that basis, P&G argued that a significant number of people were being misled into believing that Maxwell House had the largest market share.

The NAD examined the advertising in its entirety and applied its own advertising expertise to determine whether Kraft had, in fact, made a substantial claim. The NAD found that the advertising had a “nostalgic” tone, and held that in that context the phrase “best loved” did not convey a message about the market position of Maxwell House. Once it had decided that “best loved” did not rise to the level of a substantiable claim, the NAD critiqued P&G’s study and objected to the aggregation of “favorite” and “most popular” responses with “best selling” responses. “Favorite” and “most popular,” according to the NAD, did not necessarily reflect the belief that Maxwell House was the market leader. After removing “favorite” and “most popular” responses from the tabulation, the NAD determined that the number of respondents who understood the commercial to be presenting a “best selling” claim was negligible. The majority of respondents came away with a message of nostalgia, tradition and history, corresponding with the NAD’s view. The NAD, therefore, concluded that people were not taking away a message of market share superiority, and held that Kraft’s “best-loved” statement, in the context of that advertising, was mere puffery.

WOLVERINE WORLDWIDE, INC., HUSH PUPPIES SHOES, NAD CASE REPORT NO. 4004CS, MARCH 7, 1994

Wolverine Worldwide, Inc. (“Wolverine”) advertised in print for its Hush Puppies brand shoes stating, “At Hush Puppies, we know that a good fit from heel to toe isn’t enough. A shoe should also fit you from head to toe. That’s the idea behind Hush Puppies career casuals. They fit your personality perfectly...” The advertisement depicted a man dressed casually, followed by the phrase, “THE EARTH’S MOST COMFORTABLE SHOES.” Rockport Shoes (“Rockport”) challenged the Wolverine advertisement.

Rockport offered survey evidence demonstrating that the characteristic most associated with its shoes was comfort. Rockport argued that Wolverine’s claim that its shoes were the most comfortable was specific, objectively verifiable, and in the context of the advertisement, not mere puffery.

The NAD disagreed, reasoning that the advertisement focused on the shoe’s “fit” to the individual personality, which could not be quantified. Furthermore, the advertising lacked specificity regarding the definition of “comfort” and how it could be quantified. Thus, the NAD concluded that Wolverine’s statement “THE EARTH’S MOST COMFORTABLE SHOES” did not require substantiation.

BRIGHAM’S INC., ICE CREAM, NAD CASE REPORTS NO. 3007CS, MAR. 8, 1993

In print advertising, Brigham’s depicted its product along side Haagen-Dazs’ and Ben & Jerry’s products. The text read, “taste the best – at a sensible price.” Brigham’s argued that its “taste the best” statement was puffery in the

context of the entire advertisement. In light of the photograph grouping the Brigham’s product with the Haagen-Dazs’ and Ben & Jerry’s premium products, the NAD held that the statement was a comparative claim regarding taste and required substantiation of taste superiority or, at least, taste parity.

NUTRO PRODUCTS, INC., NUTRO MAX DOG FOODS, NAD CASE REPORTS NO. 2857JC, FEB. 25, 1991

A pet food manufacturer advertised that its dog food was “the best dog food in the world.” Additional statements in the advertisement were: (1) “Only the Nutro Max line offers the consistency of a chicken, rice and lamb diet for all stages of your dog’s life”; (2) “... offers your dog both proper nutrition and consistency in taste, stool performance, and skin and coat conditioning”; and (3) “At Nutro, we’ve spent over 60 years developing the perfect foods for puppies, adult dogs and older, less active or overweight dogs.” The NAD held that a consumer could reasonably expect that the “best” claim related to superiority, exclusivity and health claims, and should be supported by objective data.

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