

Court Holds Reasonable Consumers Won't be Misled by Sephora's "Clean" Claims

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Last week, we [posted](#) about an NAD decision that provides some helpful guidance for advertisers who want to use the word "clean" to describe their products. One day later, a New York federal court issued a decision in another case involving the same word. Luckily, the court's analysis is generally consistent with NAD's analysis and bolsters the tips we outlined last week.

Sephora sells a line of "clean" products under its "Clean At Sephora" line. The company explains that those products are "formulated without phthalates, formaldehyde or formaldehyde releasers, oxybenzone and octinoxate, and more." In some places, the company also links to a more detailed [list](#) of ingredients that are not included in the products.

As we [posted](#) last year, a consumer filed a purported class action against Sephora, alleging that although Sephora advertise the products as being "clean," they "contain ingredients inconsistent with how consumers understand" that word. The complaint provides a list allegedly synthetic and potentially harmful ingredients that are included in the products.

At the time, we noted that this case is a litmus test for the "reasonable consumer" standard. Given that Sephora clearly disclosed what it meant by "clean," it wouldn't be reasonable for consumers to assume that it means anything else. Luckily, the court gave reasonable consumers some credit and determined that they wouldn't be misled by Sephora's explanations.

The complaint left the court "guessing as to how a reasonable consumer could mistake" the company's claims and "believe that the cosmetics contain no synthetic or harmful ingredients whatsoever." Sephora explained that products were formulated without *specific* ingredients. The court noted that "nowhere on the label or in the marketing materials plaintiff cites does defendant make any claim that the products are free of all synthetic or harmful ingredients."

From a false advertising perspective, it doesn't matter that the plaintiff provided "a laundry list of synthetic ingredients found in 'Clean at Sephora' cosmetics that she claims have been known to cause irritation or other human harm." To determine whether or not Sephora's claims are false, it's necessary only to consider whether the products included any of the ingredients that Sephora claimed the products did not contain. Because that wasn't the case, the court dismissed the false advertising claim.

This analysis is similar to the one we discussed in last week's NAD case, though NAD added the additional caveat that the list of excluded products should "reflect the ingredients banned that are typically used in cosmetics products." As the law in this area evolves, these two decisions should help to provide a helpful framework for companies that make "clean" claims.

The framework may also be helpful for companies that make other claims using broad terms – such as “sustainable” – that don’t have established definitions. Advertisers should provide a clear and reasonable explanation of what they mean by those terms. Challengers may disagree with the definitions, but advertisers may argue that reasonable consumers won’t be misled as long as the advertisers meet the definitions.