

Dietary Supplement and Personal Care Products Regulatory Highlights – January 2021

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Welcome to our monthly roundup of regulatory and litigation highlights impacting the dietary supplement and personal care products industries.

NAD

NAD tackled substantiation for “[#1 Dermatologist Recommended](#)” claims in a challenge involving L’Oreal’s CeraVe moisturizer and use of syndicated survey data to support related claims.

Health claim substantiation was front and center in a Council for Responsible Nutrition-led [challenge](#) involving glutathione and the level of evidence required to support claims relating to low-glutathione levels.

FTC

Indirectly related to dietary supplements and consumer care, the FTC announced a [settlement](#) with app-maker Flo regarding allegations that the company shared the health information of users with outside data analytics providers after promising that such information would be kept private.

As we noted [here](#), the FTC has new civil penalty authority relative to false COVID-related advertising claims and practices.

FDA

As it has since relaxing the regulatory standards relative to manufacturing of hand sanitizers in March 2020, FDA continued issuing [warning letters](#) related to hand sanitizer products that contain active ingredients other than those allowed per the hand sanitizer tentative final monograph, primarily methanol, and relative to hand sanitizers that are allegedly sub-potent.

The agency also continued its enforcement relative to COVID-related claims with warning letters issued to [AusarHerbs](#) and [Allimax US](#) (joint warning letter with the FTC), as well as non-COVID-related letters to companies whose products featured claims relating to joint health, hair loss, and inflammation, which caused the products to be considered unapproved new drugs. The letters rely heavily on evidence from social media posts, blog posts, and product websites.

Prop 65

Our sister blog, Kelley Green Law, featured two Prop 65 developments that may impact certain

products, including [Prop 65 warnings](#) required on products that may expose consumers to THC and a [proposal](#) to minimize use of the short form warning format. Also, although not directly in the personal care space, given the proliferation of many products that feature disinfectant claims, companies may want to note [this post](#) regarding EPA enforcement on unregistered disinfectants.

Class Action Litigation

In a significant win for the dietary supplement industry, the Ninth Circuit Court of Appeals upheld the Northern District of California's grant of summary judgment to Target Corp., ruling that state law false advertising challenges to permissible structure/function claims are preempted by the Federal Food, Drug and Cosmetic Act. See our blog post discussing the case [here](#).

Other highlights from courtrooms around the country include...

Southern California skincare company Yes To Inc. [agreed](#) to pay \$775,000 to a proposed class of consumers to resolve allegations it misrepresented the dangers of its Grapefruit Vitamin C Glow-Boosting Unicorn Paper Mask, which was recalled after a flood of consumers reported facial skin irritation and burning. (Law360 subs. req'd.)

A California federal judge has [thrown out](#) for the last time a proposed class action alleging that Johnson & Johnson Consumer Inc. and Bausch Health US LLC misled customers about the safety of their talc products, saying even after five chances to amend the complaint, the pleadings still fall short. (Law360 subs. req'd.)

Skincare company Murad LLC was hit with a [proposed class action](#) claiming the company deceived buyers by wrongly representing its moisturizer as "oil-free" when the product actually contains oils. (Law360 subs. req'd.)

A woman suing Charlotte's Web Holdings Inc. [argued](#) that the CBD company shouldn't be able to pause or escape her proposed class action over its labeling of products as dietary supplements, saying that identifying them as such violates state and federal laws. (Law360 subs. req'd.) There are several cases involving this issue. See a recent post on this issue on [Cannabis Law Update](#).

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Thanks for reading our first installation of the dietary supplement and personal care monthly highlights. See you in March!

