

How Long Do You Have to Comply with an NAD Decision?

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If you lose a case before NAD and NAD recommends that you stop making certain claims, how long do you have to stop making them? Although there's no clear answer, a recent decision provides some guidance on what NAD expects.

In August 2024, NAD recommended that ASO stop claiming that some of its bandages promote "2x faster healing." ASO agreed to comply with NAD's recommendations, but when the challenger still found those claims on packages and retailer websites in January, it asked NAD to intervene.

NAD initiated a compliance proceeding and found that while ASO had taken some steps to remove the "2x faster healing" claims from online ads, the company had not done enough to remove the claims from other places where they appeared. Here are some highlights from the decision.

- NAD noted that advertisers have an ongoing responsibility to monitor claims that third-parties make about their products to ensure they are substantiated. NAD recommended that ASO contact third-party retailers who were still displaying the non-compliant claims online and request that they remove them as soon as possible.
- NAD recognizes that making changes to packages may take months. Although NAD doesn't require advertisers to destroy existing inventory or to remove it from stores, NAD routinely advises advertisers to ensure that (1) they stop printing packages with the non-compliant claims and (2) they provide new packages to retailers as soon as possible.
- "NAD or NARB has, on occasion, recommended stickering over noncompliant packaging where significant time elapsed since the underlying decision was issued." In this case, given how long it was taking to deplete existing inventory, NAD recommended that ASO consider remedial efforts, such as stickering over the claims on the existing packages.
- NAD acknowledged that changes to private-label packages can take longer to implement when an advertiser has no control over the private label company's packages. NAD encouraged ASO to take steps to inform the companies that "compliance with NAD's decision requires changes in product packaging to already be underway."

Because ASO didn't provide assurances to NAD that it would comply with its recommendations, NAD referred the matter to the FTC, the FDA, and to the platforms on which ASO's ads appear and where NAD has a reporting relationship.