NAD Addresses "Best Selling" Claims

Gonzalo E. Mon

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Benefit Cosmetics advertised that its *They're Real Mascara* was the "#1 best-selling Prestige Mascara in the U.S." and the "#1 best-selling Prestige Mascara in the U.S. for 3 years." A disclosure linked to the first claim explained that the claim was based on NPD data from July 2015-June 2016, and a disclosure linked to the second claim explained that it was based on similar data from July 2013-June 2016.

Benefit enjoyed a good run at the top, but the most recent NPD data suggests that the top spot now belongs to Too Faced Cosmetics' *Better Than Sex Mascara*.

Too Faced argued that even though Benefit's claims may have been true in the past, they no longer true now. And although the claims are qualified with the disclosures, consumers are still likely to interpret the claims to be current.

The NAD sided with Too Faced for a few reasons. First, the claims were in the present tense, suggesting that they were currently true. Second, the disclosures appeared in a "tiny, difficult to read font." And, third, even if the disclosures had been clearer, they would have still been problematic. While a disclosure can clarify a claim, it can't contradict it. Here, the NAD thought the disclosures would contradict a reasonable interpretation of the claim – that the mascara is currently the best-selling one in the US (and has been for the past three years).

It's no secret that "best-selling" claims should generally be supported by current sales data. What is more complicated is how often data must be refreshed and, if new data no longer supports that claim, how fast the claim must be removed. Although there aren't clear answers to those questions, at least one court has suggested that advertisers need to move very quickly. Companies should give this careful thought when they make temporal claims, especially on things like packages, which can take a long time to change.