

NAD Addresses Influencer Disclosures in Challenge Between Competitors

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This week, NAD announced a decision in a dispute between Mielle Organics and Kreyol Essence – two competitors in the beauty and personal care market – that focused on whether an influencer had clearly disclosed her relationship to Kreyol in various social media posts. NAD’s decision that the influencer’s disclosures did not meet the FTC’s requirements is no surprise, but readers may be interested to see how the case developed.

Laura Benoit is an influencer who participates in Kreyol Essence’s affiliate marketing program. On October 16, 2024, Mielle emailed Kreyol to inform them that Benoit failed to clearly disclose her relationship to the company in 22 TikTok posts. On October 17, Kreyol acknowledged the email and started an investigation. On October 18, Mielle confirmed removal of some posts but threatened to file an NAD challenge if remaining posts weren’t removed by 3:00 PM. The remaining posts were removed by October 20, but that was after Mielle had already made good on its threat.

NAD’s Procedures provide that, if an advertiser has permanently withdrawn an ad “prior to the date of the complaint” and provided assurance that it will no longer use the ad, NAD will administratively close the case. Here, the final posts were apparently removed two days after the complaint was filed, so NAD proceeded to issue a decision. Because it appears that Benoit may have only listed her connection to Kreyol on her Linktree website, it’s not surprising that NAD determined the disclosure wasn’t sufficient.

Although the decision doesn’t break any new ground, the case is worth noting because it illustrates that in absence of much enforcement from the FTC on influencer issues, NAD is becoming an important venue for these issues. If you’re a company using influencers, you should keep in mind that if your influencers don’t comply with FTC guidelines, both NAD and competitors may challenge your practices in that venue. And if your competitor isn’t complying with FTC guidelines, this case shows that NAD may provide you with a good venue to challenge them.