

NAD Decision Offers Guidance on Comparisons Against Categories

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When an advertiser makes a comparison against a category of products, it must generally substantiate the claim against 85% of the products in that category. It's common for advertisers to narrow down a category in order to narrow down their substantiation requirements. Although advertisers have some discretion in how they do that, a recent NAD decision suggests there are limits to that discretion.

SharkNinja advertises that its CarpetXpert Deep Carpet Cleaner offers "the best deep carpet cleaning among full-sized deep carpet cleaners." A disclosure explains that the comparison is based on an industry-standard test against "carpet cleaners above 14 lbs."

Bissell makes the TurboClean PowerBrush carpet cleaner, which out-cleans the SharkNinja product, but weighs under 13 pounds. Bissell filed an NAD challenge, arguing that SharkNinja's claim was misleading because it's based on "an arbitrary market segmentation" designed to exclude its product.

NAD wrote that "it is well-established that when making competitive claims, an advertiser is generally free to choose the point of comparison for its advertised benefit as long as it is properly disclosed; however, the advertiser must do so in an accurate and non-misleading manner."

In the case, the question of whether the comparison was misleading turned on whether consumers would "reasonably understand that carpet cleaners have categories segmented by weight." Read the decision if you're interested in the analysis, but NAD ultimately determined that weight is not "how consumers understand or define a class of carpet cleaners." Accordingly, NAD found the claim was misleading.

SharkNinja's disclosure didn't cure that problem, even if it was clear and conspicuous. NAD noted that it is "well-settled that disclaimers cannot be used to contradict or substantially alter the main message of an advertisement." Here, NAD found that "the disclosure attempts to redefine the class of full-size carpet cleaners and contradict the main message of the claim."

If you're going to segment your claims by a metric, make sure you can demonstrate that the metric is meaningful for how consumers evaluate your products or services. For example, we don't say that we're the best advertising lawyers in our weight classes. Even if your claim is true (as would be ours), it could be deemed misleading, if consumers don't normally make purchasing decisions based on that metric.