

NAD Decision on Savings Claims Holds Valuable Lessons

Gonzalo E. Mon

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The NAD recently issued a decision involving savings claims that holds some valuable lessons for advertisers. Lowes ran TV ads advertising that consumers could get “20% off appliances \$396 or more.” Not all appliances in that price range were discounted at 20%, though, and a consumer complained to the NAD, arguing that the retailer had attempted a “bait-and-switch.” Lowes responded that it had intended to advertise discounts of “up to” 20%. When it learned that those two words had been omitted, it pulled the problematic ads and replaced them with new ones.

The new ads advertised “Up to 20% Off Appliances \$396 or More,” and were accompanied by the following



disclosure: “Whirlpool, Maytag, KitchenAid, Amana, GE, LG, Samsung, Frigidaire, Electrolux, and Bosch brands limited to a maximum 10% discount, unless otherwise shown.” From the NAD’s perspective, this was still problematic. In order to support an “up to” savings claim, an advertiser must generally offer at least 10% of the inventory included in the offer at the maximum advertised rate. Given that Lowes excluded almost every major brand, the NAD was concerned that the retailer failed to meet the standard. Moreover, the NAD was concerned that the disclosure was not sufficiently clear or conspicuous.

The NAD recommended that Lowes stop making the challenged claim and that it should ensure that future “up to” savings claims apply to a significant percentage or meaningful number of products. Moreover, the NAD reminded Lowes that a disclosure with material offer terms – including significant exclusions – should be clear and conspicuous and appear close to the triggering claim. In other words, disclosures should be presented in a way that consumers are likely to notice, read, and understand them.

Beyond the obvious lessons regarding “up to” claims and disclosures, this case includes an important reminder about how ads can be challenged. Although almost all cases at the NAD start with a challenge from a competitor, a challenge can also start with a consumer complaint. When you’re evaluating your ads, make sure you think about how a typical consumer is going to react to them. Sometimes an unhappy customer can be more than just a customer-service issue.