

NAD Eyes Affiliate Marketing

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April 20, 2023

NAD recently announced two decisions involving Biossance's Squalane & Marine Algae Eye Cream. Neither of the decisions involved claims made by the company itself, though. Instead, the decisions involved mentions of the eye cream made by third parties – Sephora and Hello! Magazine – and NAD generally focused on the question of whether the product mentions constituted ads.

NAD started each decision with the principle that “as the line between what is advertising and what is not is blurred,” it’s important for digital publishers that are paid to promote a brand to provide consumers “enough information about any economic relationships” between themselves and the brands “so that consumers can decide what weight to give the information provided by the digital publishers.”

Sephora

In the Sephora case, NAD inquired whether a sponsored post by Sephora featuring the eye cream as one of its “most wanted” products violated this principle. NAD noted that although Sephora has flexibility in how it highlights products, if the products are featured “as part of a sponsorship agreement,” Sephora would be required to disclose material connection to the products being featured.

Sephora informed NAD that the products that had been featured in the ad “were not chosen as part of brand sponsorships with the manufacturers warranting a material connection disclosure.” Moreover, Sephora explained that the ad had stopped running prior to NAD’s inquiry. Based on that explanation, NAD closed the inquiry.

Hello! Magazine

In the Hello Magazine! case, NAD considered whether editorial content promoting the eye cream was really an ad. As with the Sephora case, NAD noted that if content is a paid commercial message, the publisher would have to clearly disclose its connection to the brand being promoted, including if it receives revenue from an affiliate link, “especially when the link is the primary economic motivation driving the content.”

NAD concluded that the article was editorial for a number of reasons. The brand didn’t pay for or influence the article, the recommendations were made by the magazine’s editorial staff without input from its business staff, and affiliate links were added after the article was written. Moreover, the main motivation in writing the article was to drive traffic to a website, not to generate affiliate link revenue. Thus, NAD determined that the article wasn’t a “paid commercial message” and closed the inquiry.

Beyond Eye Cream

The Hello Magazine! case is similar to other NAD cases involving publishers where the line between editorial content and ads can get blurred and consumers may not realize that a publisher will make money based on sales. The Sephora case is a little more usual, though, in that Sephora is a retailer that obviously makes money based on sales. Without a full decision on the merits, it's not clear exactly what bothered NAD in this case, but we'll keep our eyes open to see if they revisit this issue with other retailers.