

Settlement Approved in Neutrogena Naturals Class Action

September 4, 2013

Marketers of natural personal care products will want to take note of a recent nationwide settlement over marketing and advertising for Neutrogena Naturals. Plaintiffs filed suit in the Northern District of California in January of 2012. They alleged that product labels and website advertising for Neutrogena Naturals facial cleansers, body washes, and moisturizers violated California consumer protection laws. Specifically, the plaintiffs alleged that the labeling and advertising implied, falsely, that the Neutrogena Naturals products were entirely free of synthetic or synthetically-derived ingredients. The plaintiffs pointed to

- the name of the line – Neutrogena Naturals;
- the following claim, which appeared as part of an emblem on product labels: “NO harsh chemical sulfates, parabens, petrochemicals, dyes, [or] phthalates”;
- claims about active “bionutrients” in the products (e.g., “Willowbark bionutrient & Jojoba bead scrub detoxifies pores”); and
- claims related to Neutrogena using “pure” and “naturally derived” ingredients.

The plaintiffs alleged, separately, that the claim “NO . . . petrochemicals” was false and misleading, in and of itself, given the presence of petrochemical residues in the products.

Under the terms of the settlement, Neutrogena will (1) replace “petrochemicals” with “petrolatum” in the claim, “NO . . . petrochemicals” and (2) include on product labels, “a statement regarding the percentage of each product that is naturally derived.” Neutrogena will pay \$1.3 million to a settlement fund. Following pay-outs to consumers, any remainder “shall be distributed to an appropriate non-profit or civic entity(ies) agreed to by the Parties and approved by the Court.” Neutrogena will pay up to \$500,000 to the class counsel and up to \$1,500 (total) to three class representatives.

Another “natural” class action in the personal care space is currently on appeal before the Ninth Circuit. That case is against the maker of Jason Naturals. The lower court dismissed the lawsuit, finding that primary jurisdiction over “natural” claims for cosmetics rests with the FDA. The FDA has since provided a letter to the plaintiffs stating that it has no plans to define the term, “natural,” as to cosmetics.