

# The Devil's in the Data: L'Oréal's Wrinkle with the FTC

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The FTC [announced](#) last week that it settled allegations that cosmetics giant, L'Oreal, engaged in misleading and deceptive advertising relative to two of its anti-aging cosmetic products, "Lancôme Génifique" and "L'Oréal Paris Youth Code." The Complaint alleges that L'Oreal conducted research to identify skincare ingredients that increase activity of genes responsible for the production of proteins associated with skin function. L'Oreal allegedly represented that the Lancôme Génifique and L'Oréal Paris Youth Code products boost the activity of or target such genes, thereby resulting in visibly younger skin in just days, or, in some instances, overnight. The FTC alleged that L'Oreal's claims were not substantiated at the time that they were made and were, therefore, false and misleading. The consent order prohibits L'Oreal from making gene-related anti-aging claims absent competent and reliable scientific evidence.

Two points in particular are worth noting:

- First, it appears as though the FDA and FTC may have worked together on this matter. The FTC's Complaint allegations involve primarily advertising disseminated in early 2010 through mid-2011 but do not address one obvious issue, which is that gene-boosting claims go beyond the beautification claims to which cosmetics are limited. This appears to be because FDA addressed that issue separately. In September 2012, [FDA issued a Warning Letter](#) to Lancôme USA in which FDA specifically stated that claims relating to boosting gene activity were drug claims. The FDA matter was [closed](#) just two months later, in November 2012. As FDA and FTC followers may know, intra-agency cooperation has increased in recent years generally as FTC has focused on health claims.
- The Complaint language regarding the fit between the evidence and the claims is consistent with FTC's recent focus on the data underlying clinical studies. The Complaint discusses a study participant questionnaire used to substantiate claims such as "perfectly luminous" and "astonishingly even" and raises concerns relative to the structure of the questionnaire in the context of the claims and the percentage of participants who strongly agreed with each statement.

The lesson for advertisers is both old and new. Advertisers have always been required to closely tailor their substantiation to their claims. Increasingly, in this case and other recent matters ([i-Health](#) in particular), we see an agency digging in to the details of the data underlying those claims.