

APPLE INC.

Apple Notebooks

Advertising Agency: *Undisclosed*

Challenger *Dell, Inc.*

-- **Comparative claims must clearly specify the basis of comparison.**

Basis of Inquiry: Express and implied superiority and product description claims made by Apple Inc. for its MacBook laptops in broadcast and Internet advertising were challenged by Dell Inc., a competing manufacturer of laptops and other computer products. The television commercial shows the new MacBook laptop at various angles in and touts various environmental benefits of its product in every shot (“Its advanced aluminum and glass enclosure is completely recyclable”; “It’s engineered to be so efficient, it runs on a quarter of the power of a single light bulb”; “And it’s made without many of the harmful toxins found in computers like mercury”) above which are drawings in green crayon. It ends with the claim “The new MacBooks. The world’s greenest family of notebooks.” In the Internet advertisements, at the top of the webpage is the claim “The new MacBooks. The world’s greenest family of notebooks” below which it states “[t]he highly recyclable, even more energy-efficient MacBook family has been designed with the environment in mind.” Pictures of the new aluminum-enclosed MacBooks are shown and the rest of the web page describes the environmental benefits of the product under the following subheadings: 1) Many harmful toxins eliminated; 2) Highly recyclable; 3) More energy efficient; and 4) Reduced packaging. The followed claims formed the basis of NAD’s inquiry:

Express Claim:

“The New MacBooks. The world’s greenest family of notebooks.”

Implied Claim:

Apple notebooks are “greener” than competing notebooks.

Challenger’s Position:

A. “The New MacBooks. The world’s greenest family of notebooks.”

1. *Definition of “family”*

The challenger argued that the claim “world’s greenest family of notebooks” is a broad superiority claim as against all manufacturers’ notebooks and that common industry usage of “family” refers to a particular model or group of models and not the entire notebook line. The challenger maintained that according to the advertiser’s definition of family, its white MacBook, which does not offer the environmentally friendly attributes of the new MacBook line including the much touted aluminum body, would be part of its “greenest family” of MacBooks.

2. *Greenness of MacBooks*

The challenger noted that the advertiser premises its “world’s greenest family of notebooks” claim on “gold” ratings by the Electronic Product Environmental Assessment Tool (“EPEAT”). The challenger explained that this broad assessment of the environmental impact of electronic products is based on the IEEE 1680 standard and considers, among other things, a product’s recyclability, energy usage, its design and how it is manufactured.¹ However, the challenger noted that its products, along with many other competing products, have received gold EPEAT ratings. Moreover, the challenger noted that there is no scientific, regulatory or industry consensus on an appropriate single measure of “green-ness” for notebook computers thus reliance on only an EPEAT rating to substantiate a superior “green” claim is unfounded. The challenger maintained that there are limitations to the EPEAT ratings such as their relevance primarily to institutional purchasers, as the website notes that “[n]ot all the EPEAT criteria currently apply to products bought by individual consumers.” The challenger noted that EPEAT ratings do not taking into account factors such as the energy used during manufacturing, an important criterion in assessing a product’s greenness as evidenced by the FTC Green Guides, as well as multi-pack shipments or the use of halogen (a known carcinogen when disposed).² The challenger also noted that the EPEAT system does not provide different relative weights to different standards nor does it take into account the extent to which products and companies exceed (or fail to satisfy) the minimum standards for any of the criteria. Moreover, EPEAT is a self-rating system, as opposed to an independent third party certification, and its audits are limited in scope, adding that three of the nine EPEAT ratings for the advertiser’s MacBooks were not filed until January 2009 and thus not likely subject to an audit. Importantly, the advertiser noted, the challenged advertisements make no mention of EPEAT ratings, noting that the FTC Green Guides make clear that the basis of comparative environmental marketing claims should be identified.

The challenger also argued that the “four pillars” (recyclability, reduced packaging, less toxic materials, increased energy efficiency) identified by the advertiser as the basis for its “world’s greenest family of notebooks” claim are each superiority claims in the context of the “world’s greenest family of notebooks” claim, though it noted that, standing alone, they could be considered monadic. The challenger noted that Apple must, but does not, establish superiority over all of its competitors in all four pillars to support its broad superiority claim, noting that many competing laptops offer the same characteristics it cites as the basis of superiority (e.g., recyclability).

¹ See <http://www.epeat.net/Criteria.aspx>. Based on the 51 environmental performance characteristics (23 required criteria and 28 optional criteria) assessed of a specific product, a product is according to three tiers of environmental performance – Bronze (meets all 23 required criteria); Silver (meets all 23 required criteria plus at least 50% of the optional criteria); or Gold (meets all 23 required criteria plus at least 75% of the optional criteria). The criteria relate to general corporate programs, such as a Corporate Environmental Policy or Environmental Management System, in the following categories: 1) reduction/elimination of environmentally sensitive materials; 2) materials selection; 3) design for end of life; 4) product longevity; 5) energy conservation; 6) end of life management; 7) corporate performance; and 8) packaging.

² FTC Green Guides, 16 C.F.R. § 260.7(a) (explaining in Example 2 that the claim “Environmentally Friendly” on a product wrapper would be deceptive if the claim was made without also considering the negative consequences from the production of the product).

Advertiser's Position:

A. "The New MacBooks. The world's greenest family of notebooks."

1. *Definition of "family"*

The advertiser argued that "family" refers to a manufacturer's entire notebook lineup, not a particular model or group of models, and that this is both its plain meaning and industry usage. Moreover, the advertiser averred, to limit the interpretation of family to anything less will result in abuse and confuse consumers.

2. *Greenness of MacBooks*

The advertiser explained that it has undertaken substantial efforts to reduce the environmental impact of its products, having calculated its carbon emissions during all phases of its activities and determined that 95 percent of Apple's carbon footprint comes from the products it produces. As such, the advertiser noted that its core environmental considerations in the development of the MacBooks are: 1) their highly recyclable materials; 2) reduced packaging; 3) eliminating many harmful toxins; and 4) increasing energy efficiency.

The advertiser argued that the claim at issue, "[t]he world's greenest family of notebooks," refers solely to the environmental benefits of its MacBooks thus there is no need for NAD to compare the merits of each company's corporate or overall environmental efforts and commitments. The advertiser maintained that this claim was supported by MacBooks' superior EPEAT ratings. The advertiser explained that EPEAT was originally developed by the Zero Waste Alliance on a grant from the U.S. Environmental Protection Agency ("EPA") and a multi-stakeholder group, including itself and Dell. The advertiser noted that the challenger refers to EPEAT as a "consistent, accepted" standard for green procurement and its competitors tout the EPEAT ratings of their products with *PC Magazine* describing EPEAT as "far and away the strictest label you'll see."³ As such, EPEAT is an industry-accepted environmental procurement tool designed to help institutional (government and corporate) purchasers evaluate, compare and select computer products based on 51 environmental criteria. The advertiser noted that all of Apple's notebooks are EPEAT-rated, the highest percentage in the industry (compared to less than a majority for Dell and less than 60 percent for Sony, Samsung and HP) and 89 percent of them are gold-rated. The advertiser also explained that EPEAT consistently verifies product declarations and any verification failure is reported publicly, adding that an inaccurate declaration can result in the removal of a product from the EPEAT registry.

As for the specific "green" characteristics of its product, the advertiser noted that the listed attributes are monadic and clearly and conspicuously separated from the "world's greenest family of notebooks" claim. The advertiser argued that the fact that it has completely removed mercury from all of its new MacBooks is a positive improvement given that only 124 of the 367

³ Jeremy A. Kaplan, *The Green PCs*, PC MAGAZINE (March 17, 2008).

notebooks with active EPEAT ratings are mercury-free (and only 32 percent of the challenger's notebooks that are EPEAT rated are mercury free). The removal of arsenic, the advertiser averred, is also important as it is a universally recognized carcinogen as is the complete removal of BFRs (brominated flame retardant) and PVCs (polyvinyl chloride) which, for example, the challenger cannot claim for its computers. As for the energy efficiency claims (e.g., "engineered to be so efficient it runs on a quarter of the power of a single light bulb"), the advertiser argued that they are fully substantiated based on testing to determine the number of watts consumed during common tasks (e.g., web browsing and text editing) over a wireless network. The advertiser noted that all of its MacBooks are ENERGY STAR compliant, adding that EPA has strengthened the requirements for earning the ENERGY STAR certification so that devices earning the ENERGY STAR label are even more energy efficient and that other computer manufacturers cannot say the same for *all* of their notebooks. Concerning the recyclability statements, the advertiser remarked that it is not suggesting that the attributes are exclusive to Apple and noted that they are substantiated in accordance with the FTC's Green Guides because the new MacBooks' aluminum casing and glass may be recovered from the solid waste stream for reuse and do not include any extraneous parts that may not be entirely recyclable. The advertiser argued that the fact that other manufacturers incorporate recyclable materials into their notebooks and offer free recycling programs does not preclude Apple from touting the recyclability of new MacBooks. The advertiser argued that the challenger's reference to a blogger's comments as to the "wastefulness" of the process used to manufacture the aluminum casing and the reparability of the notebook are false as the MacBooks can be repaired without getting rid of the casing and any aluminum not used in the manufacture of the casing is subsequently recycled, adding that the blog also notes that MacBooks are environmentally friendly. The advertiser also noted that it publicly discloses the amount of energy it uses in the production of each of its MacBooks, providing consumers with a sophisticated life-cycle analysis of carbon emissions at each phase of production. Likewise, the advertiser noted that its packaging statements only refer to the prior generation of Apple notebooks ("The new MacBook packaging is up to 41 percent smaller than the previous generation") and affirmed that it has reduced retail and shipping packaging of the new MacBooks which has an environmental benefit because fewer shipments are required which lowers carbon emissions. The advertiser also noted that the challenger's reference to Dell's higher ranking than Apple on the Carbon Disclosure Leadership Index (CDLI) ranking is unavailing because the CDLI is an annual voluntary questionnaire that focuses on a company's corporate disclosure practices and has only a minimal relation to a company's actual CO₂ emissions. As such, it does not actively participate in the CDLI questionnaire hence its low score which, the advertiser argued, does not reflect its actual greenhouse gas emissions goals and performance.

Decision:

At issue in this case is the meaning of the claim "the world's greenest family of notebooks" – first, if it is a superiority claim as to all competing notebooks and the scope of the claim as concerns the reference to "family" – i.e., does it refer to a product line or, rather, all the notebooks produced by a given manufacturer?

The television commercial starts off with a picture of the new MacBook and then each frame features an environmental benefit (e.g., “Its advanced aluminum and glass enclosure is completely recyclable”) and ends with the screen that includes a drawing of a green apple below which is the claim “[t]he greenest family of notebooks.” The Internet advertising includes the headline “The new MacBooks. The world’s greenest family of notebooks” directly below which it clarifies “The highly recyclable, even more energy-efficient MacBook family has been designed with the environment in mind.” The rest of the webpage explains the key environmental benefits of the new MacBook under the following headings: “Many harmful toxins eliminated”; “Highly recyclable”; “More energy efficient”; and “Reduced packaging.”

Based on the juxtaposition of the “world’s greenest family of notebooks” and “the greenest family of notebooks” claims with specific “green” product improvements in close proximity to the claims being qualified, NAD believes that consumers can reasonably take away the message that Apple’s MacBooks are the most environmentally benign notebooks on the market and that the listed attributes form the basis for this superiority claim.

The FTC Green Guides make clear the following:

“[i]t is deceptive to misrepresent, directly or by implication, that a product, package or service offers a general environmental benefit. Unqualified general claims of environmental benefit are difficult to interpret, and depending on their context, may convey a wide range of meanings to consumers. In many cases, such claims may convey that the product, package or service has specific and far-reaching environmental benefits...[and] [u]nless this substantiation duty can be met, broad environmental claims should either be avoided or qualified, as necessary, to prevent deception about the specific nature of the environmental benefit being asserted.”⁴

The key substantiation on which the advertiser relies as support for its “world’s greenest family of notebooks” claim is the EPEAT ratings of its notebooks. All but one, the original (white) MacBook, are gold rated. EPEAT describes itself as “a system to help purchasers in the public and private sectors evaluate, compare and select desktop computers, notebooks and monitors based on their environmental attributes”⁵ and it is undisputed that many stakeholders, including major computer manufacturers such as the challenger and advertiser, have been involved in the creation of EPEAT standards which uses 51 criteria, from recycling and end of life management to energy efficiency, to assess the environmental impact of computers. The challenger itself has acknowledged the merits of EPEAT as it touted the fact that it is “one of the first manufacturers to register product with EPEAT” and that EPEAT is a “consistent, widely- accepted standard for...green IT procurement initiatives.”⁶ In fact, many computer manufacturers cite to the registration of their products in EPEAT as evidence of their commitment to producing “green” products. For example, Toshiba, on the webpage for its Portégé laptop, states “Good-as-Gold Green Technology” and goes on to explain that “Toshiba technology in this laptop isn’t just some of the most advanced. The design is also among the greenest. In fact, the Portégé® R500

⁴ FTC Green Guides at § 260.7(a).

⁵ <http://www.epeat.net>.

⁶ <http://www.dell.com/content/topics/global.aspx/corp/environment/en/epeat?c=us&l=en&s=corp>.

was awarded elite EPEAT Gold™ status, the highest rating in environmental standards for laptops by EPEAT. Carry this eco-conscious machine and you'll be doing a world of good.”⁷ NAD found these facts to provide evidence of industry consensus that registration of computer products in, and a gold rating from, EPEAT demonstrates a positive assessment of the overall environmental attributes of computer products.

One thing missing from the 51 EPEAT criteria is a specific reference to the manufacturing process of the computers though EPEAT does review companies' environmental management systems as well as those of original equipment manufacturers (“OEMs”) to determine if they comply with a third-party certified environmental system such as ISO 14001 (International Standards Organization) which provides guidance to companies on determining the environmental impact of their activities and improving their environmental policies. However, the benefits of EPEAT and gold-rated EPEAT computers are noteworthy and consumers are entitled to be informed of them. Although NAD notes that EPEAT was designed for “institutional purchasers,” it also acknowledges that it can be used by individual consumers as well. Moreover, the reasons cited for the use of EPEAT being limited to institutional purchasers is that “[s]ome consumer-oriented products may not meet EPEAT standards” and that “consumers have not historically shown an interest in greener electronics.”⁸ However, that is not the case here – the laptops at issue, and indeed many laptops, are EPEAT rated. Moreover, consumers are increasingly taking into account a company's environmental practices and the environmental impact of individual products when making purchasing decisions. NAD also noted that EPEAT has verification procedures in place to ensure that the information submitted by a manufacturer about the environmental attributes of its computers remains accurate. NAD determined that EPEAT is a recognized industry methodology to identify the “green” characteristics of a computer product and the fact that the advertiser has specifically undertaken to design all of its MacBooks to reduce their negative environmental impact (as is reflected in its EPEAT ratings) is information that it should be free to communicate to consumers.

The advertiser, however, does not disclose in its advertising that the EPEAT ratings of its new MacBooks form the basis of its “World's Greenest Family of Notebooks” claim. The veracity of these attributes, standing alone, is not in question and many laptop manufacturers have undertaken certain similar measures to make their laptops more environmentally benign. Indeed, there is no evidence in the record that the attributes listed are unique to the advertiser. What is unique to this advertiser is that it has elected to only produce computer notebooks that meet the highest EPEAT ratings. While other manufacturers may have subcategories of lines with similar ratings, none has comparable high ratings for all of the notebooks it produces.⁹

The question remains whether the advertiser, by referencing “family,” makes clear the basis of its intended comparison – i.e., all Apple MacBooks versus all notebooks of a given

⁷ <http://explore.toshiba.com/laptops/portege/R500>.

⁸ <http://www.epeat.net/Consumers.aspx>

⁹ As for the advertiser's low score on the Carbon Disclosure Leadership Index (CDLI), NAD noted that the scores are based on the responses and reports given by a company thus the advertiser's limited participation in the CDLI questionnaire can account for the low score. NAD does not believe that Apple's low score in the CDLI questionnaire undermines its high EPEAT ratings.

manufacturer. There is evidence in the record as to “family” referring to one product line as well as all of the products produced by a manufacturer. In the absence of consumer perception evidence, NAD routinely steps inside the shoes of the consumer to determine what messages are conveyed by an advertisement.¹⁰

NAD believes that consumers could reasonably take away the message that a “family” of notebooks is a line of products and not all the products produced by a manufacturer particularly since there are many manufacturers that have more than one line of computer notebook products and may choose to highlight one particular line in their advertising, particularly newer lines or those with unique features. While this is not the case with the advertiser, whose MacBook is its only line of notebooks it produces, consumers may not understand the basis of the comparison to be all of a given competitor’s notebooks.

Accordingly, NAD recommended that the advertiser modify its “world’s greenest family of notebooks” claim to make clearer that the basis for the comparison is between all MacBooks to all of the notebooks manufactured by any given competitor and avoid the reference to “world’s greenest” given the potential for overstatement caused by “world’s” based on current facts (i.e., that some of the Toshiba Portégé notebooks have a higher ["greener"] gold EPEAT rating than the MacBooks).¹¹

Conclusion:

Accordingly, NAD recommended that the advertiser modify its “world’s greenest family of notebooks” claim to make clearer that the basis for the comparison is between all MacBooks to all of the notebooks manufactured by any given competitor and avoid the reference to “world’s greenest” given the potential for overstatement caused by “world’s” based on current facts (i.e., that some of the Toshiba Portégé notebooks have a higher ["greener"] gold EPEAT rating than the MacBooks).

Advertiser’s Statement:

Apple thanks the NAD for confirming that its MacBooks, as compared to all of the notebooks made by any given manufacturer, are the world’s greenest notebook computers. Apple has undertaken substantial efforts to reduce the environmental impact of its lineup of notebook computers and is pleased that the NAD has recognized its commitment to the environment.

Apple thanks the NAD for recognizing that EPEAT is a comprehensive industry standard for measuring the green attributes of computer products. Like the NAD, Apple believes that a product's EPEAT rating is noteworthy for consumers and that computer manufacturers should be permitted to use these ratings in their advertising.

¹⁰ Michelin North America Inc. (Tires), Report # 4948, *NAD/CARU Case Reports* (November 2008).

¹¹ NAD also recommended that the advertiser make clear that unlike the new MacBooks, the white MacBook is silver EPEAT rated.

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Apple believes that in its advertising the term “family” clearly refers to all of its notebook computers, rather than a particular notebook model or group of models. In the interest of the self-regulatory process, however, Apple will replace the word “family” with an alternate word that effectively communicates that its “World’s Greenest” claim pertains to all of Apple’s notebooks.

Apple appreciates the NAD’s thoughtful review of this matter, and supports its self-regulation efforts. (**#5013 AMU, closed 06/03/2009**)