



NARB PANEL #302 – July 25, 2022

**Appeal of the NAD Final Decision #7045 Regarding Claims for
CoStar Group, Inc., Advertising by Apartments.com**

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REPORT OF NARB PANEL 302

Decision Issued: July 25, 2022

Appeal of the NAD Final Decision #7045 Regarding Claims for CoStar Group, Inc., Advertising by Apartments.com

A. Background

This is an appeal from the decision of the National Advertising Division (“NAD”) in NAD Case No. 7045, dated April 15, 2022. The advertiser is CoStar Group, Inc., doing business as Apartments.com. The challenger is Zillow, Inc. (“Zillow”).

As explained by NAD, the parties operate competing real estate websites that offer a platform for landlords to list, and tenants to try to find, rental units, including apartments, condos, and single-family homes. NAD Decision at 2. The Apartment.com network employs nine rental websites, and each site focuses exclusively on rentals (as contrasted with purchases/sales of residential property). Zillow’s real estate website provides a platform for selling/buying transactions as well as renting.

B. Issues on Appeal

At the NAD, Zillow challenged a total of 16 express claims and five implied claims. See NAD Decision at 1-2. NAD documented its findings and recommendations in 16 separate paragraphs. Id. at 12-13. In brief summary, NAD found certain of the challenged claims (or claims modified by the advertiser during the NAD proceeding) to be supported, and recommended others be either discontinued or modified.

There is no cross-appeal, and accordingly the only issues before the panel are those designated for appeal by the advertiser in its NAD Advertiser’s Statement, which states in pertinent part,

specifically, with respect to [NAD’s] conclusions that CoStar’s advertising is not necessarily directed to the rental market and that CoStar claims regarding the popularity of Apartments.com is not supported by unequivocal website traffic data regarding unique visits to the site.

NAD Decision at 13. As a result of the limited scope of the appeal, a total of only three of the 16 paragraphs in NAD’s findings and recommendations are relevant on this appeal.

C. Whether Consumers Understand that Apartments.com Advertising Is Directed Only to the Rental Market

Apartments.com has been running a series of humorous commercials featuring actor Jeff Goldblum as the fictional character “Brad Bellflower.” Each commercial ends with the tagline stating that Apartments.com is the “Most Popular Place to Find a Place” (the “Most Popular” tagline). Several of these commercials make an express and clear reference to “renters,” but others do not.

NAD concluded as a preliminary matter that the tagline was ambiguous, in that, by itself, the tagline could refer to sales transactions as well as rentals. The advertiser, however, offered no support for a claim of being most popular for real estate transactions when sales are included, but rather argued that the message conveyed by the tagline was understood by consumers in the context of the Brad Bellflower commercials to be limited to rental properties. NAD further concluded that when the Most Popular tagline appeared in a commercial accompanied by an express reference to renting or renters, the tagline did not mislead consumers because in that context, “place” in the phrase “find a place” would be understood by consumers as referring to a residential rental property. NAD Decision at 4-5; see also NAD Decision at 12, first Conclusion paragraph.

The advertiser argues on appeal that reasonable consumers would understand all of the Jeff Goldblum commercials as referring to only rental transactions. It argues, first, that the tagline by its very words is understood to refer exclusively to the rental market. Second, it argues that its business name, Apartments.com, is also invariably understood as a reference to the rental market, because apartments are mostly rental properties.

In response, Zillow argues that consumers often purchase, or own, apartments, and therefore references to apartments are not necessarily references to rentals. It notes, moreover, that brand names are often “fanciful and hyperbolic,” and therefore are not interpreted literally by consumers. Finally, Zillow points out that Apartments.com on several of its websites does offer properties for sale.

On this issue, the panel concludes that prominent references to the brand name “Apartments.com” convey to most reasonable consumers that the advertising messages are directed to the rental market. To ensure that the ads do not also convey a message about purchases, however, the panel recommends that commercials referring to “find a place” or a comparable phrase should also include at least one conspicuous reference to renters, renting, or a visual reference that would be understood as referring to the rental market.

D. Whether Apartments.com Has Supported a “Most Popular” for Rental Properties Claim Based on Showing that Its Website Has the Most “Unique” Visitors

At the NAD, to support its Most Popular tagline, the advertiser relied on confidential data showing that it had more “unique” visitors to its rental websites than any competitor had unique visitors

looking for rentals. However, NAD concluded that this support was not a “good fit” for the advertiser’s Most Popular claim. NAD Decision at 5-7.

As noted, NAD’s conclusions and recommendations are set forth in 16 separate paragraphs. See NAD Decision at 12-13. The dispute regarding the Most Popular tagline and comparable claims are addressed in the second and sixth paragraphs. In the second paragraph, NAD sets forth its conclusion that unique-visitor data is not a “good fit” for the claims. In the sixth paragraph, NAD recommended discontinuance of the advertiser’s “conversion claims.”

In resolving this issue, NAD concluded initially that the Most Popular tagline, as well as other claims that conveyed a comparable message, communicated that the rental website resulted in the largest number of completed rental transactions (or “conversions”). Conversion data, however, is unavailable to the websites. NAD accordingly concluded that the issue for resolution was whether the total number of unique visitors was the proper proxy for completed rental transactions.

Accepting the challenger’s arguments, NAD concluded that other available data, such as total website visits, provided alternative methods for estimating which website resulted in the most conversions. See NAD Decision at 6. NAD reasoned that a renter who visited the website only once might not have completed a transaction as a consequence of that visit, whereas a person who visited the site numerous times might have been more likely to have done so.¹

On appeal to this panel, the advertiser argues that it is the total of unique visitors that in fact makes it the “most popular” website because popularity in this context means the total number of individuals. It further argues that NAD erred in construing the tagline as a “conversion” claim when the message relates to looking for an available location, not completing a rental transaction. It further argues that the advertising at issue is primarily directed to property owners, yet NAD mistakenly relied on its understanding of the consumer interpretation of the tagline. The advertiser also argues that the promotional material of its competitors, including the challenger, show how important and relevant the industry considers unique-visitor data.

Zillow in turn makes several arguments as to why, in its view, NAD was correct in finding that, in the rental market, a measure of most visits is more relevant to popularity than is a measure of most unique visitors.² Among other arguments, Zillow contends that, as NAD found, it is unlikely that a renter will find a suitable apartment after one visit to a website. The challenger offers the analogy of visits to pediatrician—if a doctor is “popular,” patients will return many times, and not just visit once.

In resolving this issue, the panel notes at the outset that the advertiser points out that all it need do

¹ The panel notes that NAD indicated that it would have had no issue with Apartments.com promoting itself as having the most unique visitors.

² Zillow submitted evidence showing that its website is number one in “most visits.”

is provide a reasonable basis for its claims, and argues that NAD did not apply the proper standard in holding it to a standard of “perfection.” However, the panel notes that “most popular” claims are powerful claims, and the issue here is ultimately whether the advertiser has support for all reasonable interpretations of the claim, rather than the quality of the evidence it submitted for its intended interpretation.

The issue to be resolved is a complicated and subtle one, in part because both websites are available for free. Accordingly, total website traffic, whether measured by total unique visitors or total visits, is not directly analogous to total unit sales of a typical consumer good or service, which data has traditionally been used to support popularity claims in a category.

The panel notes that the advertiser is responsible for all reasonable messages conveyed by its advertising. The panel concludes that one reasonable message conveyed by the Most Popular tagline is that the advertiser’s site is the preferred site for researching available rental properties, a subjective standard. Because the advertiser does not have any consumer research to support that message, the panel recommends that the Most Popular tagline be discontinued.

In view of the foregoing, the panel does not agree with NAD’s analysis that concluded that the Most Popular tagline was necessarily a “conversion” claim. If one of the category participants were able to support a most popular claim with a consumer research study, proper qualification of the claim as based on a consumer study could ensure that consumers would not receive an unintended “conversion” message.

For clarification, addressing the sixth paragraph on page 12 of the NAD Decision, the claims addressed there in addition to the Most Popular tagline were not appealed by the advertiser and are therefore governed by the NAD Decision. For further clarification, nothing in this decision would preclude the advertiser from making a properly supported claim that specifies the specific data point, such as “most unique visitors.”

E. Recommendations

The panel recommends that the advertiser discontinue the claim “The Most Popular Place to Find a Place.”

The panel further recommends that advertising that refers to “find a place” or comparable phrase should include, in addition to prominent references to Apartments.com, at least one conspicuous reference to renters, renting, or a visual that conveys a rental-market message.

The panel thanks CoStar Group, Inc. and Zillow, Inc. for participating in industry self-regulation in the interests of promoting truth in advertising.

F. Advertiser's Statement

While CoStar Group respectfully disagrees with the Board's conclusions, it will accept the Board's recommendations.

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