

Case #7045 (04/15/2022)

CoStar Group, Inc.
Apartments.com

Challenger:

Zillow, Inc.

Product Type:

Websites/Web Services

Issues:

Performance Claims; Quantified Claims; Superiority Claims

Disposition:

Substantiated In Part/Modified-Discontinued In Part

BBB NATIONAL PROGRAMS

NATIONAL ADVERTISING DIVISION

COSTAR GROUP, INC.,
Advertiser,

ZILLOW, INC.,
Challenger.

Case No. 7045

Closed: 04/15/2022

- Most popular claims send a powerful message that the brand is preferred over all others, and it weighs heavily in consumer buying decisions.
- The evidence supporting a website popularity claim should match the message that consumers take away from such a claim.

FINAL DECISION

I. Basis of Inquiry

The advertising industry established the National Advertising Division (“NAD”) and the National Advertising Review Board (“NARB”) in 1971, as an independent system of self-regulation designed to build consumer trust in advertising. NAD reviews national advertising in all media in response to third-party challenges or opened on its own initiative. Its decisions set consistent standards for advertising truth and accuracy, delivering meaningful protection to consumers and leveling the playing field for business. Challenger Zillow, Inc. (“Zillow” or “Challenger”) challenged express and implied claims made by Advertiser CoStar Group, Inc. (“Apartments.com” or “Advertiser”) for its Apartments.com website network. The following are representative of the claims that served as the basis for this inquiry:

A. Express claims

- “The Most Popular Place to Find a Place.”
- “The Most Popular Place to Lease Your Place.”
- “Apartments.com puts more renters in new homes than any other website.”
- “#1 site for renters.”
- Apartments.com is the “#1 listing network for houses, townhomes, condos and apartments.”
- “More People Find Their Place on Apartments.com than any other website.”
- “The most renters on the web.”
- “We are the most visited online rental network with more than 75 million renter visits per month across 11 leading sites.”

- “Apartments.com has successfully helped get over 40 million leases signed by happy renters nationwide.”
- “Apartments.com also ranks in the #1 Google search position 94% of the time.”
- “Keep your property fully leased at the greatest return on your investment.”
- “The most advanced search tools that renters want.”
- “The most innovative rental technology.”
- “We deliver the highest quality, ready-to-move renters.” “Our leads convert to leases 2X more than our nearest competitor.”
- “The Most Marketing Support.”
- “7X More Exposure on the Web.”

B. Implied Claims

- Apartments.com claims: “Millions More Renters. Reaching millions of prospective renters through additional engagement and retention tools.” The claim necessarily implies that Apartments.com can reach millions more renters than Zillow and can do so because it offers tools that Zillow does not have.
- By claiming to convert leases “2X more than our nearest competitor,” Apartments.com is implying a lease conversion rate that is twice as high as Zillow’s.
- Apartments.com claims: “Unlike other websites, we never sell or share your leads,” which necessarily implies that Zillow shares or cross-sells leads with competitors.
- By claiming its customers’ ability to “build a customized lease backed by industry experts and lawyers in every state,” Apartments.com promises a level of legal expertise that it cannot offer and a product that it does not deliver.
- Apartments.com’s claim that it provides “Fast Easy and Free” service that is “100% free, with absolutely no cost for you,” fails to properly disclose that customers need to pay a fee to obtain the benefits of its premium service.

II. Evidence Presented

The Advertiser provided website images from its website and from the Challenger’s website and a Federal Trade Commission administrative complaint in an unrelated matter. The Advertiser also provided website traffic data from Comscore that includes Zillow Rentals, Apartments.com and other rental networks. The Advertiser provided confidential information including Nozzle keyword rank tracker data, Anyone Home data that shows the number of listings, leads, and leases and Apartment Management Consultants data showing traffic to particular rental sources. In addition, the Advertiser provided internal data including listing data, as well as leads and leases and conversion rates since 2011 and financial information supporting marketing expenditures.

The Challenger provided five video commercials, website marketing materials, and a direct mail piece where the alleged claims appeared. In addition, the Challenger provided other Comscore media trend data as well as a 2021 USA Today Network Renters Survey.

III. Decision

The parties operate competing real estate websites that offer a platform for landlords, and tenants to list and find rental units including apartments, condos, and single-family homes. CoStar operates the Apartments.com network of nine rental websites including Apartments.com, For Rent.com,

ApartmentFinder.com and After55.com. Each site in the Apartments.com network focuses exclusively on rentals. Zillow’s real estate website provides a platform for selling, buying, and renting homes and apartments and includes Zillow Rentals for listing a rental on Zillow and its partner sites. Two types of “consumers” use the parties’ websites: renters seeking a trusted and extensive list of potential rental properties and landlords looking to list properties that will be seen and considered by potential renters. Both parties also offer a suite of tools for property owners.

A. *Introduction*

Advertisers must possess a “reasonable basis” for claims disseminated in advertising.¹ What constitutes a “reasonable basis” depends on several factors, including the type of product, the type of claim, the consumer benefit from a truthful claim, the ease of developing substantiation for the claim, the consequences of a false claim, and the amount of substantiation experts in the field believe is reasonable.² It is well settled that advertisers are responsible for all reasonable interpretations of claims made in its advertising, including those messages they may not have intended to convey.³

Zillow challenges claims made by Apartments.com on videos, online, and through direct mail solicitations that are directed to renters and landlords. The challenge focuses on popularity claims, conversion claims, web prevalence claims, website/service features claims and other claims.

B. *Permanently Discontinued or Modified Claims*

The Advertiser stated that it permanently discontinued its use of the claim “We deliver the highest quality, ready-to-move renters.” Based on the Advertiser’s assurances that the claim will be discontinued, NAD did not review the claim on its merits. Rather, it will treat the claim for compliance purposes as if NAD had recommended discontinuance and the Advertiser agreed to comply.

The Advertiser also stated that it has permanently modified several claims as follows:

- The claim “We are the most visited online rental network with more than 75 million renter visits per month” has been modified to state: “We’re the nation’s #1 rental network, with more than 25 million visitors to our sites each month searching for a new apartment.”
- The claim “Apartments.com also ranks in the #1 Google search position 94% of the time” has been modified to state: “The Apartments.com network also ranks in the #1 Google organic search position 91% of the time.”
- The claim “We deliver the highest quality, ready-to-move renters. Our leads convert to leases 2X more than our nearest competitor.” has been modified to state: “We deliver at least 2.7X more leases for our advertisers than the competition.”
- The claim “Keep your property fully leased at the greatest return on your investment.” has been modified to state: “Keep your property leased at a great ROI.”

¹ *Guardian Technologies, LLC (GermGuardian and PureGuardian Air Purifiers and Replacement Filters)*, Report #6319, NAD/CARU Case Reports (November 2019).

² *Pfizer Inc.*, 81 F.T.C. 23 (1972). See also FTC, *Policy Statement Regarding Advertising Substantiation* (Nov. 23, 1984), <https://www.ftc.gov/public-statements/1984/11/ftc-policy-statement-regarding-advertising-substantiation>.

³ See, e.g., *Glad Products Company (ForceFlex Plus with Clorox Tall Kitchen Drawstring Bags)*, Report #6996, NAD/CARU Case Reports (January 2022).

NAD reviewed these claims as modified.

C. *Popularity Claims*

Zillow challenged a number of popularity claims that appear in a series of video advertisements, online and in a direct mail piece as misleading or unsubstantiated. Some of the challenged claims are directed toward renters while others are directed to landlords. The claims include both “most popular” claims and #1 claims:

- “The Most Popular Place to Find a Place.”
- “The Most Popular Place to Lease Your Place.”
- “Apartments.com puts more renters in new homes than any other website.”
- “#1 site for renters.”
- Apartments.com is the “#1 listing network for houses, townhomes, condos and apartments.”
- “More People Find Their Place on Apartments.com than any other website.”
- “The most renters on the web.”
- “We are the nation’s #1 rental network with more than 25 million visitors to our sites each month search for a new apartment.”

The “Most Popular Place to Find a Place” claim appears as the tag line in an advertising campaign featuring the actor Jeff Goldblum that appeared on national television, social media, radio and streaming services, outdoor billboards, and direct mail. The campaign features a fictional character, “Brad Bellflower,” the inventor of the “Apartminternet.” The Brad Bellflower commercials are humorous vignettes, and each includes the tagline “The Most Popular Place to Find a Place.” In one commercial Mr. Bellflower explains that Apartments.com has the most listings because they are willing to “scout them out no matter how far away” followed by a video feed from an intern on Mars who has nothing to report. In another commercial Mr. Bellflower begins by saying “some may wonder how Apartments.com has helped more renters find their place than any other site” and explains that it is because their employees have been digitally upgraded physically so they can give 110%. Another short commercial begins with the statement “Apartments.com makes getting into a new home easier than ever” and shows a leaf falling from a house plant and hitting “apply” on an Apartments.com screen. In another commercial Mr. Bellflower describes how Apartments.com has found over 40 million people homes or new homes. Each commercial includes voiceovers and text identifying Apartments.com and concludes with the tagline that Apartments.com is “The Most Popular Place to Find a Place.”⁴

1. Messages Conveyed

The Challenger argued that Apartments.com’s “Most Popular Place to Find a Place” claim is not limited to the rental market but extends to all real estate listings including real estate sales. The Advertiser argued that its advertising is directed to renters and includes the prominent use of the terms “renters” and “apartments” in the advertising. In addition, the Advertiser noted that its corporate brand and domain, Apartments.com, are synonymous with renting. Further, the Advertiser argued that “place” means a place to rent, not to purchase.

⁴ A direct mail piece includes claims directed to both renters and landlords and shows a picture of Mr. Bellflower with a modified tag line, “The most Popular Place to Lease Your Place.”

As neither party submitted evidence to support its respective position concerning the messages that consumers could reasonably take away from the Brad Bellflower commercials and other advertising, NAD used its own expertise to evaluate the messages reasonably conveyed by the advertising.⁵ While all of the Brad Bellflower commercials include audio and visual references to Apartments.com, not all of them refer to renters or renting but to people generally.⁶ In addition, not all the commercials reference apartments, but homes or new homes. In advertising that clearly refers to renters and renting, the claim “Most Popular Place to Find a Place” is limited to rentals. However, when the advertising does not limit the claim to renters or renting, consumers could reasonably take away the message that the popularity claims refer to finding a home, generally. As a result, NAD recommended that the advertising be modified to clearly and conspicuously disclose that the “Most Popular Place to Find a Place” claims are limited to the rental market.

2. The Fit Between Most Popular Claims and Support Provided

NAD next examined the “Most Popular” claims and the claims that Apartments.com is the “#1 site for renters” and has “the most renters on the web” to determine whether there was a good fit between the support provided and the challenged claims. Most popular claims send a powerful message that the brand is preferred over all others, and it weighs heavily in consumer buying decisions.⁷ The popularity of the Advertiser’s website is difficult to measure by products sold, the typical measure for the popularity of products. The “sold” product in the apartment rental market would be a successful rental -- a transaction that does not occur on the Advertiser’s websites. The evidence supporting a website popularity claim should match the message that consumers take away from such a claim.

The Advertiser relied on Comscore website traffic data to support its “Most Popular” claim. The data indicated that Apartments.com has the most unique visitors. The Challenger relied on other Comscore data that indicated that its websites have the most “visits” and argued that visits is a better metric than unique visitors because it indicates a more engaged audience and more attempts to seek out a rental unit on its network. The Advertiser responded that while visits may be a significant engagement metric for some websites, in the rental context it could indicate that consumers are having trouble finding what they are looking for on the website.

NAD concluded that website traffic is not a good fit for the “Most Popular” claims. When an advertiser makes a broad superiority claim, it must establish superiority with respect to “all reasonable interpretations of its claim.”⁸ While the number of unique visitors measures how many consumers visit Apartments.com when searching for a place to rent, the Advertiser’s unqualified claims that Apartments.com is “#1” or “most popular” tells consumers that the website is used by more consumers than

⁵ *Charter Communications, Inc. (Spectrum Mobile)* Report #6940, NAD/CARU Case Reports (April 2021).

⁶ The parties disagreed about whether any advertising used the “most popular” claim without referring to renters or renting. In at least one commercial Mr. Bellflower states that Apartments.com has helped over 40 million people find homes and includes the “Most Popular Place to Find a Place” claim but failed to limit the claim to rentals. Although Advertiser argued that the commercial was “old,” it did not agree to permanently discontinue the commercial or the claim.

⁷ *Perrigo PLC (Plackers Dental Flossers)*, Report # 7065, NAD/CARU Case Reports (November 2021); NARP Panel #299 (December 2021) (“#1 claims are powerful claims that can impact consumer decisions and attitudes and should be evaluated carefully.”)

⁸ *eHarmony.com, Inc. (www.eHarmon.com)* Report # 4485 NAD/CARU Case Reports (April 2006).

any other website to find a rental. Renting a home is often a lengthy process and usually requires more than a single visit to a website. As a result, the total number of visits to a website is another important indicator of popularity.

The Advertiser argued that “popularity” is defined by the volume of “people” that visit the website and, as a result, its higher number of unique visitors should provide a reasonable basis for its advertising claims. The argument cuts both ways, however, because depending on the context of the claim and the category of the product or service, the number of “people” that visit a website, a store, a museum or an amusement park include people who visit the site more than once. For example, a museum or an amusement park measures popularity based on the number of visitors per day. Understanding whether the visitors were first time visitors or returning visitors would be an important metric to understand marketing and growth, but not the sole metric for measuring popularity.

The Challenger provided evidence that website traffic is a frequently used metric for measuring website popularity.⁹ The Advertiser countered with evidence that Yelp and TripAdvisor rely on “unique users” as key metrics for measuring popularity. Both Yelp and TripAdvisor, however, can be visited once to either make a purchase or review information. By contrast, the process for renting an apartment is likely to require multiple visits to a website to review listings. The Advertiser’s quotation of Vroom, an online auto marketplace, in its report to investors is particularly instructive. Vroom explains, “We use average monthly unique visitors to measure the quality of our customer experience, the effectiveness of our marketing campaigns and customer acquisition as well as the strength of our brand and market penetration.” Understanding the volume of unique visitors helps measure website reach but is not necessarily a measure of the #1 or “most popular” website. Without a direct measure of “sales” (or here converting a person’s search for an apartment to renting an apartment) metrics such as unique visitors, website visits, time on the website, and listings on the website are all metrics that can indicate whether a website is #1 or the “most popular.” For the foregoing reasons, NAD concluded that while the Advertiser established that it has the most unique visitors, such evidence is not a good fit for the “most popular” claims.

In addition, Zillow challenged the claim that Apartments.com is the “#1 listing network for houses, townhomes, condos and apartments.” The Advertiser argued that Apartments.com’s rental network has the broadest reach on the market, as supported by the Comscore data that shows that it reaches the most unique visitors, more than competing rental networks. It also argued that the claim, “#1 listing network, conveys a message related to listing volume” and that message is supported. Apartments.com provided evidence of its number of listings, based on internal data, as compared to a lower number of listings on Zillow, based on its review of Zillow’s website, and calculated that it consistently has more listings than Zillow.

⁹ The Challenger submitted evidence that website popularity claims are measured by visits rather than visitors, citing Google’s practices for Investopedia’s ranking for “Best Rental Sites” that relies upon site traffic (visits) and inventory, as well as a statistics blog that discusses the difference between unique visitors and website visits in evaluating the ultimate conversion rate, the number of consumers who come to the site and make a purchase, or here, find a rental. The Challenger also pointed out that USA Today Network performed a survey that asked respondents how likely they were to use certain sources in an apartment search which provides another data-point, examining popularity not on the basis of visits or visitors but on the opinions and attitudes of prospective renters.

While Zillow questioned whether the data compared currently available units or counted on a per unit or per property basis, the Advertiser responded that with respect to its own data, it includes only currently available units as compared to listings available on Zillow, filtering and counting those listed as “For Rent.” Based on the evidence provided, NAD concluded that the Advertiser had a reasonable basis for its claim that it has the #1 listing network based on listing volume, but recommended that the basis of the claim, listing volume, be clearly and conspicuously disclosed to avoid conveying the message that it is the #1 network based on popularity.

With respect to the modified claim, “We’re the nation’s #1 rental network, with more than 25 million visitors to our sites each month searching for a new apartment,” NAD reviewed the confidentially submitted data provided to support the claim that Apartments.com has more than 25 million visitors each month. The visitor data, together with the Comscore data demonstrates that Apartments.com had 25 million visitors to its sites and the most unique visitors. As discussed more fully above, the Advertiser’s popularity claims were not supported, but the evidence supports a more limited claim regarding the number of visitors to a website. As a result, NAD recommended that the Advertiser discontinue the claim “We’re the nation’s #1 rental network, with more than 25 million visitors to our sites each month searching for a new apartment,” or modify it to better fit the support provided, that its online rental network has the most visitors of any rental network.

D. Conversion Claims

Zillow challenged several claims that specifically state that Apartments.com is where most renters find a rental or convert from being apartment seekers to apartment renters such as, “Apartments.com puts more renters in new homes than any other website,” “More People Find Their Place on Apartments.com than any other website,” and the modified claim “We deliver at least 2.7X more leases for our advertisers than the competition.”

The Advertiser argued that the conversion claims are supported by robust internal and external data and relied on confidentially submitted data from Anyone Home, a leading CRM provider for multi-family home property owners. The Anyone Home data shows that the Apartments.com network averages over twice as many leases as the Zillow network (for example, it shows for May 2021 685 v. 243). The Advertiser argued that the Anyone Home data is reliable because it contains data from a majority of the largest residential property owners in the country. The Challenger maintained that the Anyone Home data does not provide reliable support for the challenged conversion claims because it is not representative of the entire rental market as it is used by only a fraction of property owners and managers and does not include single family homes for rent. The Challenger acknowledged that single-family homes represent 33% of rental units generally in the United States.

NAD concluded that the Anyone Home data provides information on only a segment of the rental market, those that manage multi-family rental buildings and choose to use a specific CRM provider. It does not purport to include the entire rental marketplace, but only a subset of property owners. There was no evidence that the segment of property owners that use the software are representative of the entire marketplace. Further, evidence shows that it is not representative of the entire marketplace because it is used primarily for multi-family rentals and does not reflect the 33% of rentals for single-family homes. As a result, NAD recommended that the Advertiser discontinue its conversion claims, “most popular place to find a place,” “Apartments.com puts more renters in new homes than

any other website,” More People Find Their Place on Apartments.com than any other website,” and “We deliver at least 2.7X more leases for our advertisers than the competition.”

The Challenger also took issue with the claim that “Apartments.com has successfully helped get over 40 million leases signed by happy renters nationwide” asserting that the 40 million leases must be adequately substantiated and that the term “happy renters” is an objective claim that requires substantiation. The Advertiser argued that the 40 million leases claim is substantiated by internal data, confidentially submitted and that although “happy” may be considered puffery, it is self-evident that renters who sign leases are happy. NAD reviewed the confidentially submitted data and concluded that the 40 million claim was substantiated. NAD next considered the “happy” renters claim and determined that in this context it does not convey a general consumer satisfaction message but refers to the satisfaction that renters experience when they have signed a lease for a new home. As a result, NAD concluded that the Advertiser has a reasonable basis for the claim, “Apartments.com has successfully helped get over 40 million leases signed by happy renters nationwide.”

E. Web Prevalence Claims

Zillow also challenged claims directed to landlords related to the exposure its website provides for rentals and its Google search ranking.

1. 7X More Exposure on the Web

Zillow challenged the claim “7X More Exposure on the Web” and argued that it is a dangling comparative which can be reasonably understood to compare Apartments.com to Zillow. Apartments.com maintained that, in context, the claim refers to the seven websites that provide exposure for its listings. The full claim is “7X more exposure on the web. Get more qualified leads with your listing placed on seven leading websites that get over 70 million visits each month.” Below this claim are the logos of the seven Apartments.com websites.

Relying on *France Media, Inc. (Commercial Real Estate Publishing Platform)*¹⁰ the Advertiser argued that this claim refers to its network of other websites and not its competitors such as Zillow. In *France Media*, the advertiser promoted its ability to provide “more exposure” to sponsors of its conferences due to the number of its publications in which the conferences and sponsorships are advertised. NAD determined that France Media had a reasonable basis for the “more exposure” claim because, in context, it referred to the higher number of publications used to promote conferences (and their sponsorships).

Unlike France Media, the Advertiser’s “7x More Exposure” claim is a quantified claim that conveys a specific message quantifying the extent of additional exposure with Apartments.com. The depiction of the logos of the Advertiser’s seven leading websites shows where the additional exposure will be. One reasonable takeaway is that the additional websites provide 7x more exposure than competing websites by volume of visitors, not limited to 7x more websites where rentals can be viewed. The Advertiser did not provide website traffic data related to the seven websites or other evidence to

¹⁰ *France Media, Inc. (Commercial Real Estate Publishing Platform)*, Report #6419, NAD/CARU Case Reports (October 2020).

support the claim. NAD determined that the Advertiser did not have a reasonable basis for its “7X more exposure” claim and recommended that be discontinued.

2. The Apartments.com Network also ranks in the #1 Google organic search position 91% of the time.¹¹

Zillow challenged another claim related to the “exposure” the Advertiser provides landlords that list on their website network, specifically that “The Apartments.com Network ranks in the #1 Google organic search position 91% of the time.” The Advertiser argued that the claim was supported by data from Nozzle, a widely recognized online keyword rank tracker tool that allows companies to track search engine rank positions of various brands. Nozzle provided the search results in response to a list of approximately 10,000 keyword searches in Google and used the data to compare the Google search position of various other rental websites. The Advertiser stated that organic search results (i.e., not paid placements) tracked using the software found that Apartments.com network sites were the first result, ranking first far more than any other rental network—91% of the time in the most recent quarter at the time (Q3 2021). Zillow responded that it had not been provided the underlying data, with the only support being provided confidentially. It noted that there was no indication of what search terms were used or that the data was sufficiently reliable to support the “#1” claim.

Upon review of the confidentially submitted substantiation for this claim, the evidence was not sufficiently robust to provide a reasonable basis for the claim. For example, it was not clear that the Nozzle data represents all consumer searches in the rental home market. While at first glance, the sheer number of searches—10,000—seems large, the possible variety of searches in this marketplace is much broader. For example, the term “rentals in [municipality],” for each U.S. municipality with a population over 10,000 would account for over 4,000 possible searches alone. Without more information about the underlying methodology, including information related to how Nozzle chooses the 10,000 search terms and how they represent consumer searches, NAD could not rely on the confidentially submitted data. Accordingly, NAD determined that the Advertiser did not have a reasonable basis for its claim that “the Apartments.com network also ranks in the #1 Google organic search position 91% of the time” and recommended it be discontinued.

3. “Millions More Renters” Claim

Zillow argued that the Advertiser has not supported the claim “Millions More Renters. Reaching millions of prospective renters through additional engagement and rental tools.” Both parties argue that the claim is being considered out of context. The context of the claim relates to the benefits of ForRent.com, one of the websites that is part of the Apartments.com network, to property owners and landlords. The claim touts that property owners and landlords who list and advertise on Apartments.com reach more renters due to the additional listing on ForRent.com. Without evidence related to the additional renters on ForRent.com, NAD concluded that the “Millions More renters Reaching

¹¹ The claim “We are the most visited online rental network with more than 75 million renter visits per month” has been modified to state: “We’re the nation’s #1 rental network, with more than 25 million visitors to our sites each month searching for a new apartment.”

millions of prospective renters though additional engagement and rental tools.” claim was unsupported claim and recommended it be discontinued.

F. Website/Service Features

Zillow challenged a number of claims that touted Apartments.com’s technology and the features of its network, arguing that the claims are comparative and disparaging to Zillow suggesting that Zillow’s technology is less advanced. Examples of the challenged claims include “The most advanced search tools that renters want” and “The most innovative rental technology.”

The Advertiser argued that the claims are not comparative and do not suggest that Apartments.com is the only website that uses the “most advanced search tools” or “most innovative technology.” In addition, the Advertiser argued that the claims are supported because the Apartments.com network offers the most advanced features currently available such as 3D tours.

Claims like “the most advanced search tools that renters want” and “The most innovative rental technology” can, depending on context, be comparative or monadic and highlight the use of the “most advanced” tools or “most innovative” technology available. While the qualifying language, “that renters want,” implies that the tools are ones with which renters are familiar with and used by others,¹² the context of the advertising further states that the Advertiser “leads the industry in providing advanced tools and technology” and reasonably conveys the message that the Advertiser is claiming that, as compared to its competitors, it offers the “most advanced tools” and “most innovative rental technology.” The Advertiser did not provide any support that its rental technology is more innovative than its competitors. Therefore, NAD recommended the “most advanced search tools that renters want” and “most innovative rental technology” claims be modified to avoid conveying a comparative superiority message.

G. The “Most Marketing Support” Claims

Zillow next challenged the claim that Apartments.com provides “The Most Marketing Support” and asserted that the claim conveys a message that it provides more marketing support than Zillow provides. The Advertiser argued that the claim is not comparative and that the claim was taken out of context and that “The Most Marketing Support” is followed by the sentence “We invest heavily in national advertising on your behalf to drive more leads to your listing” that qualifies the claim. As support for this claim, Apartments.com provided data showing that it spends more on advertising than any other listing website.

NAD found that the claim “The Most Marketing Support” is a broad comparative claim and that the qualifying sentence about investing in national advertising could reasonably convey that national advertising is an example of how Apartments.com provides marketing support, but not necessarily the exclusive way support is provided. Marketing support could include other investments such as providing data on rental trends or pricing trends in a particular region. The Advertiser’s advertising and marketing expenditures are impressive and could support a claim tailored to its investment in national

¹² The Advertiser argued that it uses technology like 3D tours, that are a recent innovation and one that has not be superseded.

advertising. As a result, NAD determined that the Advertiser did not support the broad comparative claim that it provides the most marketing support and recommended that the claim be discontinued.

Zillow challenged the claim, “Keep your property fully leased at the greatest return on your investment,” on the Apartments.com Commercial Subscribers webpage, a claim that was modified during the course of the challenge to state, “Keep your property leased at a great ROI.” The Advertiser argued that the claim is puffery, but that if it is not, it has a reasonable basis for the claim. It argued that the claim is directed to landlords and property owners and is not comparative but promotes the benefits of using its listing service to advertise and lease properties. The Advertiser maintained that the “return” landlords and property owners receive for their “investment” in advertising spend with Apartments.com, is its success in converting leads to leases. NAD concluded that the modified claim “Keep your property leased at a great ROI,” was no longer comparative and was supported by the evidence.

H. Customized Lease Claims

In addition, Zillow challenged the claim that Apartments.com helps customers “build a customized lease baked by experts and lawyers in every state.” This claim appears on a number of pages on the Apartments.com website. The Advertiser explained that it hired a leading national law firm to research state lease laws, drafted a template for each jurisdiction using advice and counsel from a network of local real estate law practitioners and continued to monitor developments in the lease laws in each jurisdiction. Nevertheless, the Advertiser argued that it provides a disclosure on the lease tool that prospective tenants should consult their own counsel.

The claim, however, can reasonably be interpreted to mean that the Apartments.com leases are built and customized for individual renters. While the advertising discloses that renters should consult their own counsel, the disclosure does not limit the claim to the message that leases customized based on state and local lease laws. NAD recommended that the customized lease claim be discontinued or modified to better fit the support, that it provides a template lease that has been customized to state and local leasing laws.

I. Fast, Easy and Free Claims

Zillow also takes issue with Apartments.com’s claims that it provides “Fast, Easy and Free” service that is “100% free, with absolutely no cost for you,” and that the Advertiser fails to properly disclose that customers need to pay a fee to obtain the benefits of its premium service. Apartments.com argued that listing rentals is 100% free but that it charges listers for other additional services.

NAD reviewed the claims, in context, and noted that premium services are touted in close proximity to the “Fast, Easy and Free” claims. NAD recommended that the claims be modified to avoid conveying the message that premium services are free by, for example, disclosing that premium services are an additional cost or disclosing the specific services that are “free.”

J. “We Never Share or Sell Your Lead” Claim

Finally, Zillow challenged Apartments.com’s claim, “Unlike other websites, we never sell or share your leads” and argued that the claim implies that Zillow shares or cross-sells leads. Apartments.com asserted that the claim is not directed to Zillow, but directed to “other websites” that are lead generation-style websites which share or cross-sell leads.

NAD found that the use of the phrase, “unlike other websites,” transforms the truthful and monadic claim, “we never sell your share your leads” into a comparative claim. Without referencing the “other websites” that share or sell leads, the claim reasonably conveys the message that “other websites” refers to leading competitors, including Zillow. NAD recommended that the claim, “Unlike other websites, we never sell or share your leads” be discontinued or modified to avoid conveying a comparative message that its leading competitors sell or share leads.

IV. Conclusion

NAD recommended that the Apartments.com’s advertising be modified to clearly and conspicuously disclose that the “Most Popular Place to Find a Place” claims are limited to the rental market.

NAD concluded that while the Advertiser established that it has the most unique visitors, such evidence is not a good fit for the “The Most Popular Place to Find a Place,” “The Most Popular Place to Lease Your Place,” “Apartments.com puts more renters in new homes than any other website,” “#1 site for renters,” and “Apartments.com is the “#1 listing network for houses, townhomes, condos and apartments” claims.

NAD concluded that the Advertiser had a reasonable basis for its claim that it has the #1 listing network based on listing volume, but recommended that the basis of the claim, listing volume, be clearly and conspicuously disclosed to avoid conveying message that it is the #1 network based on popularity.

NAD recommended that the Advertiser discontinue the claim “We’re the nation’s #1 rental network, with more than 25 million visitors to our sites each month searching for a new apartment,” or modify it to better fit the support provided, that its online rental network has the most visitors of any rental network.

NAD concluded that the Advertiser had a reasonable basis for its claim that it has the #1 listing network based on listing volume, but recommended that the basis of the claim, listing volume, be clearly and conspicuously disclosed to avoid conveying the message that it is the #1 network based on popularity.

NAD recommended that the Advertiser discontinue its conversion claims, “most popular place to find a place,” “Apartments.com puts more renters in new homes than any other website,” “More People Find Their Place on Apartments.com than any other website,” and “We deliver at least 2.7X more leases for our advertisers than the competition.”

NAD concluded that the Advertiser has a reasonable basis for the claim, “Apartments.com has successfully helped get over 40 million leases signed by happy renters nationwide.”

NAD determined that the Advertiser did not have a reasonable basis for its “7X more exposure” claim and recommended that be discontinued.

NAD determined that the Advertiser did not have a reasonable basis for its claim that “the Apartments.com network also ranks in the #1 Google organic search position 91% of the time” and recommended it be discontinued.

NAD concluded that the “Millions More renters Reaching millions of prospective renters through additional engagement and rental tools.” claim was unsupported claim and recommended it be discontinued.

NAD recommended the “most advanced search tools that renters want” and “most innovative rental technology” claims be modified to avoid conveying a comparative superiority message.

NAD determined that the Advertiser did not support the broad comparative claim that it provides the “Most Marketing Support” and recommended that the claim be discontinued.

NAD concluded that the modified claim “Keep your property leased at a great ROI,” was no longer comparative and was supported by the evidence.

NAD recommended that the customized lease claim be discontinued or modified to better fit the support, that it provides a template lease that has been customized to state and local leasing laws.

NAD recommended that “Fast, Easy and Free” claim be modified to avoid conveying the message that premium services are free by, for example, disclosing that premium services are an additional cost or disclosing the specific services that are “free.”

NAD recommended that the claim “Unlike other websites, we never sell or share your leads” be discontinued or modified to avoid conveying a comparative message that its leading competitors sell or share leads.

V. Advertiser’s Statement

CoStar thanks the NAD for its time and careful review of this matter. CoStar is pleased with the NAD’s favorable findings regarding various of its claims including that “Apartments.com has successfully helped get over 40 million leases signed by happy renters nationwide,” that Apartments.com helps landlords “[k]eep [their] property leased at a great ROI,” and that Apartments.com is the “#1 listing network based on listing volume.” CoStar respectfully disagrees with the NAD’s findings as to the other claims addressed in the decision because those claims are truthful and supported by the evidence, and the NAD’s decision with respect to those claims is inconsistent with the evidence in the record and NAD precedent. CoStar will appeal the NAD’s decision with respect to these claims in part – specifically with respect to its conclusions that CoStar’s advertising is not necessarily directed to the rental market and that CoStar’s claims regarding the popularity of Apartments.com is not supported by unequivocal website traffic data regarding unique visitors to the site. Notwithstanding its partial appeal of the NAD decision, CoStar will take the NAD’s recommendations and guidance on all of its claims into account and intends to discontinue or modify the applicable advertising consistent with such recommendations and guidance at least while such an appeal is pending. CoStar appreciates the opportunity to participate in the self-regulatory process and looks forward to resolving this matter with the National Advertising Review Board. **(#7045 KA, closed 04/15/2022)**