

For Immediate Release

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In Two Fast-Track SWIFT Cases, One Voluntary Discontinuance of Claims, and One National Advertising Division Recommendation to Discontinue Claims

New York, NY – July 13, 2021 – The National Advertising Division (NAD) of BBB National Programs closed two new Fast-Track SWIFT cases in June:

- Function challenged PerSe Beauty’s “over 192,000 5-star product reviews” claim.
- Nestle Nutrition challenged Reckitt Benckiser’s exclusivity claims about the ingredients of the Enfamil brand’s Nutramigen line of infant formula products.

Fast-Track SWIFT is an expedited NAD process designed for single-issue advertising cases.

Function Inc. v. PerSé Beauty Inc. d/b/a Prose

Function brought a challenge to Prose’s claim that it had “over 192,000 5-star product reviews!” for its customizable hair care products. NAD recommended that the advertiser discontinue the challenged claim.

The “over 192,000 5-star product reviews” claim was appropriate for Fast-Track SWIFT because the issue was limited to the presentation of the advertiser’s product reviews, including whether the advertiser provided a reasonable basis for the claim.

The advertiser formulates a customer’s product from the result of their online hair and lifestyle survey and continuously tailors the formula based on the customer’s post-purchase feedback, a process it refers to as its “Review & Refine” experience. As part of its process, Prose solicits star-ratings on aspects of the customer’s experience after each purchase — overall experience, satisfaction per product, and various product attributes. It may revise its formulation after each purchase. For example, if the customer indicated that they would prefer a stronger fragrance – that adjustment is made on subsequent purchases. The iterative process of reviewing and refining happens every time the customer orders. NAD noted that nothing in the context of the challenged unqualified “192,000” claim, or the claim itself, alerts consumers that its count of 5-star reviews is based on Prose’s “Review and Refine” experience.

Reasonable consumers may not expect that the number of reviews is the result of a back-and-forth process of altering and re-reviewing the product to increase consumer satisfaction. NAD determined that the “Review and Refine” process provides a meaningful consumer benefit, but any claim based on aggregated product reviews should indicate the way in which this level of customer satisfaction is achieved to avoid conveying a misleading message.

In its advertiser’s statement, Prose stated that while it “respectfully disagrees with NAD’s assessment of Prose’s claim regarding the number of 5-star product reviews it has received, we appreciate NAD’s guidance.”

Nestle Nutrition v. Mead Johnson Nutrition of Reckitt Benckiser

Nestle Nutrition challenged claims that appeared in online advertising for Nutramigen infant formula. The challenged claims included:

- Nutramigen is “the only hypoallergenic formula with no sugar (sucrose) added.”
- Nutramigen is “the only hypoallergenic formula with probiotics to support immune system and digestive health.”
- Nutramigen is “the only hypoallergenic brand with expert recommended DHA amount.”

In response to Nestle Nutrition’s SWIFT challenge, the advertiser stated that for business purposes it agreed to permanently discontinue the challenged claims. NAD noted that because permanent discontinuance of the claims had not been fully completed prior to the challenge, it did not administratively close the case but instead maintained jurisdiction so that it may review the matter for compliance.

Although mooted by the advertiser’s permanent discontinuance of the challenged claims, NAD nevertheless found that the challenge was appropriate for Fast-Track SWIFT because the issue of whether the advertiser’s exclusivity claims about Nutramigen’s ingredients was supported was not likely to require the review of complex evidence.

Learn more about the [NAD Fast-Track SWIFT](#) challenge process and how to file a challenge. All BBB National Programs case decision summaries can be found in the [case decision library](#). For the full text of NAD, NARB, and CARU decisions, subscribe to the [online archive](#).

About BBB National Programs: BBB National Programs is where businesses turn to enhance consumer trust and consumers are heard. The non-profit organization creates a fairer playing field for businesses and a better experience for consumers through the development and delivery of effective third-party accountability and dispute resolution programs. Embracing its role as an independent organization since the restructuring of the Council of Better Business Bureaus in June 2019, BBB National Programs today oversees more than a dozen leading national industry self-regulation programs, and continues to evolve its work and grow its impact by providing business guidance and fostering best practices in arenas such as advertising, child-directed marketing, and privacy. To learn more, visit bbbprograms.org.

About the National Advertising Division: The National Advertising Division (NAD), a division of BBB National Programs, provides independent self-regulation and dispute resolution services, guiding the truthfulness of advertising across the U.S. NAD reviews national advertising in all media and its decisions set consistent standards for advertising truth and accuracy, delivering meaningful protection to consumers and leveling the playing field for business.