

#HonestAds : A Wrap Up from the 2018 NAD Conference

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by Fara Sunderji and Sandra Edelman

We are back from the 2018 National Advertising Division Annual Conference: The Truth About Advertising Law – Recent Developments and Best Practices that took place over two days in downtown New York. We heard from the NAD Director, NAD staff attorneys as well as staff of the Bureau of Consumer Protection at the FTC. If you



didn't make it this year, don't worry – here's a quick wrap-up of the highlights:

Monetary Remedies – In his keynote address, Andrew Smith, the FTC's Director of the Bureau of Consumer Protection, discussed the recent emphasis on monetary remedies in FTC enforcement actions and on findings and admissions as a part of the settlement process. He closed with a word to the wise, that even though the FTC is operating under a Republican administration that might be perceived as low-regulatory in general outlook, the agency still intends to bring national advertising enforcement actions where appropriate.

Numerical Claims - There was a lively discussion of appropriate sample size for market research and statistical analysis – the takeaways were that NAD expects that a sample size will be “robust enough to be statistically significant” and that the survey respondents will be representative of the actual consumer market; helpful insights were provided about the proper way to make numerical ratio claims when comparative results have a confidence level range—definitely consult someone with statistical expertise before making these types of ad claims!

Related People

- Fara Sunderji

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Customer Reviews - In the session on use of consumer reviews as a basis for advertising claims, Martin Zwirling of the NAD talked about the importance of transparency, authenticity and the representativeness of consumer reviews. As we've blogged about before, verified consumer reviews are extremely important as well as disclosure of whether consumers were incentivized or provided products for free before posting reviews.

Health Claims – As always, we saw a focus on health claims. One panel covered evidentiary standards in the area of health-related claims in courts, the FTC and NAD, and how they differ. There was a lively debate about p values, but the panel members all agreed that when advertisers make health claims, the claims need to fit the evidence.

Social Media Posts as Ads – Leslie Fair, the author of the incomparable FTC Business Blog, noted that over the past year so many of the ad claims that the FTC has focused on have been found on social media, including on Instagram, Facebook and Twitter. This was the case with one of the latest FTC enforcement actions in the arena of “made in the USA” claims, where the advertiser posted on social media with #AmericanMade.

ICC Marketing Code Updates – The International Chamber of Commerce released an update to its advertising self-regulatory code on September 25 live at the conference. The ICC Marketing Code seeks to protect consumers by setting out the dos and don'ts for responsible marketing to ensure legal, honest, decent and truthful communications and practices. While the basic principles of truth and honesty have not changed, these updates cover: (i) native advertising (*i.e.* distinguishing marketing communications content from true editorial and user generated content); (ii) new digital mediums; (iii) direct marketing and digital marketing communications; (iv) mobile phones, location-based advertising and interest-based advertising and (v) advertising to children and teen.

Until next year.