

The NAD Takes on Health and Fitness Fads (and a Few Kardashians in the Process)

5th Edition: Trends in Marketing Communications Law

Every year brings with it a new set of health and fitness fads, and a new set of opportunistic marketers seeking to take advantage of consumers' never-ending desire to look and feel their best. Never one to blindly follow trends, the Advertising Self-Regulatory Council's National Advertising Division (NAD) spent much of the past year ensuring that advertisers do not exploit these fads at the expense of consumers.

Last year, the NAD addressed a pair of challenges involving FitTea, a beverage that promised to "Boost Energy, Boost Immunity, Boost Metabolism, Burn Fat" when used as part of a diet and exercise regimen. As a part of its marketing push, FitTea hired social media influencers – including Kourtney Kardashian, Khloe Kardashian and Kylie Jenner – to post Instagram endorsements of its product. In addition, FitTea populated its website with various social media posts and testimonials that it received from uncompensated consumers. Many of these posts included claims that FitTea boosts metabolism and burns fat, and included before-and-after photos showing substantial weight and fitness changes. The NAD found that, although the diet and exercise program that FitTea promoted may result in weight loss and fitness improvement, there was no evidence that FitTea itself boosts metabolism, boosts immunity, burns fat or otherwise results in weight loss. The NAD therefore required FitTea to stop re-posting consumer testimonials that contained such claims and to ensure that its paid endorsers avoid conveying such untrue messages. In a separate challenge involving the influencers themselves, the NAD found that they had failed to adequately disclose their connection to FitTea, and required that the influencers modify their posts to make clear that they were compensated for their statements.

The NAD also reviewed advertising for a natural deodorant product that included claims that the product absorbs wetness and moisture without aluminum (a common ingredient in most antiperspirants). Although the advertiser presented laboratory testing and consumer-use surveys as evidence that the product helps absorb wetness, the NAD found that the advertiser's claims were unsubstantiated, absent testing of the product on actual consumers.

Other health misrepresentations were far more blatant. For example, one advertiser marketed its version of the wildly popular fidget spinner as an "ADHD Focus Anxiety Relief Toy" that is "Great for Anxiety, Focusing, ADHD, Autism." Others proclaimed that all-natural herbal remedies and dietary supplements could treat a broad range of ailments, from cramping and kidney stones to opiate addictions and even cancer. In each case, the advertiser refused to participate in the self-regulatory process or provide substantiation, resulting in referrals by the NAD to the Federal Trade Commission.

Key Takeaways

- Marketers are responsible for statements made in paid-for testimonials and must ensure that their influencers adequately disclose their material connections to the advertiser.

- Today's fad could be tomorrow's NAD challenge. Marketers seeking to leverage health or fitness trends must therefore ensure that their advertising claims are truthful and substantiated.
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