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## **Puffery – You Know It When You... Smell It? NAD Reinforces the Line Between Claims and Puffery in New Decision.**

by [Bryan J. Wolin](#)

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A recent NAD decision provides advertisers with a great example to help distinguish puffery from advertising claims that require substantiation. In SWIFT case 7590, Beiersdorf, Inc. challenged advertising by Vacation, Inc. in which Vacation said its sunscreen products are the “World’s Best-Smelling Sunscreen.” NAD concluded that, standing alone, the phrase is mere puffery, given the inherently subjective nature of a smell claim and the grossly exaggerated characterization of the product’s scent. Unfortunately for Vacation, NAD did not stop there. It also held that the context surrounding the phrase on Vacation’s website suggested to reasonable consumers that the claim was substantiated by the reviews, taking it outside the realm of mere puffery.

The question NAD confronted was simple: would reasonable consumers viewing Vacation’s advertising as a whole and in context “expect [Vacation] to have undertaken a comparison of every single sunscreen in the world to support the ‘World’s Best’ claim.” Three key facts informed this inquiry. First, the claim was surrounded by quotation marks. Second, the claim was displayed immediately above five stars. Third, the claim and stars were accompanied by the text “4.8/5.0” and “13,457 Reviews.”

This combination of factors led NAD to conclude that reasonable consumers would believe the quoted language was not mere puffery. As NAD explained: “Quoted claims that appear immediately above ratings information are often either quoted testimonials from one of the reviews or a summary of the reviews.” Vacation’s only defense was puffery, and it likely declined to assert an alternative defense that the claim was substantiated given how difficult the claim would be to support. That left NAD with no alternative but to recommend that Vacation modify its advertising to avoid conveying the message that the “World’s Best-Smelling Sunscreen” claim is substantiated by the reviews.

If you need help distinguishing claims from puffery (or anything else ad-law related), the [Kilpatrick Advertising Team](#) is here to help.