

Insights: Alerts

Diaper Advertising Challenge Addresses Some Basics of Ad Law: “Up To” Claims, Superiority Claims Versus Unnamed “Leading Brand,” and Influencer Disclosure Obligations

September 10, 2025

Written by **Bryan J. Wolin** and **Alice N. Danelia**

The National Advertising Division (“NAD”) issued a new decision addressing a number of basic advertising law staples: “up to” claims, comparative superiority claims, *and* apples-and-oranges comparisons.

Coterie Baby Inc. (“Coterie”) makes premium diapers and advertised that its diapers provided “Up To 4x Absorbency Compared to Leading Brands” and “Up To 3x Drier Skin Compared to Leading Brands.” The Procter & Gamble Company (“P&G”), manufacturer of Pampers diapers and one of those “leading brands,” challenged Coterie’s claims.

The NAD reviewed testing by both Coterie and Pampers and ultimately found that, although the testing methodologies used by both were similar, the end results varied significantly, with the NAD finding P&G’s tests more reliable. Coterie measured absorption rate and rewet amounts with two tests to support its superiority claims against Huggies, Pampers, and other diaper brands. But those test results did **not** demonstrate that its product was four times as absorbent or three times drier than P&G’s Pampers, one of the two leading brands referenced in the claim. The NAD concluded that a superiority claim over “leading brands” is misleading if substantiated by results from only half of those brands, even when hedged with the phrase “up to.” Finally, NAD also explained that comparing the best-performing Coterie diaper to the worst-performing Pampers diaper in the test set would be a misleading apples-and-oranges comparison, and therefore inappropriate to substantiate the claims. As a result, the NAD found Coterie’s claims unsubstantiated.

This case also addressed issues related to influencer and endorser marketing, particularly deceptive “door-opener” claims. These occur when the initial engagement with a consumer is based on a deceptive premise, causing the consumer to interact with advertising content under false assumptions. P&G challenged Coterie’s endorsement practices, alleging that Coterie failed to provide adequate disclosures of material connections in social media and blog posts by endorsers. For instance, a Facebook post appearing to be an impartial inquiry —“Which diaper is actually best?”—included a “learn more” link, leading users to a blog post that ultimately endorsed Coterie. The required disclosure of the paid endorsement appeared only on the final blog post, not in the original social media content.

The NAD found that such practices are misleading, even if consumers are eventually informed of the paid relationship. It recommended that Coterie clearly and conspicuously disclose any material connection to endorsers at the initial point of contact, such as in the original social media post linking to the endorsement. While this outcome is entirely consistent with NAD precedent requiring clear and conspicuous disclosures of material connections like sponsorship relationships, it is notable because of how it expands the rationale in a way that could apply in other contexts. We note that this rule is also consistent with the FTC's related guidelines allowing disclosures to be one click away under typical circumstances, because that rule does not apply when—as was the case here—the initial post is deceptive on its face in the absence of a disclosure.

Collectively, these recommendations provide important guidance for advertisers regarding the use of “up to” superiority claims and “door opener” language. Advertisers should ensure that their superiority claims against “leading brands” in crowded marketplaces are substantiated by reliable evidence across most leading brands—not just a select few—and that any material relationships with endorsers are fully disclosed at even the initial consumer interaction if that touchpoint would constitute a deceptive “door-opener” in the absence of such a disclosure.

If you have any questions or concerns about advertising challenges at the NAD, or any advertising claims, please feel free to contact us [Kilpatrick's Advertising and Marketing team](#).

Related People



Bryan J. Wolin

t 212.775.8735

bwolin@ktslaw.com



Alice N. Danelia

t 202.508.5872

adanelia@ktslaw.com