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NAD's Newfound Interest in Financial Services Extends to B2B Marketing

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Two recent National Advertising Division decisions involving competing 401(k) providers underscore that NAD's expanding focus on financial services advertising is not limited to consumer-facing debt-relief claims. NAD will also scrutinize *business-to-business* advertising for financial services, including claims about the advertiser's size, popularity, growth, or financial strength, where ambiguity or imprecision can materially influence purchasing decisions by employers and plan sponsors. Two recent challenges between Guideline, Inc. and Human Interest Inc., competitors that both offer retirement plans like 401(k)s, illuminate this trend.

In *Case #7509*, which was initiated by Human Interest, Inc., NAD reviewed Guideline's claim that it had "nearly $140 million ARR" (short for "Annual Recurring Revenue") in a year-end "Year in Review" publication. NAD found that ARR lacks a universally accepted definition and, accordingly, advertisers must clearly and conspicuously explain how they calculate ARR in their marketing materials. This is particularly true where the claim is used to signal company size or stability, as these are highly persuasive features for potential customers. NAD found that Guideline's method for calculating ARR was not uncommon or impermissible, but its failure to explain its methodology rendered the underlying claim ambiguous, and recommended modifications to mitigate that ambiguity.

In a separate challenge earlier this year that was also filed by Human Interest Inc., *Case #7476*, NAD addressed Guideline's claims that it was "Gusto's #1 retirement partner" and the "most popular 401(k) with Gusto customers," (Gusto is a well known online payroll and human resource solutions provider). While the record demonstrated that Guideline had the highest number of active 401(k) plans among Gusto's partner providers, NAD found that the unqualified "#1" and "most popular" claims reasonably conveyed broader messages—such as that Guideline was currently being selected by more Gusto customers than any competitor. Because popularity and superiority claims are highly influential and susceptible to multiple reasonable interpretations, NAD recommended that Guideline either discontinue the claims or modify them to clearly disclose that the basis for the "#1" designation was the number of active accounts, not current selection rates or subjective preference.

Together, these decisions reflect NAD's increasing activity regarding financial services advertising that targets employers, plan fiduciaries, and other sophisticated audiences. The cases make clear that NAD will not assume B2B audiences can "fill in the blanks" when confronted with undefined financial metrics or broad superiority claims. On the contrary, NAD applied the same core principles that govern consumer advertising: advertisers must support all reasonable takeaways of their claims, and material qualifiers must be clear, conspicuous, and proximate to the claim itself.

These Fast-Track SWIFT matters also highlight how NAD is functioning as an important regulatory backstop at a time when federal oversight of financial-services advertising is uneven. The Consumer Financial Protection Bureau is authorized to enforce the prohibition on unfair, deceptive, or abusive acts or practices (UDAAP) set forth in the Consumer Financial Protection Act. Deceptive or misleading advertising of financial products and services has repeatedly formed the basis of UDAAP violation claims, and the Bureau has brought numerous enforcement actions against financial institutions and other financial service providers for deceptive marketing practices.

While the Consumer Financial Protection Bureau does not directly regulate B2B retirement-plan marketing in the same way it oversees products or services marketed directly to consumers, broader federal enforcement resources have been constrained, and agencies – including the FTC and state financial services regulators – have limited capacity to address the growing volume of nuanced, data-driven claims appearing in digital marketing materials. NAD's Fast-Track SWIFT process allows competitors to quickly challenge discrete, high-impact claims – such as growth metrics or "#1" representations – before they become entrenched in the marketplace.

For financial services companies, these decisions carry several practical lessons. Claims about revenue, growth, popularity, or market leadership – even when technically accurate – must be carefully framed and transparently explained. Undefined financial metrics and unqualified superiority claims are increasingly likely to draw scrutiny, particularly where they influence employer-customer decision-making. Any material claims or omissions made when advertising financial products or services can be deemed "deceptive" under the UDAAP framework if they are likely to mislead the audience, so financial services providers should ensure that all representations are based on verifiable facts and that all marketing materials clearly, prominently, and accurately describe the costs, benefits, and other material terms of the product, including any limitations or conditions that may apply. More broadly, companies operating in the financial services sector should view NAD not only as a forum for resolving competitor disputes, but as a source of de facto guidance on how financial performance and market position can be communicated without overstating competitive advantages.

The Kilpatrick Advertising team will continue to monitor developments in financial services advertising. For guidance based on these recent decisions, please reach out. Additionally, the Kilpatrick Financial Services group is available as a resource for regulatory developments impacting the financial services industry.