

For Immediate Release

NAD RECOMMENDS MERCK DISCONTINUE CLAIM THAT COPPERTONE ‘PROTECTS ACROSS 100% OF THE UVA UVB SPECTRUM’

NAD Considers Literal Truth at Issue, Versus Implication

New York, New York – Dec. 15, 2011 – The National Advertising Division of the Council of Better Business Bureaus Claims has recommended that Merck Consumer Care (MSD Consumer Care, Inc.), discontinue the advertising claim that Coppertone Sunscreen with a sun protection factor (SPF) of 15 or higher “Protects across 100% of the UVA UVB spectrum.”

In this case, NAD, the advertising industry’s self-regulatory forum, determined that advertiser’s evidence supported the claim that Coppertone sunscreens with a SPF of 15 or higher offer some skin protection for all wavelengths across the entire UVA UVB spectrum.

However, NAD also examined whether the advertising claim at issue, displayed through the advertising with a rainbow motif, conveyed the message that the advertiser’s sunscreens provide 100 percent protection across 100 percent of the spectrum, a message that was not supported by the evidence in the record.

The advertising at issue appeared in print, Internet and point-of-purchase advertising, and in free standing inserts and broadcast advertising.

As the advertiser explained, sunburn and other types of skin damage are caused by the spectrum of harmful ultraviolet (UV) radiation from the sun that reaches the Earth’s surface and are classified by wavelength. UVA rays are waves that are 320-400 nanometers (nm) in length (UVA1 rays are 340-400 nm and UVA2 rays are 320-340 nm), while UVB waves range from 290-320 nm in length. UVB rays, which penetrate the top layer of skin, are responsible for eighty percent of the skin’s sunburn response. SPF ratings on sunscreen products refer to the amount of skin protection that a particular sunscreen will provide against the sunburn effect of UVB and UVA radiation. UVA rays also penetrate to the deeper layers of the dermis and play a large role in premature aging of the skin, allergic reactions, and may increase the likelihood of developing skin cancers.

To measure spectral coverage at the UVA end of the spectrum, researchers measure the “absorbency” associated with active ingredients in sunscreens. Further, the advertiser noted, there is no test currently available of providing information about the extent to which skin receives protection from the percentage of UV rays blocked at any given point of the UV spectrum, especially for the longer UVA rays.

(Full text of decision available to media upon request.)

NAD noted in its decision that it is well-held that while a claim may be literally true it may still convey a message that is false or misleading. NAD appreciated that the advertiser’s intended message was the breadth of its sunscreens’ coverage rather than the

completeness of the protection. However, NAD noted, regardless of intent, advertisers are responsible for all the reasonable messages conveyed by their advertising. NAD was concerned specifically about the aspect of claim "across 100%" because "100%" is a quantified term of absolute completeness.

NAD recommended that the advertiser discontinue the claim "protects across 100% of the UVA UVB spectrum," but noted that nothing in this decision prevents the advertiser from promoting that its Coppertone sunscreens with a SPF of 15 or more offer protection across the entire UVA UVB spectrum, as long as the any new claim does not imply complete protection at every point in the spectrum.

The company, in its advertiser's statement, said that while it "disagrees with the NAD's view about other conveyed messages, Merck Consumer Care will take the NAD's view into consideration in its advertising going forward. Merck Consumer Care respects the NAD's program of self-initiated inquiries and supports the self-regulatory process."

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NAD's inquiry was conducted under NAD/CARU/NARB Procedures for the Voluntary Self-Regulation of National Advertising. Details of the initial inquiry, NAD's decision, and the advertiser's response will be included in the next NAD/CARU Case Report.

About Advertising Industry Self-Regulation: The National Advertising Review Council (NARC) was formed in 1971. NARC establishes the policies and procedures for the National Advertising Division (NAD) of the Council of Better Business Bureaus, the CBBB's Children's Advertising Review Unit (CARU), the National Advertising Review Board (NARB) and the Electronic Retailing Self-Regulation Program (ERSP).

The NARC Board of Directors is composed of representatives of the American Advertising Federation, Inc. (AAF), American Association of Advertising Agencies, Inc., (AAAA), the Association of National Advertisers, Inc. (ANA), Council of Better Business Bureaus, Inc. (CBBB), Direct Marketing Association (DMA), Electronic Retailing Association (ERA) and Interactive Advertising Bureau (IAB). Its purpose is to foster truth and accuracy in national advertising through voluntary self-regulation.

NAD, CARU and ERSP are the investigative arms of the advertising industry's voluntary self-regulation program. Their casework results from competitive challenges from other advertisers, and also from self-monitoring traditional and new media. NARB, the appeals body, is a peer group from which ad-hoc panels are selected to adjudicate NAD/CARU cases that are not resolved at the NAD/CARU level. This unique, self-regulatory system is funded entirely by the business community; CARU is financed by the children's advertising industry, while NAD/NARC/NARB's primary source of funding is derived from membership fees paid to the CBBB. ERSP's funding is derived from membership in the Electronic Retailing Association. For more information about advertising industry self-regulation, please visit www.narcpartners.org.