

FTC TARGETS “ALL NATURAL” AND “100% NATURAL” PRODUCTS AND DEFINES TERMS

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On April 12, the Federal Trade Commission (FTC) [announced](#) proposed settlements with four companies that market products containing artificial ingredients as “all natural” or “100% natural”. In announcing the settlements, FTC Bureau of Consumer Protection Director Jessica Rich said that, at least according to the FTC, “[a]ll natural’ or ‘100 percent natural’ means just that – no artificial ingredients or chemicals.”

Each of the settling companies made all-natural claims, including through product names, in company and third-party Internet ads:

- **“ALL NATURAL HAND AND BODY LOTION” AND “ALL NATURAL MOISTURIZING GEL.”** The FTC alleges these product names are misleading because the lotion contains dimethicone, ethylhexylglycerin, and phenoxyethanol, and the gel contains phenoxyethanol. The FTC also took issue with the company’s catalogue description of its Hand and Body Lotion as “wonderful rich ingredients: lots of aloe vera, wheatgerm & apricot oils, shea butter, and borage oil too. And they’re all natural.”
- **“ALL NATURAL” SUNSCREEN PRODUCTS, INCLUDING A “FACE STICK SPF 60 ALL NATURAL SUNSCREEN” AND “FACE STICK SPF 60 KIDS ALL NATURAL SUNSCREEN.”** The FTC alleges the products are falsely advertised because they contain dimethicone, polyethylene, and other synthetic ingredients.
- **“ALL NATURAL” HAIR CARE PRODUCT CLAIMS, INCLUDING THROUGH THE NAME OF PRODUCTS SUCH AS “COCONUT SHEA ALL NATURAL CURL DEFINING CREAM,” “COCONUT SHEA ALL NATURAL STYLING ELIXER,” AND “JOJOBA MONOI ALL NATURAL SHAMPOO.”** The FTC alleges the company’s advertising, labeling, promotion, and sale of the products is false or misleading because the products contain at least one synthetic ingredient, such as polyquaternium-37, phenoxyethanol, caprylyl glycol, and polyquaternium-7.
- **“NATURAL SUNSCREEN SPF 30” PRODUCT, DESCRIBED ONLINE AS “100% NATURAL SUNSCREEN.”** The FTC alleges the product name and website statement are false or misleading because the product contains synthetic ingredients dimethicone and caprylyl glycol.

The FTC also issued a complaint against a California-based skin care company for marketing “all natural sunscreens.” The FTC complaint cites to the company’s online statements which tout its “all natural sunscreen ... enriched with antioxidants from botanical sources ... to increase skin hydration and protection from environmental damage.” The FTC also took issue with the company’s claim that it “uses only the purest, most luxurious and effective ingredients found in nature. All of our formulas are naturally scented and free of parabens and harsh synthetic chemicals.” The FTC alleges that the product name and descriptions constitute unfair or deceptive acts or practices and are false advertisements in violation of the FTC Act. Through its complaint, the FTC seeks to bar the company from misrepresenting the following when advertising, promoting, or selling its products: (1) whether the product is all natural or 100 percent natural; (2) the extent to which the product contains any natural or synthetic components; (3) the ingredients or composition of a product; or (4) the environmental or health benefits of a product.

Of particular note, the FTC also seeks to require the company to have and rely on “competent and reliable evidence” to support any product claims before they are made and, when appropriate, “competent and reliable scientific evidence.” The FTC defines “competent and reliable evidence” as “tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by qualified persons, using procedures generally accepted in the profession to yield accurate and reliable results.” “Competent and reliable scientific evidence” is defined as “tests, analyses, research, studies, or other studies that have been conducted and evaluated in an objective manner by qualified persons, using procedures generally accepted in the profession to yield accurate and reliable results.” The FTC also seeks to impose a 5-year record keeping requirement and 20-year enforcement period.

The FTC shares jurisdiction with the Federal Food and Drug Administration (FDA) for regulating the promotion of food, dietary supplements, and cosmetics, and the two agencies operate under a Memorandum of Understanding that provides the FTC with primary responsibility for advertising and the FDA with primary responsibility for product labeling. The recently announced settlements, in which the FTC challenges product names and descriptions, blurs the lines between the agencies. Indeed, it is not unusual for the FDA to cite to the FTC advertising standards as a basis for challenging a company's conduct. Thus, while the FDA has yet to determine how, or even if, to define the term "natural" on food labeling, there is little doubt that the FTC's definition of "all natural" and "100% natural" will influence the FDA.

No doubt many will take issue with the "all natural" or "100% natural" definition advanced by the FTC. Nevertheless, companies that want to avoid regulatory scrutiny are well advised to consider, if not follow, the FTC's definition of these terms.

ADDITIONAL INFORMATION

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