

All's Not "Fair" in Advertising: Social Impact Product Marketing

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Advertising by consumer product companies that calls attention to the "green" benefits or "social impact" of products is on the rise, as the media, the Federal Trade Commission, and the National Advertising Division of the Council of Better Business Bureaus, Inc. ("NAD") have all recognized. Two recent NAD decisions highlight the importance of accurately communicating to consumers the extent to which an advertised product embodies those qualities because, as NAD wisely has recognized, "customers cannot easily verify for themselves whether social impact claims...are truthful or meaningful, [and] purchasers often rely on advertising, including certification marks, to determine what public interest benefits the product offers."[\[1\]](#)

This past summer, in two related NAD disputes,[\[2\]](#) TransFair USA and Avon Products, Inc. (which used TransFair marks in its advertising) were challenged by Dr. Bronner's Magic Soaps concerning the use of certain TransFair "Fair Trade Certified Ingredient" seals and statements on personal care and cosmetic products. Dr. Bronner's argued that these TransFair seals falsely communicated that the entire product, as opposed to specific ingredients, were fair trade certified, and that certain other fair trade advertising statements also communicated the message that entire products were fair trade certified when they were not. Dr. Bronner's also challenged the application of the "Fair Trade Certified Ingredient" and "Fair Trade Certified Ingredient-Specific" seals to products which contained only 2-5% fair trade certified ingredients (in accordance with TransFair's established standards), and argued that Avon, specifically, should be required to substitute fair trade ingredients, wherever possible, in its product compositions. As discussed below, NAD agreed in large part with TransFair and Avon concerning their advertising, but certain recommendations were made for revising statements used in connection with their fair trade claims.

TransFair, a nonprofit organization, audits and certifies fair trade products in the United States. The term "fair trade" is generally used to describe agricultural ingredients or products that are supplied by farmers in developing countries who have been paid a certain minimum price, whose workers are employed in accordance with recognized safe, healthful working conditions, and who commit to using environmentally-sustainable farming methods. These NAD disputes concerned personal care and cosmetic products that contained fair trade certified ingredients and were therefore eligible to use certain "Fair Trade Certified Ingredient" marks on their packaging. As explained in the NAD decisions, TransFair follows a specific policy of certification for personal care and cosmetic products whose manufacturers wish to use TransFair's "Fair Trade Certified Ingredient" and "Fair Trade Certified Ingredient-Specific" seals. Specifically, (1) "leave on" oil and wax based products must contain a minimum of 5% fair trade ingredients; (2) "wash off" products must contain a minimum of 2% fair trade ingredients; (3) for cosmetic products that contain more than one ingredient, all ingredients that can be fair trade certified must be fair trade certified; and (4) all fair trade certified ingredients must be clearly identified on the packaging.

In its decisions, NAD was careful to clarify that, since TransFair's certification process *itself* did not constitute national advertising, it was not appropriate for NAD to evaluate the standards or certification methods that TransFair employs.^[3] Instead, NAD evaluated the *messages* that were conveyed to consumers by use of the "Fair Trade Certified Ingredient" and "Fair Trade Certified Ingredient-Specific" seals (and other fair trade statements) on certain cosmetic and personal care products, including Avon products.

NAD found that although TransFair's "Fair Trade Certified Ingredient" and "Fair Trade Certified Ingredient-Specific" seals were closely similar in appearance to TransFair's "Fair Trade Certified" seal (which denotes an entire *product* comprised of fair trade ingredients), there was little potential for consumers to confuse these seals and believe that an entire product was fair trade certified. Importantly, the "Fair Trade Certified Ingredient" and "Fair Trade Certified Ingredient-Specific" seals appear alongside statements that make it clear which ingredients are certified, and consumers generally recognize that personal care and cosmetic products are composite products (i.e., comprised of several substances). Because TransFair requires that the fair trade certified ingredients be clearly identified on the advertising and packaging, it was unlikely that consumers would take away an implied message that these products are made entirely of fair trade certified ingredients.[\[4\]](#)

NAD further determined, however, that the TransFair authorized statements permitted for use on the product packaging (which often referred to the benefits of fair trade *products*, not *ingredients*) should be revised to explain not only the meaning of fair trade, but also to make it clear to consumers that TransFair only requires that cosmetic and consumer care products contain 2-5% fair trade certified ingredients. In particular, concerning Avon's use of certain authorized TransFair statements, NAD recommended that the statements be modified to ensure that any fair trade references were narrowed to refer to particular *ingredients*, not *products* as a whole. To that end, NAD also examined Avon's print and Internet advertisements containing fair trade statements and found that several overstated the impact that its fair trade ingredient products (which are only required to contain 2-5% fair trade ingredients), had on the fair trade movement. Indeed, NAD found that certain statements could give consumers the impression that the majority of ingredients in the Avon products were fair trade certified, when they were not. In that respect, NAD recommended that Avon discontinue its use of certain demonstrative photographs and statements such as, "help change the world with four of the best body care products on earth," which implied the product's wide impact on the movement. NAD emphasized, however, that Avon was *not* prevented from advertising the fact that it incorporates Fair Trade Certified Ingredients or speaking generally about Avon's efforts to support the fair trade movement, particularly because print and Internet ads (unlike packaging) provide an advertiser with space to explain its statements in full detail.

These NAD cases serve as important reminders that while advertisers are encouraged to educate consumers and promote the socially responsible nature of their products, advertisers must also ensure that their claims send clear and accurate messages concerning the scope of that social impact.

[1] *TransFair USA*, NAD Case Report # 5337, June 2011.

[2] *TransFair USA*, NAD Case Report # 5337, June 2011; and *Avon Products, Inc.*, NAD Case Report # 5338, June 2011.

[3] For that reason, NAD similarly did not opine on Dr. Bronner's argument that Avon should be required to substitute fair trade ingredients in its product compositions.

[4] Because Avon clearly marked its fair trade ingredients and used the appropriate corresponding ingredient seal marks, NAD found that consumers were not likely to be misled into thinking that Avon products were comprised wholly of fair trade ingredients.