

# ADVERTISING CLAIMS SUPPORT

## Case Histories and Principles

This popular course, now in its 12<sup>th</sup> year, has been of keen interest to attorneys, market researchers, marketers, business leaders, scientists, product developers and government employees. The purpose of attending this 2.5-day course is to learn the principles that are involved in designing and communicating truthful advertising messages from litigated, regulatory and NAD cases. In the process, you will learn the skills needed to evaluate your own and your competitors' ads. This knowledge will help to avoid vulnerabilities in communicating product benefits and prepare you to participate in countering false advertising claims made by competitors. In the course, you will learn the principles involved in *testing product performance* and *perception surveys* to assess advertising messages.

The speakers include a scientific team with decades of experience conducting and defending claims substantiation research along with a team of NAD attorneys, litigators, in-house counsel, and an arbitrator to discuss cases that illustrate the principles and engage discussion. The course speakers have decades of experience as instructors, scientific experts, jurors, and litigators in addressing claims with significant survey and product testing components.



### TUESDAY (APRIL 11, 8am - 4pm ET)

#### 8:00 – 9:00 | Advertising Claims Support

- ♦ Introduction and scope of the course
- ♦ Claims support in product/brand development
- ♦ Admissibility of expert testimony
- ♦ Surveys in false advertising and trademark cases
- ♦ Efficacy, perception, and materiality

#### 9:10 – 10:00 | Claims and False Advertising; Internal Counsel Perspective

- ♦ Three ways an ad can be false
- ♦ A typical false advertising lawsuit
- ♦ Puffery, falsity, and injury examples:
  - *The Procter & Gamble Co. vs. Kimberly-Clark* (2008)
  - *Schick vs. The Gillette Co.* (2005)
  - *The Procter & Gamble Co. vs. Ultreo, S.D.N.Y.* (2008)
- ♦ To sue, challenge, or negotiate - an internal counsel's perspective

#### 10:10 – 11:00 | Motivating Case/ASTM Sensory Claims Guide

- ♦ **NAD Case #6977** (2022) and **NARB Panel #303** (2022) *Procter and Gamble (Febreze®)*
- ♦ Review of the ASTM Claims Guide
  - Evolution of the Guide content
  - Choosing a target population, product selection, sampling and handling, selection of markets
  - Claims: Superiority, unsurpassed, equivalence, non-comparative



#### 11:10 – Noon | Test Method, Design, Location, and Participants

- ♦ Test options: Monadic, sequential, direct comparisons
- ♦ Test design issues: Within-subject, matched samples, position and sequential effects, replication
- ♦ Choosing a testing location and test subjects

1) **NAD Case #5425** (2012) *Church & Dwight Co. Inc. (Arm & Hammer® Sensitive Skin Plus Scent)*

2) **NAD Case #5782** (2014) *The MOMbrands Company (Malt-O-Meal Cereals)*

3) **NAD Case #6041** (2016) *Unilever United States, Inc. (Suave Essentials Body Wash)*

#### ■ Noon – 1:00 LUNCH ■

#### 1:00 – 3:00 | NAD Mock Hearing; Overview of the NAD

- ♦ **NAD Mock Hearing:** General Mills - Yoplait vs Chobani
- ♦ Preparing for an NAD hearing
- 4) **NAD Case #5129** (2009) *MillerCoors, LLC (Miller Lite Beer)*
- 5) **NAD Case #5715** (2014) *General Mills Inc. (Yoplait Blended Greek Yogurt)*

#### 3:10 – 4:00 | Sensory and Hedonic Methods

- ♦ Methods: Difference, descriptive, hedonic
- ♦ Data: Counts, ranking, rating scales
- ♦ “Better” and “Greater”, hedonic, sensory, and technical claims
- ♦ Attribute interdependencies
- 6) **NAD Case #5866** (2015) *Kimberly-Clark Corp. (Huggies Natural Care Wipes)*
- 7) **NAD Case #5874** (2015) and **NARB Panel #207** (2016) *Chattam, Inc. (Nasacort)*
- 8) **NAD Case #5984** (2016) *French's Food Company (French's Tomato Ketchup)*

**WEDNESDAY (APRIL 12, 8am - 4pm ET)****8:00 – 9:00 | Consumer Relevance**

- ◆ Setting action standards for consumer-perceived differences
  - ◆ Linking expert and consumer data
  - ▶ Clinical vs. statistical significance
- Litigated Case:** (S.D.N.Y. 2012) *Church & Dwight Co., Inc. vs. Clorox Co. (cat litter)*
- 9) **NAD Case #5974** (2010) *Comcast Communications, Inc. (Xfinity Internet, Television & Telephone Services)*
  - 10) **NAD Case #6025** (2010) *Bausch & Lomb, Inc. (Peroxide Clear Contact Lens Peroxide Solution)*
  - 11) **NAD Case #6131** (2017) *Too Faced Cosmetics, LLC. (Better Than Sex Mascara)*

**9:10 – 10:00 | Survey Principles**

- ◆ Answering questions
- ◆ Purpose of conducting surveys: Events and behaviors, attitudes and beliefs, subjective experiences
- ◆ How respondents answer questions: Optimizing and satisficing
- ◆ Filters to avoid acquiescence and no opinion responses
- ◆ Survey questions: Biased, open-ended vs. closed-ended
- ◆ Steps to improve survey questions

**10:10 – 11:00 | Consumer Perception Surveys**

- ◆ A survey must include: Sample, design, questionnaire, analysis
- ◆ Reliability and validity: Ecological, external, internal, face, construct
- ◆ Bias: Code, position
- ◆ Task instructions – importance and impact
- ◆ Data collection methods
- ◆ Target universe and size, controls, biased questions, improvements in design and analysis
- ◆ Design Issues: Monadic vs sequential monadic (within subject), separating open-ended questions from close-ended
- ◆ The stimulus is the label or ad, not the product itself
- ◆ Why open-ended questions are not a good basis for quantification
- ◆ Common design flaws

**11:10 – Noon | How NAD Has Ruled on Perception Surveys**

- ◆ Consumer takeaway surveys: NAD perspective, critique of cases
- 12) **NAD Case #5849** (2015) *T-Mobile USA (More Data Capacity)*
- 13) **NAD Case #5926** (2016) *Comcast Cable Communications (Xfinity Cable TV)*
- 14) **NAD Case #6009** (2016) *Epson America, Inc. (Epson EcoTank Supertank Printers)*

■ Noon – 1:00 LUNCH ■

**1:00 – 2:00 | Consumer Takeaway Survey Research**

- ◆ Independent research on the Bayer Advanced fertilizer case
- 15) **NAD Case #6033** (2016) *Bayer CropScience US (Bayer Advanced 3-in-1 Weed and Feed for Southern Lawns)*

**2:10 – 3:00 | Analysis - Interpretation and Communication**

- ◆ Hypothesis testing
- ◆ Determining statistical significance and confidence bounds
- ◆ Communicating claim requirements to the business side
- 16) **NAD Case #5569** (2013) *InterHealth Nutraceuticals (ZyChrome Dietary Supplement)*
- 17) **NAD Case #5755** (2014) *The Procter & Gamble Co. (Olay Sensitive Body Wash)*
- 18) **NAD Case #6236** (2018) *Abbott Nutrition (Similac Human Milk Fortifier)*
- ▶ **Litigated Case:** (S.D.N.Y. 1994) *Avon Products vs. S.C. Johnson & Son, Inc. (Skin-So-Soft)*

**3:10 – 4:00 | Test Power**

- ◆ The meaning of power
- ◆ Planning experiments and reducing cost
- ◆ Sample sizes for claims support tests
- ◆ Managing risks: Advertiser claim, competitor challenge
- 19) **NAD Case #6065** (2017) *Shell Oil Co. (Shell V-Power NiTRO+ Premium Gasoline)*
- 20) **NAD Case #6164** (2018) *The Procter & Gamble Co. (Finish® Quantum® Max Automatic Dishwasher Detergent)*

**THURSDAY (APRIL 13, 8am – Noon ET)****8:00 – 9:00 | Handling No Difference/No Preference Responses**

- ◆ No preference option analysis
- ◆ Power comparisons: Dropping, equal and proportional distribution
- ◆ Statistical models and psychological models
- ◆ ASTM recommendation
- 21) **NAD Case #5453** (2012) *Ocean Spray Cranberries, Inc. (Ocean Spray Cranberry Juice)*
- 22) **NAD Case #6037** (2016) *Mizkan America, Inc. (RAGU Homestyle Traditional Sauce)*

**9:10 – 10:00 | Testing for Equivalence and Unsurpassed Claims**

- ◆ How the equivalence hypothesis differs from difference testing
- ◆ ASTM requirements for an unsurpassed claim
- ◆ The paradox of finding support for superiority, unsurpassed, and equivalence; the need for a minimum standard for superiority
- ◆ FDA method for qualifying generic drugs: The TOST
- 23) **NAD Case #5609** (2013) *Starbucks Corp. (Verismo Single-Serve Coffee System)*
- 24) **NAD Case #5822** (2015) *Kimberly-Clark Global Sales, LLC (Huggies® Little Snugglers Diapers)*
- 25) **NAD Case #5829 and NARB Panel #202** (2015) *Bayer HealthCare, LLC (Claritin and Claritin-D)*

**10:10 – 11:00 | Ratio, Multiplicative, and Count-Based Claims**

- ◆ The difference between ratio and multiplicative claims
- ◆ Examples of multiplicative claims
- ◆ Count-based claims (e.g., “9 out of 10 women found our product reduces wrinkles”)
- 26) **NAD Case #5107** (2009) *Ciba Vision Corp. (Dailies Aqua Comfort Plus)*
- 27) **NAD Case #5416** (2012) *LG Electronics USA, Inc. (Cinema 3D TV & 3D Glasses)*
- 28) **NAD Case #5484** (2012) *Reynolds Consumer Products (Hefty® Slider Bags)*
- 29) **NAD Case #5779** (2014) *S.C. Johnson & Son, Inc. (Scrubbing Bubbles Heavy Duty Cleaner with fantastik & Scrubbing Bubbles Bleach 5-in-1 All Purpose Cleaner with fantastik)*
- 30) **NAD Case #5934** (2016) *Rust-Oleum Corp. (Painter's Touch Ultra Cover 2X Spray Paint)*

**11:10 – Noon | “Up To” Claims and Conclusion**

- ◆ Definition and support for an “up to” claim
- ◆ FTC opinion on windows marketers claim
- ◆ “Up to” energy savings claim at the NAD
- 31) **NAD Case #5876** (2015) *The Procter & Gamble Co. (Duracell Coppertop & Duracell Quantum Alkaline Batteries)*





## REGISTRATION

**In-person attendance** at The Greenbrier.... \$2,500

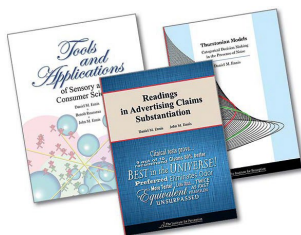
**Live-stream attendance** ..... \$2,300

*\*A 10% discount will be applied to each additional registration when registered at the same time, from the same company.*

*\*The Institute for Perception offers reduced or waived course fees to non-profit entities, students, judges, government employees, and others. For more information, please contact us.*

**Note:** Continuing Legal Education (CLE) credits will be sought upon request. This program also qualifies for Certified Food Scientist contact hours (CH). CFS Certificants may claim 15 CH for their attendance.

**Fee includes course manual, and a copy of our latest books. For in-person attendees fee also includes food/beverage break refreshments on Tuesday - Thursday, buffet lunch and group dinner on Tuesday and Wednesday.**



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Fee payment can be made online by credit card. If you qualify for a fee discount, or would like information about payment by invoice, please contact **Shannon Denton-Brown** before registering at [mail@ifpress.com](mailto:mail@ifpress.com) or call 804-675-2980.



### LOCATION

The courses will be held at The Greenbrier® in White Sulphur Springs, West Virginia. Nestled in the Allegheny Mountains, this gracious hotel is renowned for its hospitality and service.

### LODGING

Lodging is not included in the course fee and participants must make their own hotel reservations. A block of rooms is being held at The Greenbrier at a special rate of **\$275 (plus resort fees & taxes)**. To make a reservation, please call **1-877-661-0839** and mention you are attending the **Institute for Perception** course (**note:** the special rate is not available through online reservations.) To learn more about The Greenbrier, visit their website at [www.greenbrier.com](http://www.greenbrier.com).

### TRANSPORTATION

The Greenbrier Valley Airport (**LWB**) in Lewisburg is only a 15 min. shuttle ride from the hotel. Direct flights to LWB are available from Charlotte (**CLT**). Other airports include Roanoke, VA (**ROA**, 1hr. 15 min.), Charleston, WV (**CRW**, 2 hrs.), and Charlottesville, VA (**CHO**, 2 hrs. 15 min.).

### CANCELLATION POLICY

Registrants who have not cancelled two working days prior to the course will be charged the entire fee. Substitutions are allowed for any reason.

## SPEAKERS

For biographical information, please visit [www.ifpress.com](http://www.ifpress.com)

### Scientific Team



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