

## Client Alert

### FTC Targets “All Natural” Claims for Personal-Care Products

June 1, 2016

The Federal Trade Commission (FTC) has sounded a warning to companies selling personal-care products advertised as “100 percent natural” or “all natural.” On April 10, 2016, the FTC announced charges against five sellers of skin-care and hair-care products, claiming that the companies falsely promoted their shampoos, skin lotions, and sunscreens as “all natural” or “100 percent natural” even though their products contained synthetic active and/or inactive ingredients. According to the FTC’s complaints, the challenged claims and products included:

- **Trans-India Products, Inc., doing business as ShiKai:** The FTC alleges that the company falsely markets its “All Natural Hand and Body Lotion” and “All Natural Moisturizing Gel” directly, on its own website and on the products’ packaging, and indirectly through third-party websites, including walgreens.com and vitacoast.com. According to the FTC, these products are not “all natural” because they contain some or all of the synthetic ingredients dimethicone, ethylhexyl glycerin, and phenoxyethanol.
- **Erickson Marketing Group, Inc., doing business as Rocky Mountain Sunscreen:** The FTC alleges that the company’s claims for “Face Stick SPF 60” and “Face Stick SPF 60” Kids, both marketed as “all natural” sunscreens on the company’s website, are false because the sunscreens contain the synthetic ingredients dimethicone, polyethylene, butyloctyl salicylate, and neopentyl glycol diethylhexanoate.
- **ABS Consumer Products LLC, doing business as EDEN BodyWorks:** According to the FTC, the company’s website falsely advertises as “all natural” its “Coconut Shea All Natural Curl Defining Cream,” “Coconut Shea All Natural Leave In Conditioner,” “Coconut Shea Styling Elixir,” “Jojoba Monoi Moisturizing Shampoo,” and “Jojoba Monoi Revitalizing Conditioner” products. The FTC alleges that these products contain a range of synthetic ingredients such as polyquaternium-37, phenoxyethanol, caprylyl glycol, and polyquaternium-7.
- **Beyond Coastal LLC:** The FTC alleges that the company’s “Natural Sunscreen SPF 30” is falsely advertised as “100 percent natural” on the company’s website even though it contains the synthetic ingredients dimethicone and caprylyl glycol.
- **California Naturel, Inc.:** The FTC alleges that the company’s website falsely claims that its Sunscreen SPF 30 product is “all natural” and “uses only the purest, most luxurious and effective ingredients found in nature.” According to the FTC, this product is not “all natural” because it contains the synthetic ingredient dimethicone.

Four of the five companies — Trans-India Products, Inc., Erickson Marketing Group, Inc., ABS Consumer Products LLC, and Beyond Coastal — agreed to settle the charges and change their labels and advertising. Under the proposed administrative settlements, each of the four companies is barred from misrepresenting, when advertising or promoting their products:

1. The product as “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.
4. The environmental or health benefits of a product.

Further, the proposed consent orders require the companies to have competent and reliable evidence to substantiate any ingredient-related, environmental, or health claims they make. This means that, for some claims, the companies must have scientific evidence, such as tests, analyses, research, or studies that have been conducted and evaluated objectively by qualified individuals, using generally-acceptable procedures in the industry, which should lead to accurate and reliable results. The proposed consent orders, which are open for public comment until May 12, 2016, have a 20-year enforcement period and require the companies to retain advertising and promotional material for five years after the date it is last disseminated and to make such material available to the FTC upon request.

The FTC did not settle its claims against California Naturel Inc. and has initiated an administrative proceeding alleging that the company has made deceptive “all natural” claims in violation of Sections 5 and 12 of the FTC Act.

The actions mark the first time that the FTC has targeted natural claims for personal-care products. In recent years, the term “natural” has garnered much attention in both the regulatory and litigation space. Specifically, the term has been a lightning-rod for consumer-protection lawsuits brought by civil litigants against food and personal-care products. For example, in February 2016, two consumers in New York took aim at The Honest Company, a maker of cosmetics and personal care products, for similar “all natural” claims. And in March 2016, a parallel lawsuit against The Honest Company was filed in California, a perpetual hotbed for this type of litigation.

In the regulatory space, the Food and Drug Administration (FDA), which has long-declined to offer a formal definition of the term “natural,” recently signaled a change in position. In November 2015, the FDA asked the public to comment on whether it should define the term “natural” and set guidelines for its use on food products, including those that are genetically engineered or made with genetically-engineered ingredients. The comment period closes on May 10, 2016.

Similarly, the FTC had, until now, opted to stay out of the “all natural” discussion altogether. In October 2012, the FTC declined to include “natural” as a defined term in its revised Guides for the Use of Environmental Marketing Claims, a.k.a., “Green Guides.” In explaining why it had not addressed the use of the terms “sustainable,” “natural,” or “organic” in its revision, the FTC stated that it “lack[ed] a sufficient basis to provide meaningful guidance” and wanted to “avoid proposing guidance that duplicates or contracts rules or guidance of other agencies.”

In filing the recent actions against the five personal-care companies, the FTC is signaling a change in its posture and its intent to review and, as needed, take enforcement action against marketers that misuse “natural” and similar product descriptions.. According to Jessica Rich, director of the FTC’s Bureau of Consumer Protection,

“All natural’ or ‘100-percent natural’ mean just that — no artificial ingredients or chemicals.” Ms. Rich further cautioned that “companies should take a lesson from these cases” — suggesting that businesses using the phrases “all natural” or “100-percent natural” on their personal-care products should consider themselves warned going forward.

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