

# The Ad Standard: Monthly Update

January 2026

Last month the FTC brought its first actions to enforce its Review Rule, adopted in 2024 to curb the misleading use of reviews. The rule bans fake reviews, incentivizing reviews that express a particular sentiment, and reviews that fail to disclose they are written or controlled by insiders. The FTC sent warning letters to ten companies of potential violations. While the FTC did not disclose the companies or the practices that prompted its warning letters, its press release noted that its inquiry, which was prompted by consumer complaints, highlighted its commitment to ensuring companies comply with the rule. Other actions from the FTC show its continued focus on misleading pricing practices with settlements of investigations into misleading practices in advertising for every-day consumer expenses including residential rentals, groceries, and ride share services.

In class action litigation, a court in the Northern District of California denied class certification in a false advertising matter alleging the claim, “Suitable for People with Diabetes” was misleading because the products could have negative health consequences when consumed in high amounts. The court found the plaintiff had not demonstrated that he was harmed in a manner typical of the class. Another court in the Northern District of California dismissed a false advertising case alleging that consumers were misled when a product’s features were phased out or discontinued, concluding that the complaint was deficient because the alleged misrepresentations were not false at the time of purchase.

Noteworthy activity from BBB National Programs this month included (1) a joint inquiry by NAD and CARU reviewing both the advertising and privacy practices of a company making a “smart” baby monitor, recommending some modifications to the advertising, but concluding the company had not violated CARU’s Privacy Guidelines and that COPPA was not triggered; and (2) a challenger appeal, available only if the NARB concludes there is a “substantial likelihood” that the NARB would reach a different result from NAD, that affirmed NAD’s decision.

## TOPICS

|   |          |
|---|----------|
| <b>FTC Focus .....</b>                        | <b>2</b> |
| AI-Related 2024 Final Consent Order Set Aside | 2        |
| Price Advertising and Hidden Fees.....        | 2        |
| Billing and Cancellation Practices.....       | 2        |
| Weight-Loss Program Claims .....              | 3        |
| Warning Letters .....                         | 3        |
| Workshops .....                               | 3        |
| Analysis .....                                | 4        |
| <b>Class Actions.....</b>                     | <b>4</b> |

|   |          |
|---|----------|
| “Made With Real Fruit” and “No Synthetic Ingredients” Claims..... | 4        |
| Safety Product Labeling Claims .....                              | 4        |
| Sports Betting Claims.....  | 4        |
| Recent District Court Developments .....                          | 5        |
| <b>NAD Focus .....</b>  | <b>6</b> |
| Infant Formula Claims .....                                       | 6        |
| Uniqueness, Superiority Claims.....                               | 6        |
| Health and Safety Claims .....                                    | 7        |
| Referrals .....   | 8        |

## FTC Focus

---

### AI-Related 2024 Final Consent Order Set Aside

1. Late last month, the FTC set aside a 2024 final consent order settling allegations that Rytr LLC's AI-enabled writing assistance service allowed subscribers to generate false and deceptive online reviews in violation of the FTC Act. Among other things, the order banned Rytr from providing any AI-enabled service generating reviews or testimonials. An FTC review determined that the facts alleged in the complaint failed to support allegations that the company violated Section 5 of the FTC Act and that the order unduly burdens AI innovation. Noting the FTC focus on promoting innovation, Christopher Mufarrige, Director of the FTC's Bureau of Consumer Protection, stated that "Condemning a technology or service simply because it potentially could be used in a problematic manner is inconsistent with the law and ordered liberty."

[FTC Reopens and Sets Aside Rytr Final Order in Response to the Trump Administration's AI Action Plan | Federal Trade Commission](#)

---

### Price Advertising and Hidden Fees

1. Instacart will pay \$60 million in refunds to settle FTC allegations that Instacart advertised "free delivery" to consumers on their first order but charged a mandatory service fee; offered a "100% satisfaction guarantee," but typically only provided a small credit toward a future order rather than a full refund; and failed to disclose that signing up for a free trial would automatically enroll consumers into its Instacart+ membership program.

[Instacart to Pay \\$60 Million in Consumer Refunds to Settle FTC Lawsuit Over Allegations it Engaged in Deceptive Tactics | Federal Trade Commission](#)

2. Greystar, a multi-family rental property manager, agreed to pay \$23 million to the FTC and \$1 million to the State of Colorado to resolve allegations over its advertised rental prices. The FTC and Colorado alleged that Greystar advertised a low rental price that excluded several fixed, mandatory monthly fees. Director Mufarrige commented that, "The FTC is focused on monitoring the housing marketplace to ensure that competitors are meaningfully competing on price and that consumers receive transparent pricing."

[Greystar Agrees to Pay \\$24 Million and Stop Deceptive Advertising Practices as a Result of FTC and Colorado Lawsuit Alleging the Firm Deceived Consumers About Rent Prices | Federal Trade Commission](#)

---

### Billing and Cancellation Practices

1. On December 15, 2025, the FTC was joined by 21 states and the District of Columbia in filing an amended complaint alleging that Uber violates the FTC Act and ROSCA by enrolling consumers in its Uber One subscription without their knowledge or consent, by failing to deliver promised savings including \$0 delivery fees, and by making it exceedingly difficult to cancel their subscriptions despite stating that consumers can "cancel anytime." The FTC initially sued Uber in April over allegations related to its Uber One subscription.

[FTC and States File Amended Complaint Against Uber for Deceptive Billing and Cancellation Practices | Federal Trade Commission](#)

## Weight-Loss Program Claims

1. The FTC has given final approval to an order against telemedicine company NextMed and its principals, Robert Epstein and Frank Leonardo, requiring them to stop deceptively advertising weight-loss programs and stop using deceptive and unfair billing and cancellation practices. In a July 2025 complaint, the FTC alleged that the respondents imposed undisclosed costs and membership commitments on consumers, made unsubstantiated claims about clients' weight loss, used fake testimonials, unfairly distorted consumer reviews, failed to timely process cancellation and refund requests, and failed to obtain consent before making charges or recurring debits.

[FTC Approves Final Order against Telehealth Provider NextMed Over Charges It Used Deceptive Advertising Claims to Sell GLP-1 Weight-Loss Programs | Federal Trade Commission](#)

---

## Warning Letters

1. The FTC sent letters to ten companies warning them of potential violations of the agency's Consumer Review Rule, which prohibits, among other things, false or misleading reviews and testimonials that misrepresent a reviewer's experience, and prohibits businesses from conditioning compensation or other incentives on reviewers expressing a particular sentiment and misrepresenting that a website or entity it controls provides independent reviews about products or services that includes its own products or services. The letters, sent in response to consumer complaints to the FTC, serve as a reminder of the companies' obligations under the Consumer Review Rule and warn that violations can result in legal action and civil penalties of up to \$53,088 per violation.

[FTC Warns 10 Companies About Possible Violations of the Agency's New Consumer Review Rule | Federal Trade Commission](#)

2. In a second action this month targeting misleading pricing practices in home rentals, the FTC also sent warning letters to 13 property management software providers stating that they may be violating the law by limiting rental property managers and owners from accurately advertising total monthly rental prices by failing to include all mandatory fees. The letters warn that engaging in such conduct may subject violators to legal action and civil penalties of up to \$53,088 per violation. The letters advise the companies to review their practices, including their platforms and software or coding that controls the flow of information to internet listing sites.

[FTC Sends Warning Letters to 13 Property Management Software Providers Nationwide | Federal Trade Commission](#)

---

## Workshops

1. The FTC will hold a workshop on January 28, 2026 to discuss issues related to age verification and estimation technologies. The workshop will address the importance of age verification, age verification and estimation tools, how companies can navigate the regulatory contours of age verification, how to deploy age verification more widely, and the interplay between age verification technologies and the COPPA Rule.

[FTC Announces Workshop on Age Verification Technologies | Federal Trade Commission](#)

## Analysis

1. According to the FTC's latest Consumer Protection Data Spotlight, since 2020 consumers have reported nearly 65,000 rental scams and losses totaling about \$65 million. Many such scams originated from fake listing advertisements on social media that copy information from legitimate listings but are posted with the scammer's contact information.

[FTC Analysis shows Consumers Have Lost Millions to Rental Scams | Federal Trade Commission](#)

## Class Actions

---

### **“Made With Real Fruit” and “No Synthetic Ingredients” Claims**

Dreyer's Grand Ice Cream, Inc. was sued in a putative class action alleging that it falsely represents that its Outshine frozen fruit bars are healthy, predominately contain the fruit depicted on the packaging, are nutritionally equivalent to real fruit, and do not contain synthetic ingredients or artificial colors or flavors. The plaintiff asserts violations of California's False Advertising Law, Consumers Legal Remedies Act, and Unfair Competition Law.

*Gomez v. Dreyer's Grand Ice Cream, Inc.*, No. 1:25-cv-10549 (N.D. Cal. Dec. 19, 2025)

---

### **Safety Product Labeling Claims**

Walter Kidde Portable Equipment, LLC d/b/a Kidde Safety Equipment and BRK Brands, Inc. d/b/a First Alert were sued in a putative class action alleging that they have misleadingly advertised, labeled, and packaged their products as “smoke alarm” products but that the products do not in fact detect or provide timely warnings of smoldering fires, which plaintiffs describe as “particularly common and dangerous.” Among other claims, plaintiffs assert violations of the Washington Consumer Protection Act, which prohibits unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.

*Stapelman v. Walter Kidde Portable Equipment, LLC*, No. 2:25-cv-02413 (W.D. Wash. Dec. 1, 2025)

---

### **Sports Betting Claims**

Kalshi Inc. and its related subsidiaries were sued in a putative class action alleging they advertise and operate an unlicensed online sports gambling platform. Among other claims, plaintiffs assert that defendants are violating New York General Business Law Section 349 and misrepresent that consumers are engaging in “peer-to-peer” wagers when consumers bet against Kalshi's internal market makers and partners.

*Pelayo v. Kalshi Inc.*, No. 1:25-cv-09913 (S.D.N.Y. Nov. 26, 2025)

## Recent District Court Developments

### **Northern District of California: Denies Motion for Class Certification in Suit Alleging That Splenda Is Misleadingly Marketed**

On December 3, 2025, the Northern District of California denied a motion for class certification in a class action alleging that TC Heartland, LLC misleadingly markets certain Splenda products with the label “Suitable for People with Diabetes” because the products contain sucralose, which may have negative health consequences when consumed in high amounts. Plaintiff primarily asserted violations of California’s False Advertising Law, Consumers Legal Remedies Act and Unfair Competition Law. Denying certification, the court concluded that plaintiff failed to meet the requirements of FRCP 23(a) because he is not a typical putative class member as he has not demonstrated that he or other putative class members relied on the “Suitable for People with Diabetes” label and therefore cannot show that he was harmed by the label in a manner typical of the class. The court also concluded that plaintiff did not establish that the proposed class, defined as “all residents of California” who purchased the products, is identifiable and ascertainable. The court noted that the definition “includes people who are, and are not, diabetic; those two groups necessarily cannot be injured in the same manner when the challenged labels concern diabetes-related health claims.”

*Garcia v. TC Heartland, LLC*, No. 5:23-cv-04192 (N.D. Cal. Dec. 3, 2025)

### **Northern District of California: Broadly Grants Dismissal in Class Action Alleging That Selling a Smart Device and Later Rendering it Obsolete Violated Consumer Protection Laws**

On December 18, 2025, the Northern District of California largely dismissed a putative class action alleging that Meta Platforms, Inc. sold its Meta Portal smart device and later rendered it obsolete in violation of California’s Consumer Legal Remedies Act (CLRA), Unfair Competition Law, False Advertising Law and Section 349 of New York’s General Business Law. As to whether the company made misleading misrepresentations to consumers that the Meta Portal devices had specific features, functions, and services, the court concluded that complaint is deficient because each of the alleged misrepresentations were not, in fact, false at the point of purchase. As to plaintiffs’ reliance on *In re Sony PS3 Other OS Litigation*, 551 F. App’x 916 (9th Cir. 2014), finding that representations mischaracterizing a device’s functionality were sufficient to allege a claim under the CLRA, the court noted that in this case plaintiffs did not articulate whether the company made affirmative representations about the product’s lifespan whereas in *In re Sony*, the seller advertised that the product would have a “ten-year lifespan.” As to plaintiffs’ omission theory, based on the allegation that Meta failed to disclose its intention to discontinue many of the device’s features, the court concluded that the theory was inadequately pleaded because the complaint did not allege that the company knew at the time of purchase that it was going to strip the devices’ functionality.

*Shipley v. Meta Platforms, Inc.*, No. 25-cv-03324 (N.D. Cal. Dec. 18, 2025)

## NAD Focus

---

### Infant Formula Claims

On appeal, an NARB panel has determined that certain claims made by Kendal Nutricare Limited for its Kendamil infant formula products are supported and not misleading. In a challenger appeal, Nurture, LLC appealed the NAD decision, which determined that Kendal could continue to make claims related to its whole milk ingredient in its infant formulas that naturally contains MFGM (milk fat globule membrane) and its association with cognitive development and claims that its formulas do not contain specific oils commonly used in its competitor's formulas. Notably, the NARB panel agreed with NAD's conclusions after determining that consumers of organic infant formula are relatively sophisticated and will not misunderstand the information Kendal provides. The panel agreed with NAD that Kendal's statements, such as "Whole milk fats are similar to those found in breast milk, with naturally occurring MFGM supporting cognitive development," are truthful and not misleading. The panel agreed with NAD that research supports the claim that whole milk as the primary ingredient in infant formula will contain MFGM, which has been shown in studies to provide cognitive development benefits. The panel also agreed that Kendal's claims, stating that its products start "with natural whole milk fats . . . replacing palm oil, soy, and corn syrups," are truthful and not misleading. The panel confirmed that Kendal's formula contains additive oils like sunflower, rapeseed, and coconut, and that its claims do not imply that all fats in the formula come exclusively from whole milk.

Kendal Nutricare Limited (Kendamil infant formulas), Report #7422-342, *NARB Case* (Dec. 2025)

---

### Uniqueness, Superiority Claims

In response to a challenge from Capital One, N.A. to claims made by JPMorgan Chase Bank, N.A. that its Chase Sapphire Reserve (CSR) Credit Card and CSR for Business Credit Card are the "most rewarding card" and "most rewarding business card," respectively, NAD concluded that the claims are puffery and do not require substantiation when used alone. Similarly, NAD concluded that the challenged claim, "Introducing the Business Card that Gives Back All You Put In" was puffery. However, NAD concluded that the "most rewarding" claims, when tied to specific card benefits, required substantiation. Although Chase provided support for the "most rewarding" claims, but NAD determined that Chase should disclose to consumers its basis for those claims, given the number of assumptions required in Chase's analysis.

With respect to Chase's claim "[a]nd with over \$2500 in annual value, there's no competition," NAD found the "over \$2500 in annual value" portion of the claim to be supported and that the disclosures included with the claim sufficiently notify consumers of material details. But NAD recommended that Chase discontinue its claims that "there's no competition" to its CSR for Business Credit Card.

JP Morgan Chase Bank, N.A. (Chase Sapphire Reserve Credit Card and Chase Sapphire Reserve for Business Credit Card), Report #7506, *NAD/CARU Case Reports* (Nov. 2025)

Following a challenge from competitor Sanofi S.A., NAD recommended that Galderma Laboratories, L.P. modify or discontinue claims for Nemluvio, its injectable monoclonal antibody drug used to treat moderate-to-severe eczema. As to the express claim, "Works like nothing before, treating eczema at its core," NAD concluded that the use of the word "core" suggested that eczema has a single cause and that Nemluvio treats it. NAD also found that "works like nothing before" communicates comparative superiority. NAD determined that the record did not support claims that Nemluvio treats the

underlying cause of eczema, that it is the only FDA-approved drug to do so, or that Nemluvio delivers superior efficacy compared to all other FDA-approved eczema treatments was unsupported. As to the claim that Nemluvio is the “First treatment of its kind that calms the nerves that make you itch, soothes inflammation, and restores skin barrier,” NAD found that the record did not support the claim and recommended that Galderma discontinue the full claim, discontinue or modify the standalone “first treatment of its kind” claim, and modify its advertising to avoid conveying that Nemluvio is the first and only treatment of its kind to provide the claimed benefits. NAD also recommended that Galderma discontinue the “calms the nerves that make you itch” claim based on its finding that nothing in the clinical data, prescribing information, or Galderma’s submissions demonstrates that Nemluvio reduces nerve excitability or sensitivity in a way that could be described as “calming.” NAD recommended that Galderma modify the “soothes inflammation” claim to clearly and conspicuously specify that it refers to skin inflammation because there was insufficient support in the record for broader claims regarding other types of inflammation.

Galderma Laboratories, L.P. (Nemluvio), Report #7490, *NAD/CARU Case Reports* (Dec. 2025)

---

## **Health and Safety Claims**

During an NAD inquiry challenging claims made by Proximity Capital Partners, LLC d/b/a Asutra concerning the efficacy of its Magnesium Body Butter with Capsaicin, Asutra informed NAD that it had permanently discontinued all of the challenged claims for “business reasons unrelated to the challenge.” The challenged health-related claims, included express claims the product provides relief from chronic pain, aids in recovery from exercise, and promotes comfort and better sleep, and the implied claim that the product “eliminates chronic pain (including plantar fasciitis) in a short period of time.”

Proximity Capital Partners, LLC (Magnesium Body Butter with Capsaicin), Report #7532, *NAD/CARU Case Reports* (Dec. 2025)

After a challenge from competitor Oral Essentials, Inc to Smile&Shine Essentials, Inc.’s advertising claims for its INOPRO® Whitening Strips, that the product is “clinically proven,” results in “instant teeth whitening without the harm,” “30 minutes to whiter teeth,” “enamel safe,” and “no sensitivity” as well as implied claims that INOPRO Whitening Strips cause no harm while peroxide-based tooth whiteners damage teeth, Smile&Shine informed NAD that it had permanently discontinued the challenged claims.

Smile&Shine Essentials, Inc. (INOPRO® Whitening Strips), Report #7510, *NAD/CARU Case Reports* (Dec. 2025)

In a joint inquiry, NAD and CARU reviewed claims that ADC Solutions USA, LLC d/b/a Horizon Brands, LLC’s “AI-Powered Smart Baby Monitor Solution,” offers “Laugh Detection” and “Cry Detection,” provides a “Virtual Fence” and “Stand Detection,” and ensures “Secured Local Storage.”

NAD found the evidence submitted by Horizon Brands regarding the Kneron AI chip and product inspection reports supported the general “AI-Powered” claim. With respect to the laugh and cry detection claims, video demonstrations and internal testing summaries showed laugh detection accuracy averaging around 89% and cry detection accuracy around 78% with some limitations on the face detection technology. Due to limitations in the testing, NAD recommended that Horizon Brands clearly and conspicuously disclose the functionality limitations on the baby monitor’s ability to identify emotions. As to the “Virtual Fence” and “Stand Detection,” while Horizon Brands provided evidence showing high accuracy, NAD determined that the challenged claims convey safety assurances to consumers, a message that was not substantiated, and recommended that Horizon Brands discontinue language that conveys to parents that its baby monitor

can “ensure [an infant’s] safety” so that parents can “rest easy” and modify its advertising to clearly and conspicuously disclose the functionality limitations on the baby monitor’s ability to detect motion.

In addition, CARU concluded that the product stores information on-device using the Kneron AI chip, and that video and images are stored only on the monitor’s removable SD card and does not violate CARU’s Privacy Guidelines and that COPPA was not triggered.

ADC Solutions USA, LLC d/b/a Horizon Brands, LLC (Tiny Traveler AI Classic Baby Monitor), Report #7486, NAD/CARU Case Reports (Dec. 2025)

---

## **Referrals**

Several cases this month were referred to government authorities and reported to online platforms for compliance with platform truth in advertising policies when the advertiser refused to participate or comply with NAD’s recommendations.

Rascals International Limited (Rascals Diapers), Report #7376C, NAD/CARU Case Reports (Nov. 2025)

Willow Health Services Inc. (Compounded Semaglutide Products), Report #7488, NAD/CARU Case Reports (Nov. 2025)

T-Mobile US, Inc. (T-Mobile Wireless Communication Services), Report #7525, NAD/CARU Case Reports (Dec. 2025)

## KEY CONTACTS

### Laura Brett

*Partner*

+1-212-455-2180

[laura.brett@stblaw.com](mailto:laura.brett@stblaw.com)

### Lynn K. Neuner

*Partner*

+1-212-455-2696

[lneuner@stblaw.com](mailto:lneuner@stblaw.com)

## SIMPSON THACHER WORLDWIDE



### UNITED STATES

#### New York

425 Lexington Avenue  
New York, NY 10017  
+1-212-455-2000

#### Boston

855 Boylston Street, 9<sup>th</sup> Floor  
Boston, MA 02116  
+1-617-778-9200

#### Houston

1000 Main Street, Suite 2900  
Houston, TX 77002  
+1-713-821-5650

#### Los Angeles

1999 Avenue of the Stars  
Los Angeles, CA 90067  
+1-310-407-7500

#### Palo Alto

2475 Hanover Street  
Palo Alto, CA 94304  
+1-650-251-5000

#### San Francisco

One Market Plaza  
Spear Tower, Suite 3800  
San Francisco, CA 94105  
+1-415-426-7300

#### Washington, D.C.

900 G Street, NW  
Washington, D.C. 20001  
+1-202-636-5500

### EUROPE

#### Brussels

Square de Meeus 1, Floor 7  
B-1000 Brussels  
Belgium  
+32-2-504-73-00

#### London

CityPoint  
One Ropemaker Street  
London EC2Y 9HU  
England  
+44-(0)20-7275-6500

#### Luxembourg

Espace Monterey  
40 Avenue Monterey  
L-2163 Luxembourg  
Grand Duchy of Luxembourg  
+352-27-94-23-00

### ASIA

#### Beijing

6208 China World Tower B  
1 Jian Guo Men Wai Avenue  
Beijing 100004  
China  
+86-10-5965-2999

#### Hong Kong

ICBC Tower  
3 Garden Road, Central  
Hong Kong  
+852-2514-7600

#### Tokyo

Ark Hills Sengokuyama Mori Tower  
9-10, Roppongi 1-Chome  
Minato-Ku, Tokyo 106-0032  
Japan  
+81-3-5562-6200

### SOUTH AMERICA

#### São Paulo

Av. Presidente Juscelino  
Kubitschek, 1455  
São Paulo, SP 04543-011  
Brazil  
+55-11-3546-1000

*The contents of this publication are for informational purposes only. Neither this publication nor the lawyers who authored it are rendering legal or other professional advice or opinions on specific facts or matters, nor does the distribution of this publication to any person constitute the establishment of an attorney-client relationship. Simpson Thacher & Bartlett LLP assumes no liability in connection with the use of this publication. Please contact your relationship partner if we can be of assistance regarding these important developments. The names and office locations of all of our partners, as well as our recent memoranda, can be obtained from our website, [www.simpsonthacher.com](http://www.simpsonthacher.com).*