Simpson Thacher

The Ad Standard: Monthly Update

December 2025

November was a quiet month at the FTC, as the government was shut down for the first half of the month. However, the FTC began the month with an announcement from Chair Ferguson. While expressing the view that the agency's focus should be on law enforcement rather than rule-making, the Chair indicated that he initiated the rule-making process to address unfair or deceptive fees in rental housing, a move that underscores the agency's continued efforts to combat hidden fees.

Class action activity more than filled any void in advertising legal activity with new actions filed related to the contents of products (including lawsuits once again challenging "organic" and "hypoallergenic" claims), the quality or amount of protein in products, the serving size of products, and "limited time" offers sent by email that were alleged to be not time-limited and violations of Washington State law. A recent class action also followed from a warning letter from the FDA related to unauthorized claims.

NAD's cases this month highlight how competitors are using the forum to challenge misleading health and environmental claims. They also provide new guidance on social media disclosures and clarify when platform tools such as 'creator earns commission' are sufficient—or insufficient—to disclose the relationship between an influencer and the product being promoted.

TOPICS

FTC Focus

Financial Fraud

1. Greystar, the nation's largest multi-family rental property manager, is paying $24 million to settle actions brought by the FTC and the State of Colorado alleging that "Greystar misled consumers by advertising low rent prices and then adding mandatory fees at the end of the sales process." FTC Chairman, Andrew Ferguson, issued a statement noting that "misleading pricing representations in America's rental markets is not limited to Greystar, and today's order will not fully resolve this problem," and indicating that the FTC will begin the process of proposing a rule to address unfair or deceptive fees in rental housing.

   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

2. The FTC settled with Seek Capital over allegations it deceived entrepreneurs and small business owners seeking business funding with promises to get business owners access to lenders' cash with no interest due for extended periods. However, Seek Capital would instead charge its clients thousands of dollars to open credit cards, often without the promised 0% interest terms, costing business owners millions and harming their credit scores. Seek Capital also advertised that it would charge no upfront fees but would in fact levy cancellation charges. In September, a federal court granted most of the FTC's request for summary judgment against Seek Capital and its CEO, Roy Ferman, finding that various misrepresentations violated both the Federal Trade Commission Act and the Telemarketing Sales Rule. To settle the FTC's allegations, Seek Capital and Ferman, have been permanently banned from providing business financing, debt relief, and credit repair services.

   Seek Capital and CEO are Permanently Banned from Providing Business Financing, Other Services to Settle FTC Allegations | Federal Trade Commission

Class Actions

"Organic," "100%" and "Hypoallergenic" Claims

Kellogg Supply, Inc. was sued in a putative class action alleging it falsely advertises its organic soil and fertilizer products as "organic" even though they contain synthetic, non-organic, and harmful forever chemicals known as PFAS (perfluoroalkyl and polyfluoroalkyl substances). Plaintiffs assert violations of California's False Advertising Law, Consumers Legal Remedies Act and Unfair Competition Law and New York General Business Law Sections 349 and 350.

Valdez v. Kellogg Supply, Inc., No. 3:25-cv-02917 (S.D. Cal. Oct. 29, 2025)

Costco Wholesale Corporation was sued in a putative class action alleging that it falsely advertises its Kirkland Signature brand tequila as "100% de Agave" and "100% Blue Agave" although it contains cheaper, non-agave alcohol. Notably, plaintiffs assert claims under the Racketeering Influenced and Corrupt Organization Act, as well as the Washington Consumer Protection Act, California's False Advertising Law, Consumers Legal Remedies Act and Unfair Competition

Law, the Connecticut Unfair Trade Practices Act, the Florida Unfair and Deceptive Trade Practices Act, the Michigan Consumer Protection Act, the New Jersey Consumer Fraud Act, the New Mexico Unfair Trade Practices Act, and New York General Business Law Sections 349 and 350.

Salisbury v. Costco Wholesale Corp., No. 2:25-cv-02277 (W.D. Wash. Nov. 14, 2025)

Bimbo Bakeries USA, Inc. was sued in a putative class action alleging that it falsely represents that its Sara Lee-branded Artesano bread products as "Always baked without artificial colors, flavors & preservatives" when they in fact contain citric acid. Plaintiffs assert claims under New York General Business Law Sections 349 and 350.

Pardo v. Bimbo Bakeries USA, Inc., No. 1:25-cv-06368 (E.D.N.Y. Nov. 17, 2025)

Unilever United States, Inc. was sued in a putative class action alleging it falsely labels and markets its Vaseline brand Baby Healing Jelly as "hypoallergenic" but it contains fragrance chemicals in amounts that can reasonably be expected to induce an allergic response. The plaintiffs assert claims under New York General Business Law Sections 349 and 350 and the Massachusetts Consumer Protection law and Massachusetts General Laws Chapter 93A.

Vicks v. Unilever U.S., Inc., No. 2:25-cv-17887 (D.N.J. Nov. 24, 2025)

Kimberly-Clark Corp. was sued in a putative class action alleging it deceptively markets its Huggies Little Movers disposable diapers as "hypoallergenic" because consumers have reported strong, sudden, and severe skin reactions on the defendant's website after the defendant allegedly secretly reformulated its product. The plaintiff asserts claims under New York General Business Law Sections 349 and 350.

Burns v. Kimberly-Clark Corp., No. 1:25-cv-01662 (N.D.N.Y. Nov. 25, 2025)

Protein Claims

Tilray Brands, Inc. was sued in a putative class action alleging it misleadingly markets its "Just Hemp Protein" powders by misrepresenting the quality and quantity of their protein because the products are allegedly comprised of inferior plant-based protein sources that do not provide the same nutritional benefits as whey protein. The plaintiff claims that it is misleading to not disclose on the back label the daily value for the total protein because 11 grams of plant-based protein often has a lower daily value percentage than 11 grams of meat-based protein. The plaintiff asserts violations of California's False Advertising Law, Consumers Legal Remedies Act and Unfair Competition Law.

Kha v. Tilray Brands, Inc., No. 2:25-cv-10630 (C.D. Cal. Nov. 5, 2025)

Kettle and Fire, Inc. was sued in two different putative class actions alleging it misleadingly labels its "Classic Chicken Bone Broth," "Classic Organic Chicken Bone Broth" and similar products, because they claim to have between 17-19 grams of protein but, in fact, only contain 76% of the claimed protein. The plaintiff asserts violations of California's False Advertising Law, Consumers Legal Remedies Act and Unfair Competition Law and Florida's Deceptive and Unfair Trade Practices Act.

Cohen v. Kettle And Fire, Inc., No. 1:25-cv-01485 (E.D. Cal. Nov. 3, 2025)

Keirsted v. Kettle & Fire, No. 6:25-cv-02037 (M.D. Fla. Oct. 22, 2025)

Family Size Claims

Post Consumer Brands, LLC was sued in a putative class action alleging it falsely states on its Fruity Pebbles cereal that its net weight is 19.5 oz and that it contains approximately 15 servings while the product, in fact, only contains at most approximately 12.2 servings, or 18.74% fewer servings than represented. The plaintiff further alleges that the product is prominently labeled as a Family Size, but that the difference between the stated number of servings and the number of actual servings renders the prominent Family Size representation misleading. The complaint asserts violations of New York General Business Law Sections 349 and 350.

Sweeney v. Post Consumer Brands, LLC, No. 25-cv-9263 (S.D.N.Y. Nov. 5, 2025)

Email Subject Lines With "Limited Time" Offers

In Washington State Court, Hanesbrands, Inc. was sued in a putative class action alleging that its emails featuring subject lines such as, "The Jig Is Up! Free Shipping Ends Today" and "Last Chance to Get Lucky with Free Shipping" create a false sense of urgency concerning buying opportunities because, while the deal appears to be limited, there is no actual deadline or the deadline resets when reached. Plaintiff asserts violations of Washington's Commercial Electronic Mail Act (CEMA), which prohibits sending emails with false or misleading information in the subject line to Washington residents and Washington's Consumer Protection Act, which prohibits unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce. Hanes has sought to remove the case to the federal district court for the Eastern District of Washington.

Jackson v. Hanesbrands, Inc., No. 2:25-cv-00440 (E.D. Wash. Nov. 5, 2025)

In Washington State Court, Hilton Grand Vacations, Inc. was sued in a putative class action alleging it marketing emails with subject lines making false time scarcity claims, such as "Don't Miss This Offer! VACAYS FROM $109 To Las Vegas, Gatlinburg + More." The plaintiff alleges that the body of the email stated that the offer would expire on December 4, 2024, but on December 5 Hilton sent an email extending the deadline with the subject line "Thought You Missed It? Cyber Monday Sale EXTENDED!" The case has been removed to the federal district court for the Western District of Washington.

Rice v. Hilton Grand Vacations, Inc., No. 25-cv-2205 (W.D. Wash. Nov. 5, 2025)

Made in USA Claims

Black Rifle Coffee Company LLC and BRC Inc. was sued in a putative class action alleging they market their coffee as "America's Coffee" with an American flag on the packages that conveys the message that the coffee is sourced and produced in the United States, while in fact defendants only roast their coffee in the United States. Plaintiffs assert violations of California's Unfair Competition Law, Consumer Legal Remedies Act, False Advertising Law, and Business and Professions Code Section 17533.7, which prohibits selling or offering for sale merchandise with the words "Made in America" or similar words if it or any part thereof, "has been entirely or substantially made, manufactured, or produced outside of the United States." Plaintiffs also assert violations of New York General Business Law Sections 349 and 350.

Bakker v. Black Rifle Coffee Co., No. 2:25-cv-03193 (E.D. Cal. Nov. 3, 2025)

Wearable Device Claims

Whoop, Inc. was sued in a putative class action alleging it falsely and misleadingly represents that its Whoop MG wearable device can provide medical-grade daily blood pressure readings despite receiving an FDA warning letter advising that the device's Blood Pressure Insights feature has not been authorized for any use, including for the measurement or estimation of a user's blood pressure, and that the product is adulterated, misbranded, not legally saleable, and subject to immediate recall. The plaintiff asserts violations of California's False Advertising Law, Consumers Legal Remedies Act and Unfair Competition Law.

Rowe v. Whoop, Inc., No. 3:25-cv-09910 (N.D. Cal. Nov. 18, 2025)

Recent District Court Developments

Northern District of California: Dismisses Class Action Alleging That Members-Only Prices Were False Discounts

A court in the Northern District of California dismissed a putative class action alleging that Safeway Inc. deceives customers by offering false discounts on its wine prices. The plaintiffs claimed that while the discount labels had a listed end date, Safeway would immediately generate another similar or identical discount with a new expiration date after each purportedly time-limited sale ended. Noting that all of the plaintiffs' claims sound in fraud, the district court held that the plaintiffs failed to plausibly plead their claims with particularity as required under Federal Rule of Civil Procedure 9(b). The court held that the allegations as to the non-member prices being false reference prices were insufficient to plausibly show a reasonable consumer would be deceived because there was no dispute that higher non-member prices were real prices charged to non-members.

Tempest v. Safeway, Inc., No. 24-cv-06553, 2025 U.S. Dist. LEXIS 223950 (N.D. Cal. Nov. 13, 2025)

Eighth Circuit: Reverses Class Certification in Class Action Alleging Misleading Coffee Brewing Instructions

On November 26, 2025, the Eighth Circuit reversed a district court's class certification in a class action alleging that The Folger Coffee Company and its corporate parent The J.M. Smucker Company made false, deceptive, or misleading representations about the number of six-ounce cups that the coffee in over two dozen Folgers products could produce in violation of the Missouri Merchandising Practices Act (MMPA). Specifically, the plaintiff alleged that consumers could only brew about 70% of the cups promised if using the product directions for making one serving of coffee. As a class action must satisfy Federal Rule of Civil Procedure 23, the Eight Circuit concluded that certification was inappropriate because even though a plaintiff need not show traditional common-law reliance under the MMPA, individual issues would "still likely swamp any efficiencies that a class action might offer." The Eighth Circuit explained that many class members were not deceived because they believed that the promised number of cups could be achieved and, therefore, figuring out who was and who was not deceived "will require consumer-by-consumer inquiries into each class member's individual tastes, interpretations, and circumstances, undermining the efficiencies class actions are intended to provide."

In re: Folgers Coffee Marketing, No. 24-2830, 2025 U.S. App. LEXIS 30890 (8th Cir. Nov. 26, 2025)

Northern District of Georgia: Denies Dismissal of Allegations That Referral Service Charged for Referrals to In-Network Businesses While Claiming to Provide Impartial Free Guidance

A court in the Northern District of Georgia denied dismissal of allegations that Caring, LLC, a senior living placement and referral service, misleadingly claims to offer "comprehensive directories," "expert consultation," and "free referrals" but in fact only makes referrals to in-network communities and earns commissions. The plaintiff, an out-of-network senior living community asserts false advertising in violation of the Lanham Act, violation of the Georgia Fair Business Practices Act and false advertising in violation of the Georgia Uniform Deceptive Trade Practices Act. Acknowledging that Caring's website does not state that it provides unbiased recommendations, the district court found a reasonable consumer would be misled to believe the defendant's representatives generate their recommendations in an independent, fact-based manner and select possible options from the entire directory instead of only promoting communities in their network, which the court concluded was sufficient to satisfy the first element of a false advertising claim.

Cedar Cmtys. at Com., LLC v. Caring, LLC, No. 1:25-cv-00922, 2025 U.S. Dist. LEXIS 224082 (N.D. Ga. Nov. 14, 2025)

District of New Jersey: Denies Dismissal of CFA Claim Concerning "Risk-Free" Gambling Promotion

A court in the District of New Jersey denied dismissal in a class action alleging that DraftKings Inc. violated the Consumer Fraud Act (CFA) by failing to disclose the full terms in its "Risk-Free" promotion ads, including that the "Bonus Bets" users would receive after losing their wagers had no cash value, were non-transferable, could not be withdrawn, and had an expiration date. The district court pointed out that the Bonus Bet provided if the user lost their initial wager is "essentially a coupon" to place another bet. As a result, the user ultimately collects nothing if he loses when playing with a Bonus Bet. As both plaintiffs lost their initial bets, the district court concluded that they sufficiently pleaded ascertainable loss under the CFA because they received less than what they were promised by not getting the refund to which they reasonably believed they were entitled.

Youngs v. DraftKings Inc., No. 25-00179, 2025 U.S. Dist. LEXIS 227457 (D.N.J. Nov. 19, 2025)

NAD Focus

Health and Environmental Claims

Following a challenge brought by a paper-products trade association, NAD recommended that Plant Paper Inc. discontinue or modify certain comparative health and environmental claims for its bamboo toilet and facial tissues. NAD found that the challenged advertising, including express claims that conventional tree-based toilet paper "is contributing to your risk of cancer" and is produced with "formaldehyde, and other known carcinogens" were not substantiated and recommended that the claims, along with other related express health claims, be discontinued. NAD also found that Plant Paper "did not provide reliable, product-specific, data demonstrating that *most* conventional tissue brands contain formaldehyde at dangerous levels." Thus, NAD recommended that Plant Paper modify its advertising to avoid conveying the message that Plant Paper's manufacturing does not entail any "toxic" chemicals while conventional tree tissue does and that Plant Paper products are better for human health and the environment.

Plant Paper Inc. (PlantPaper Toilet and Facial Tissue Products), Report #7471, *NAD/CARU Case Reports* (Nov. 2025)

After two challenges brought by Novo Nordisk Inc., which markets the only FDA-approved semaglutide medicines, to express and implied advertising claims related to the superiority, safety, efficacy, and health benefits of compounded sublingual semaglutide products, both companies informed NAD during the inquiry that they had permanently discontinued the challenged claims.

Fletcher Family Medical Center (Subsema, Compounded Sublingual Semaglutide Product), Report #7518, *NAD/CARU Case Reports* (Nov. 2025)

Regen Doctors, Inc. (Compounded Semaglutide: Injection, Melts and Drop), Report #7516, *NAD/CARU Case Reports* (Nov. 2025)

Influencer Disclosures

In a Fast-Track SWIFT case, initiated by The Procter & Gamble Company, concerning social media posts promoting household cleaning products made by One Home Brands, Inc. d/b/a Blueland, NAD determined that no additional disclosure is necessary beyond the TikTok Shop "creator earns commission" disclosure for creators who received free products and whose only other relationship to Blueland is to participate in the TikTok shop affiliate program. For creators who received additional compensation separate from their participation in the TikTok Shop affiliate program, NAD recommended that Blueland ask that the posts be modified to include additional disclosures regarding their partnership with Blueland or discontinue the posts.

One Home Brands, Inc. (Blueland Cleaning Products), Report #7521, *NAD/CARU Case Reports* (Nov. 2025)

Price and Savings Claims

On appeal, the NARB panel largely affirmed NAD's recommendation that AT&T Services, Inc. modify its advertising to avoid conveying the message that everyone is eligible for AT&T's free cell phone offer, or to clearly and conspicuously disclose that subscribers to its value plans are not eligible or otherwise make clear the extent of plan eligibility. In the underlying Fast-Track SWIFT case initiated by Verizon Communications Inc. challenging AT&T's claim, "Learn how everyone gets iPhone 16 Pro on us," NAD recommended AT&T avoid conveying the message that everyone is eligible to receive a free iPhone 16 Pro or to clearly and conspicuously disclose that although everyone can be eligible for the offer, they must subscribe to certain plans. The panel concluded that the challenged advertising, on its face, conveys a false message and recommend AT&T disclose the plan limitations of the offer in a clear and conspicuous manner.

AT&T Services, Inc. (iPhone 16 Pro Offer) Report #7501-343, *NARB Case* (Nov. 2025)

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** In April 2025, Simpson Thacher announced plans to expand its Bay Area presence with an office in San Francisco.*