



*A service of the advertising industry and Council of Better Business Bureaus*

## *Southwest SCC Scientific Seminar*

*Advertising Industry Self-Regulation and Claim  
Substantiation in Personal Care and Cosmetics Cases*

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# Advertising Self-Regulation System

## **Advertising Self-Regulatory Council (ASRC)**

- Sets policies and procedures for self-regulatory system.

## **National Advertising Division (NAD)**

- Examines truth and accuracy of national advertising claims.

## **Children's Advertising Review Unit (CARU)**

- Reviews advertising directed to children under the age of 12.

## **National Advertising Review Board (NARB)**

- The appellate body of the self-regulatory forum.

## **Electronic Retailing Self-Regulation Program (ERSP)**

- Reviews direct-response advertising.

## **Children's Food and Beverage Advertising Initiative**

- Pledge program for companies that advertise foods and beverages to children.

## **The Online Interest-Based Advertising Accountability Program**

- Regulates behavioral advertising across the Internet.

## Who can file a challenge? Anyone

- Competitors
- Consumer Complaints
- Referral by local Better Business Bureau
- NAD monitoring program
- Trade associations
- Advocacy groups

Approximately 80% of our cases are competitor challenges; 20% are self-monitoring cases.

- Review national advertising in different media
- Review various types of claim substantiation depending on the claim.
- Decision phase:
  - What are the messages that are reasonably conveyed?
  - Is there a “reasonable basis” for the claims?

# *NAD's Decisions*

- After receiving the NAD decision, an advertiser submits an advertiser's statement indicating whether or not they will comply with our recommendations.
- A press release is issued with each decision.
- All decisions are public and available via online subscription at:

<http://www.asrcreviews.org>.


# *COSMETIC PRODUCTS*

- Advertisers continue to overstate their product's performance benefits and make comparisons to cosmetic procedures.
- Advertisers do not typically challenge each other's anti-aging claims.
- Regulators are watching.
- Consumer class actions continue but many do not have traction.

# Words Matter

**INTRACEUTICALS ATOXELENE**  
Expression lines appear smoother, firmer and visibly reduced, eye contour looks more defined and lips look plumped.

**Atoxelene daily serum**



**1. REVIVE** **Atoxelene Daily Serum**

**1** Step 1 in 3 Step Hyaluronic Layering

**Rapid Results**  
Rapid Wrinkle Reduction. Professional strength serum with botanical peptides directly targets expression lines and wrinkles. Instantly reduces the visible appearance skin ageing with accumulative and long term results.


**How to Use:**  
Apply twice daily to all areas where expression lines and wrinkles are a concern. For maximum benefits use as a targeted enhancement to Intraceuticals 3 Step Hyaluronic Layering. Apply Atoxelene Daily Serum between Step 1 and Step 2.

**Recommended for:**

- Expression lines around the eyes, lips and forehead
- Lines around the nasal folds caused by facial muscle contractions

buy now

**Atoxelene line wand**



**Atoxelene Line Wand**

**Lift - Tone - Smooth**

Atoxelene Line Wand contains a concentrated skin smoothing complex that targets the appearance of expression lines and wrinkles without loss of facial expression. Smooths and visibly reduces the way fine lines and wrinkles look without pain in a portable, take anywhere applicator. Apply to affected areas around forehead, eyes and smile lines. Use twice daily. Optimum results achieved in 30 days.

**How to Use:**  
Apply twice daily to all areas where expression lines and wrinkles are a concern. For maximum benefits use as a targeted enhancement to Intraceuticals' 3 Step Hyaluronic Layering. Apply Atoxelene Line Wand between Step 1 and Step 2.

**Recommended for:**

- Expression lines around the eyes, lips and forehead
- Lines around the nasal folds caused by facial muscle contractions
- Fine lines and wrinkles around the eye area

buy now

Intraceuticals, LLC (Atoxelene Skin Care Products), Report #5953 (May 2016)

“Instantly reduce the visible signs of premature skin aging. Results accumulate with continued use.”

“Atoxylene Line Wand contains a concentrated skin smoothing complex that targets the appearance of expression lines and wrinkles without loss of facial expression. Smooths and visibly reduces the way fine lines and wrinkles look without pain in a portable, take anywhere applicator.”



## *Testing:*

### 1) In-house study of 10 subjects

- Subjects filled out a questionnaire immediately after application

Results: instant reduction in wrinkles (30-45 yr olds); visible reduction in fine lines and wrinkles and increased skin firmness (45 and over age group)

### 2) Study on 7 volunteers

- Subjects filled out a questionnaire immediately after application.

Results:

- 86% reported improvement in the appearance of skin
- 71% reported skin texture looked more refined
- 57% reported that fine lines or creases appeared reduced.

3) Randomized, double-blind study with a cross-over design of 10 subjects

- Subjects used either a line wand containing Atoxelene serum or a placebo and completed a questionnaire.

Results: A high percentage of participants noticed improvements in fine lines and expression lines and in the overall appearance of the skin with the line wand versus placebo.

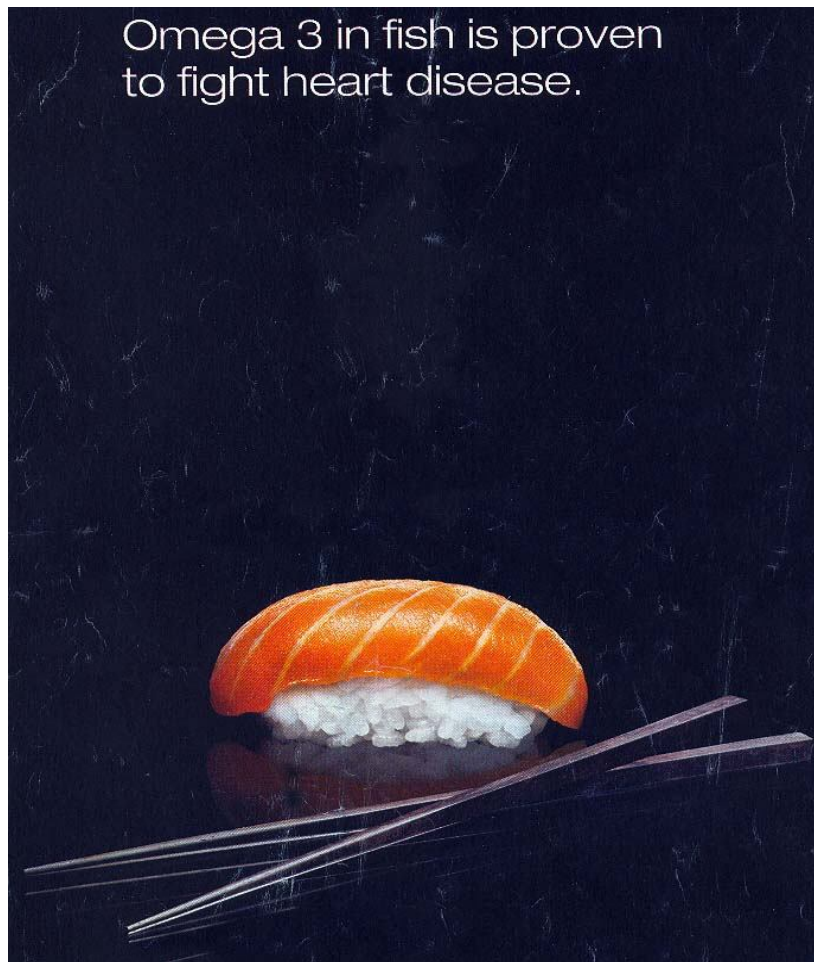
4) In vitro and in vivo testing on ingredients in the product.

**Problems with these studies:**

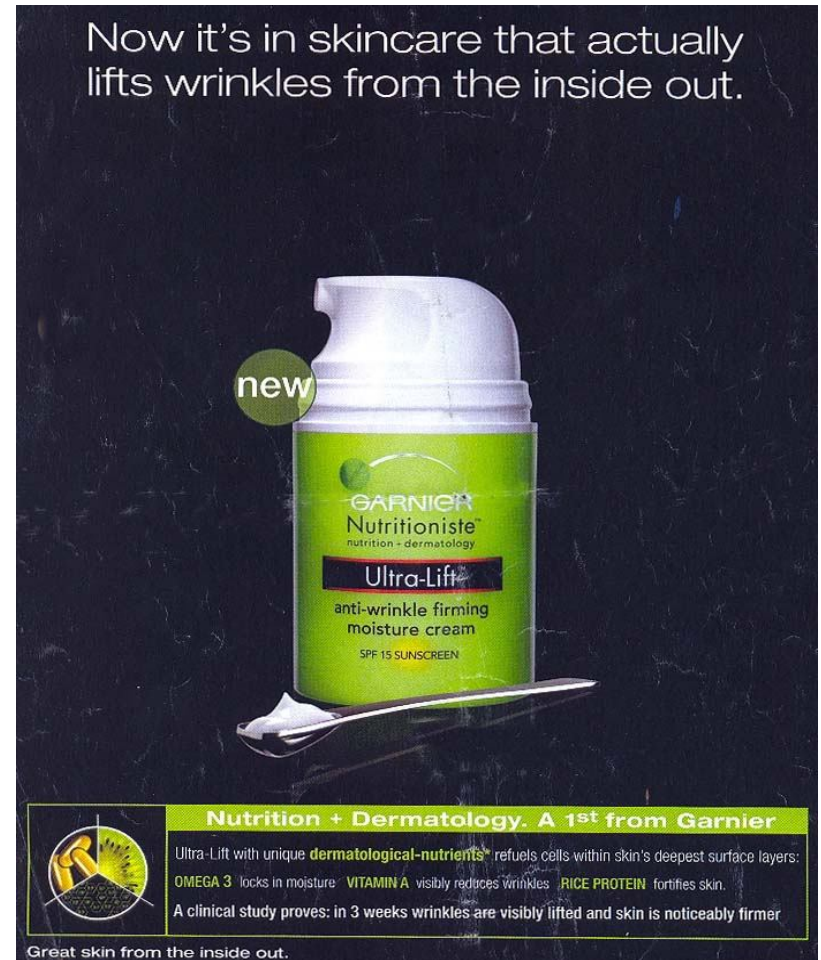
- 1) Bias – testing on company employees
- 2) Missing information on test protocols
- 3) Small sample sizes
- 4) Ingredient testing is insufficient to support product performance claims.

All of the claims had to be discontinued.

# L'Oreal USA, Inc. (Garnier Nutritioniste™ Ultra Lift™ and Garnier Nutritioniste™ Skin Renew), Report #4704 (August 2007)



Now it's in skincare that actually  
lifts wrinkles from the inside out.

A photograph of a green and white pump bottle of Garnier Nutritioniste Ultra-Lift anti-wrinkle firming moisture cream. The bottle has a white pump dispenser and a green body with white text. A small green circle with the word "new" is next to the bottle. A small silver spoon with a dollop of cream is in front of the bottle. The background is dark and textured.

**new**

GARNIER  
Nutritioniste™  
nutrition + dermatology

**Ultra-Lift™**  
anti-wrinkle firming  
moisture cream  
SPF 15 SUNSCREEN

**Nutrition + Dermatology. A 1<sup>st</sup> from Garnier**

Ultra-Lift with unique **dermatological-nutrients™** refuels cells within skin's deepest surface layers:  
**OMEGA 3** locks in moisture **VITAMIN A** visibly reduces wrinkles **RICE PROTEIN** fortifies skin.  
A clinical study proves: in 3 weeks wrinkles are visibly lifted and skin is noticeably firmer

Great skin from the inside out.

## *Claims:*

### Garnier Nutritioniste™ Ultra Lift™

- “Lifts wrinkles from the inside out.”
- “A clinical study proves: in 3 weeks wrinkles are visibly lifted and skin is noticeably firmer.”
- “Ultra-Lift with unique dermatological-nutrients refuels cells within skin’s deepest surface layers: OMEGA 3 locks in moisture; VITAMIN A visibly reduces wrinkles; RICE PROTEIN fortifies skin.”

### Garnier Nutritioniste™ Skin Renew

- “Lycopene is a powerful antioxidant, now it’s in skincare proven to fight fine lines and dullness.”
- “Only Garnier captures the power of our dermatological nutrients so Skin Renew transforms textures from the inside out for more flawless, visibly brighter skin.”

# *Substantiation:*

## Ultra-Lift

- 1) Corneometer testing
- 2) 9 week clinical study – expert and self-assessments
- 3) Study of silicone imprints
- 4) 4-week single-blind consumer use study – 98 women
- 5) Studies and scientific articles on dermatological ingredients.

## Skin Renew

- 1) 9 week controlled clinical study – expert and self-assessments
- 2) 4-week single-blind consumer use study – 110 women
- 3) Lycopene has been proven to have a strong anti-oxidant effect by protecting skin cells from free radicals.

## *Finding:*

- 1) “Now it’s skincare that actually lifts wrinkles from the inside out” should be discontinued or modified to reflect a reduction in the appearance of, and not elimination of, lines and wrinkles.
- 2) “A clinical study proves: in 3 weeks wrinkles are visibly lifted and skin is noticeably firmer” should be modified to reflect the wording of the attribute questions in the studies (i.e., wrinkles appear reduced, skin feels firmer).
- 3) “Ultra-Lift with unique dermatological-nutrients refuels cells within skin’s deepest surface layers: OMEGA 3 locks in moisture; RICE PROTEIN fortifies skin” is supported, but the “visibly reduces wrinkles” reference for “VITAMIN A” should be modified to reflect that it helps reduce fine lines and wrinkles.

4) "Lycopene is a powerful antioxidant, now it's in skincare proven to fight fine lines and dullness" should be discontinued or modified to avoid conveying the unsupported message that lycopene can fight fine lines and dullness.

5) **Supported Claims:** "Skin Renew – the power to fight fine lines and dullness in skin"; "Only Garnier captures the power of our dermatological nutrients so Skin Renew transforms textures from the inside out for more flawless, visibly brighter skin"; "Clinically proven – Results in 3 weeks"; "It's like getting new skin from within"; and "Great skin from the inside out."



THREE ZONES. TWO EYES. ONE TOTAL EYE TURNAROUND.

regenerist eye

● firms lids   
 ● smoothes corners   
 ● tones undereyes

Eyelifts are serious business. But now you can get dramatically younger looking eyes without surgery. Introducing Regenerist Eye Lifting Serum. The Amino Peptide Complex hydrates to allow the natural regeneration of collagen and elastin. Skin's appearance is visibly lifted and brightened for firm lids, smooth corners, and even-toned undereyes. Without drastic measures.

**OLAY**  
 love the skin you're in™

The Procter & Gamble Company (Olay Regenerist Eye Lifting Serum), Report #4266 (December 2004)

### Express Claims:

- 1) "Dramatically younger looking eyes."
- 2) "The Amino Peptide Complex hydrates to allow the natural regeneration of collagen and elastin."

### Implied Claim:

Olay Regenerist works as well as (or similar to) eyelift surgery.

## *Testing:*

- 1) Long-term double blind clinical studies —  
-- image analysis [profilometry]; dermatological assessments.
- 2) Five-day dansyl chloride study
- 3) Visual attribute test -- expert and self assessments that evaluated the Eye Serum's impact on, among other things, wrinkle reduction.
- 4) Three-week single product use study – self-assessment.
- 5) Skin hydration testing – corneometer and TEWL

## *Finding:*

- 1) “Dramatically younger looking eyes” claim should be modified to reflect the actual test results.
- 2) Studies showed that the product hydrated skin;
- 3) “To allow the regeneration of collagen and elastin” statement should be limited to the role scientists believe hydration plays in the regeneration of collagen and elastin.
- 4) Claims should be modified to avoid implying that the product produces results comparable to surgical procedures.

# Quantified Performance Claims/Before and After Photographs

*new!* vitamin c<sup>8</sup>  
+  
exclusive dna  
renewal complex  
in a fresh-pour delivery  
for peak potency

*at last, time is  
on your side*

women told us their skin looked  
**730 days younger\***  
that's 2 years on your side  
with our age-defying serum

*"lines have disappeared and...  
i go makeup free."*—cecilia

*"changed my life and given me the  
skin i never thought i would ever be able  
to have!"*—katwoman94

*"amazing, amazing, amazing.  
this is the best new skin care product  
around...i don't want to be without it  
ever again."*—busytwinmommy

see all reviews at [philosophy.com](http://philosophy.com)

**time**  
in a bottle

**philosophy:** time can be  
on your side. when you  
focus on what really  
matters, time becomes

available at qvc.com, sephora, ulta, nordstrom,  
impulse beauty at macy's, and [philosophy.com](http://philosophy.com)

**philosophy**  
believe in miracles

\*in an 8 week study of 56 women, 40% indicated their skin looked at least 2 years younger. \*\*consumer review from philosophy.com. reviewer may have received the product to test.

**transform your skin  
inside and out at any age\***  
defy the appearance of all major signs  
of aging, and help your skin appear:

- radiant
- poreless
- even
- wrinkle-free
- smooth
- firm

**inside:** aging not yet visible on the surface\*



before



after 4 weeks

uneven skin tone seen in cross-polarized light

**out:** visible aging on the surface\*



before



after 8 weeks

**clinically tested on women ages 25-55**

**82%** showed improvement in signs of aging not  
yet visible on the surface after 4 weeks

**95%** showed significant reduction in  
visible signs of aging after 8 weeks

\*clinical study, 120 women, ages 25-55, once daily use.  
measurement of aging not yet visible on the surface using cross-polarized  
light to reveal sub-surface signs of aging in the epidermal layer.

Philosophy, Inc. (Time In A Bottle Age-Defying  
Serum), Report #5765 (September 2014)

**ASRC**  
A service of the advertising industry and Council of Better Business Bureaus

"Women told us their skin looked 730 days younger\*, that's 2 years on your side with our age-defying serum."

"Transform your skin inside and out at any age\*

"Defy the appearance of all major signs of aging, and help your skin appear:

- Radiant
- Poreless
- Even
- Wrinkle-free
- Smooth
- Firm

"Inside: aging not yet visible on the surface\*" (along with the before and after photographs)

"Out: visible aging on the surface\*" (along with the before and after photographs)

"82% showed improvement in signs of aging not yet visible on the surface after 4 weeks."

"95% showed significant reduction in visible signs of aging after 8 weeks."

- \* clinical study, 120 women ages 25-55, once daily use. Measurement of aging not yet visible on the surface using cross-polarized light to reveal sub-surface signs of aging in the epidermal layer.

"Lines have disappeared and...I go makeup free."

## *Testing:*

- 6-month independent blinded clinical study
- 117 subjects ages 25-55 (split into 3 age groups: 25-35; 36-45 and 46-55)
- One-week washout period prior to the study
- Objective measurements: corneometer and image assessments (image assessments taken on a subset of 26 subjects)
- Self-assessment questionnaire

*Findings:* the claims and visuals have to be discontinued.

- “Women told us their skin looked 730 days younger\*, that’s 2 years on your side with our age-defying serum” is based on question 21 out of 53: “Skin appears \_\_\_ years younger” which is inherently arbitrary and influenced by preceding anti-aging related questions.
- Study was flawed for following reasons:
  - Failing to take into account environmental factors;
  - Visuals were based on a very small subset of the study participants; and
  - Failing to use trained graders to conduct the visual assessments.
- The results do not support the challenged claims and visuals.
- The case was appealed to the NARB, and the NARB upheld NAD’s findings in part.

**BOTTOM LINE: Don’t overstate performance results verbally or visually.**



# Personal Care Products



"Unlike Dove Sensitive Skin Body Wash, which actually dries out your skin over time, new Olay Sensitive Body Wash gives your skin the moisture it deserves. So say goodbye to harsher body wash and hello to gentler, moisturizing Olay Sensitive Body Wash."

*Implied claims:*

Dove Sensitive Skin is harsh, i.e., abrasive, and will cause noticeable damage to the skin.

Over time, Dove Sensitive Skin removes significant moisture from the skin and causes noticeable dry skin.

The Procter & Gamble Company (Olay Sensitive Body Wash),  
Report #5755 (September 2014)

## *Testing:*

- 19-day leg controlled application test (LCAT)
  - 7 day pre-conditioning prior to the start of the study
  - 12-day treatment phase
- 36 subjects
- Dove Sensitive Skin Body Wash and Olay Sensitive were tested against a water control.
- Corneometer readings were taken at certain time points.
- Results: Dove Sensitive Skin is directionally more drying than water at most of the reported time points and is statistically significantly more drying than water only at the last time point of the study (i.e., hour three on day 12).

## *Findings:*

- Advertiser should discontinue the claim “So say goodbye to harsher body wash and hello to gentler, moisturizing Olay Sensitive Body Wash” and avoid conveying the unsupported message that Dove Sensitive Skin Body Wash is “harsh.”
- Advertiser should modify its claim that “Dove Sensitive Skin Body Wash dries out your skin over time” to more accurately reflect the LCAT results (i.e., Dove is more drying than water over time).
- Advertiser should avoid conveying the unsupported messages that consumers who use Dove Sensitive Skin Body Wash will have noticeably drier skin with continued use and that consumers will perceive the drying effect of the Dove Sensitive Skin Body Wash upon contact.

# What's In A Name?



back panel :

*“Why You Want It...This exotic, precious blend of argan oil of Morocco penetrates, moisturizes, renews and creates softness and strength while protecting your hair from harmful styling heat and UV damage as it gives you smooth, sexy tresses.”*

Vogue International, Inc. (OGX Shampoos and Conditioners), Report #5844  
(May 2015)

### *Express Claims:*

- “Renewing Argan Oil of Morocco” and other product names.
- “A unique, precious blend of Argan oil of Morocco which instantly penetrates the hair shaft restoring shine and softness while strengthening and creating soft, seductive, silky perfection.”
- “OGX products use a unique blend of sulfate free surfactants. Our formulas do not contain lauryl or laureth sulfates” and “Zero SLS/SLES.”

### *Implied Claims:*

- The featured ingredients are present in the product at a level that provides a performance benefit for hair.
- The absence of sulfates in OGX products provides a material benefit for hair.
- OGX products, including shampoos and conditioners, do not contain any sulfates.

- When a product name makes an express claim which conveys a message that is not supported, extrinsic evidence of consumer confusion is not required to recommend a product name change.

- Each product in the OGX line is named for an exotic ingredient preceded by a descriptive word (e.g., Anti-Breakage Keratin Oil Shampoo).
- Problem: there is no evidence that the touted ingredient in the product provides the advertised performance benefit.
- Weightless Hydrating Coconut Water Shampoo contains Ammonium Lauryl Sulfate, a sulfate-based surfactant.

*Decision:*

- NAD recommended that the advertiser modify its product names and product packaging to make it clear that the product ingredients, taken together, provide the claimed benefits.
- NAD recommended that the advertiser discontinue claims that the Weightless Hydration Coconut Water Shampoo has “Zero SLS/SLES” or otherwise imply that the shampoo contains only sulfate-free surfactants because it contains Ammonium Lauryl Sulfate.

# Organic, Natural, Free Of

Context is key – express *and* implied claims must be supported.

Good rule of thumb: If a product or an ingredient undergoes chemical processing, it's not natural.

“Free of” - FTC’s Green Guides are instructive

Advertisers can make a free-of claim for a product that contains some amount of a substance if:

- a. only trace amounts or background levels of the substance are in the product;
- b. the amount of substance present doesn’t cause harm that consumers typically associate with the substance; and
- c. the substance wasn’t added to the product intentionally.



# Natural?



Vogue International, LLC (Proganix Line of Hair Care Products, Report #5864 (July 2015))

- “Performance Naturals (*noun*): 1. High performance extracts up to 200x more potent than their raw natural state.”

*Implied claims:*

- The natural ingredients in Proganix render the formula 200x more powerful in delivering the claimed benefit.
- The performance of each Proganix formulation is attributable to named extracts.

## *Finding:*

- Discontinue “High performance extracts up to 200x more potent than their raw natural state.”
- May claim that the *Aloe Vera* in its product is 200x more concentrated than its raw natural state.
- Modify advertising and product packaging to avoid conveying the message that specific exotic ingredients are responsible for the product benefits.

# Dietary Supplements

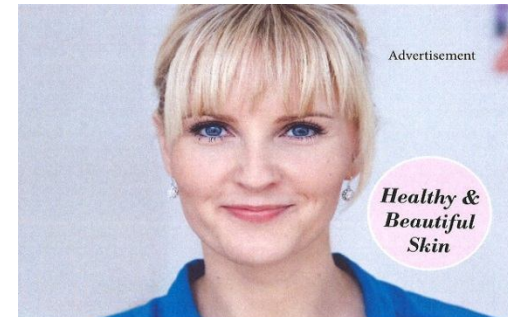
- Many dietary supplements on the market claim to confer a cosmetic benefit.
- NAD review: Is there a good fit between the claims and the support?
- Guidance -- *FTC's Dietary Supplements Guide*
  - How does the dosage and formulation of the advertised product compare to what was used in the study?
  - Is the advertised product administered in the same manner as the ingredient used in the study?

## Frequent problems in dietary supplement cases:

1) testing only one or a combination of ingredients to support product performance claims; and

2) product was not tested according to use instructions.

# New Nordic (Skin Care™ Collagen Filler), Report #5901 (November 2015)



## *My lifestyle* gave me wrinkles

Diana is 29 years old and works as a sales assistant in Copenhagen. "I have always loved the outdoors and staying in the sun, even without protection. But unfortunately my skin started to show signs of wrinkles already in my 20's, particularly on my forehead, which frustrated me a lot. So much so, that I chose to get bangs.

I had tried other products from New Nordic with good results so when I noticed they had a skin

care tablet, I bought the product right away. The price was surprisingly low compared to other skin products I have at home.

Now, I have used the tablets for 6 months and they really work for me. I am ready to get rid of my bangs and show my forehead again. I don't feel like stopping the tablets because I feel my skin looks better, tighter and healthier. Skin Care will surely be part of my daily skin care routine now."

Diana, Copenhagen

## YOUR SKIN TABLET

New Nordic introduces Skin Care™ – a new supplement designed to activate your skin's cells to generate more anti-wrinkle collagen and help your skin stay healthy and youthful looking. The ingredients will better reach the deepest layers of your skin where no anti-aging cosmetic serum reaches.



Now available at participating retailers and online. 1-877-696-6734.

Walgreens meijer amazon.com  
drugstore Vitacost iHerb.com GNC  
At select RED BATH & BEYOND  
FACE VALUES

These statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure or prevent any disease. Always read the label and follow the instructions prior to use. Statements are not proof of efficacy. Results may vary.

“Reduces formation of wrinkles.”

“New Nordic introduces Skin Care™ - a new supplement designed to activate your skin's cells to generate more anti-wrinkle collagen and help your skin stay healthy and youthful looking. The ingredients will better reach the deepest layers of your skin where no antiaging cosmetic serum reaches.”

“Collagen Filler with Proven Ingredients.”

Claims and testimonial must be discontinued.

- No studies on the actual product
- Ingredient studies are flawed
  - Only abstracts provided for some studies
  - Animal ingredient studies are not relevant
  - Remaining studies:
    - Two on collagen, but not clear whether the collagen is the same (or in the same amount) as collagen in the product
    - One on a drink – different form from product; lycopene and vitamin C not in the same amounts as the ingredients in the product.

Referred to the FTC after a compliance inquiry.

New Nordic reformulated the product and after consultation with the FTC and NAD, it agreed to follow NAD's guidance in its future advertising.



# KEY POINTS

1) Performance claims must always be truthful and accurate and reflect the results of product testing.

- You need reliable product testing producing statistically significant and consumer meaningful results.
- Avoid likening topical cosmetic products to invasive medical procedures.
- Quantified performance claims (e.g., "30% fewer wrinkles!") require reliable clinical studies with statistically significant results that show results at or above the specified percentage.
- Performance claims based on consumer use testing should mirror the language of the attribute questions.

2) In the absence of product testing, ingredient claims are appropriate provided:

- a) there are reliable studies that link the ingredient to a claimed product benefit;
- b) the amount tested was the same as the amount found in the advertised product; and
- c) the claims accurately reflect the studies' results.

3) A claim can be made without words

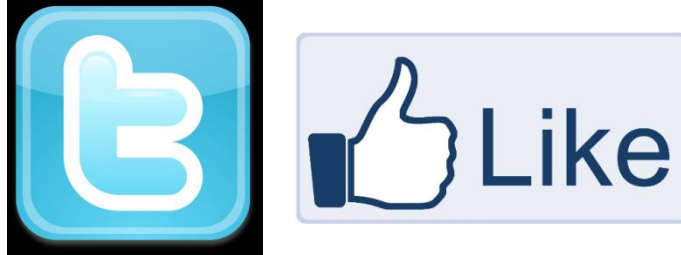
- Photographs and product demonstrations depict product performance and, as such, they must reflect what consumers can reasonably expect to achieve when using the product as directed.

4) A disclosure does not cure an otherwise inaccurate claim

- However, if the claim is accurate, then a disclosure is appropriate provided it is clear, conspicuous and in close proximity to the claim it is qualifying.



[www.asrcreviews.org](http://www.asrcreviews.org)



**Questions?**

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