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National Advertising Division Weighs in on Advertising Claims Related to Lab-Grown Diamonds



Key Takeaways:

- The FTC's Jewelry Guides require marketers to make clear and conspicuous disclosures to truthfully represent the origin of lab-grown diamonds and gemstones (i.e., distinguishing mined diamonds and gemstones from man-made substitutes) and otherwise comply with the Jewelry Guides (see below for additional compliance considerations).
- Advertising claims for lab-grown diamonds and gemstones are subject to scrutiny by regulators, competitors (including adverse trade associations), and consumers, so companies should consult with legal counsel when developing any such claims.

The National Advertising Division (NAD) recently issued recommendations to diamond companies in response to two challenges concerning advertising claims for diamonds that are created in a laboratory, rather than mined from the earth (commonly referred to as "lab-grown diamonds" or "LGDs"). The Natural Diamond Council (an association of diamond companies representing about 75% of the world's natural diamond production) and Diamond Foundry, Inc. (a producer of lab-grown diamonds) each challenged the other's advertising claims in two recent NAD cases. Specifically, the Natural Diamond Council first challenged Diamond Foundry's advertising of LGDs as "diamonds," without a sufficiently clear disclosure that its LGDs are created in a laboratory. Diamond Foundry then challenged The Natural Diamond Council's advertising claims, which touted the benefits of mined, natural diamonds over LGDs, including those related to carbon emissions, the scarcity of mined diamonds, and the resale value of mined diamonds versus man-made diamonds. These challenges resulted in a NAD recommendation that Diamond Foundry modify its advertising to more clearly disclose the origin of its lab-made diamonds, followed by a separate NAD recommendation that The Natural Diamond Council discontinue certain unsupported advertising claims comparing the benefits of mined, natural diamonds vs. lab-grown diamonds. Select takeaways from the NAD recommendations follow:

- FTC standards require disclosure when diamonds are grown in labs. In both decisions, NAD looked to FTC guidance in determining whether diamond-related advertising is deceptive, including both the FTC Jewelry Guides and the FTC's Dot Com Disclosure business guidance. In particular, the Jewelry Guides require marketers to make prominent, effective disclosures to truthfully represent the origin of lab-grown diamonds and gemstones and to distinguish mined diamonds and gemstones from lab-made substitutes.
- The word "Laboratory" or "Lab" should appear in immediate proximity to "Diamond." In Diamond Foundry, Inc., NAD found that advertisers should disclose in close proximity to the word "diamond" (with equal conspicuousness) that the stones are not naturally mined. For example, NAD found that Diamond Foundry's placement of the word "laboratory" far below the description of the diamond (e.g., requiring scrolling down on a mobile device) was not sufficient to make it clear that it was a lab-grown diamond and not a natural, mined diamond.
- Environmental benefit and value claims must have sufficient support. In Natural Diamond Council USA, the NAD found that there was not sufficient evidence that mined diamonds are better for the environment than lab-grown diamonds and recommended discontinuing the claim. Similarly, NAD found that certain messages related to the "resale value" (e.g., "A laboratory created diamond has no resale value and its price is falling rapidly") were not supported and recommended the Natural Diamond Council discontinue such claims.
- Using the word "Real" to describe lab-grown diamonds is likely misleading. In Diamond Foundry, Inc., consistent with the FTC Jewelry Guides' prohibition on using "real" to describe "any industry product that is manufactured or produced artificially," the NAD found that, without more context that the diamond was created in a lab, the word "real" conveys that the product is a mined, natural diamond.

Authors

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