



NAD Refers OrthoClear Inc. to FTC

Advertiser Declines to Participate in NAD Forum, Citing Proprietary Technology

New York, NY – February 21, 2006 – The National Advertising Division of the Council of Better Business Bureaus has referred advertising from OrthoClear, Inc., the maker of an "invisible" orthodontic device, to the Federal Trade Commission, following the company's refusal to participate in an NAD review.

Advertising claims for OrthoClear's aligners were challenged by Align Technology, Inc., a competing maker of orthodontic devices. Align Technology took issue with a wide range of claims, including comparative performance claims, superior fit and comfort claims, hygiene claims and clarity and aesthetics claims. Claims at issue included:

- The OrthoClear Technology Revolution
- OrthoClear Aligners: Are more comfortable – OrthoClear's revolutionary manufacturing process creates the most precise aligners on the market today, ensuring the most accurate fit.
- Smooth surfaces stay cleaner than other plastic aligners.
- OrthoClear aligners are the clearest on the market.

OrthoClear, in a statement to NAD, the advertising industry's self-regulatory forum, said that the company is engaged in state and federal litigation with Align Technology. Due to the pending litigation, as well as its own pending patents, it is not in a position to subject its proprietary process to disclosure through an NAD review proceeding, the company said.

In its decision, NAD noted that pending litigation deprives the self-regulatory forum of jurisdiction only when "the advertising complained of is ... the subject of pending litigation or an order by a court."

In this case, NAD reviewed the complaints filed with the state and federal courts and determined that the advertising claims challenged by Align were not the subject of, nor would they likely be addressed, by the state and federal courts.

"Although NAD is disappointed with the advertiser's decision not to participate in the self-regulatory forum ... and the advertiser has respectfully declined to provide a substantive response, NAD will refer this matter to the appropriate governmental agency ...," the NAD decision states.

For a copy of the NAD decision, please contact Sheryl Harris at 212.705.0120. For media inquiries, please contact Linda Bean at 212.705.0129.

NAD's inquiry was conducted under NAD/CARU/NARB Procedures for the Voluntary Self-Regulation of National Advertising. Details of the initial inquiry, NAD's decision, and the advertiser's response will be included in the next NAD Case Report.

The National Advertising Review Council (NARC) was formed in 1971 by the Association of National Advertisers, Inc. (ANA), the American Association of Advertising Agencies, Inc. (AAAA), the American Advertising Federation, Inc. (AAF), and the Council of Better Business Bureaus, Inc. (CBBB). Its purpose is to foster truth and accuracy in national advertising through voluntary self-regulation. NARC is the body that establishes the policies and procedures for the CBBB's National Advertising Division (NAD) and Children's Advertising Review Unit (CARU), as well as for the National Advertising Review Board (NARB).

NAD and CARU are the investigative arms of the advertising industry's voluntary self-regulation program.

Their casework results from competitive challenges from other advertisers, and also from self-monitoring traditional and new media. The National Advertising Review Board (NARB), the appeals body, is a peer group from which ad-hoc panels are selected to adjudicate those cases that are not resolved at the NAD/CARU level. This unique, self-regulatory system is funded entirely by the business community; CARU is financed by the children's advertising industry, while NAD/NARC/NARB's sole source of funding is derived from membership fees paid to the CBBB. For more information about advertising self regulation, please visit www.narcpartners.org.