

Case #6416 (09/25/2020)

One Home Brands, Inc. d/b/a Blueland
Blueland Cleaning Products

Challenger: *The Clorox Company*

Product Type: *Household Products*

Issues: *Environmental Claims; Performance Claims; Implied Claims/Consumer Perception*

Disposition: *Substantiated In Part/Modified-Discontinued In Part*

- **An environmental marketing claim should not overstate, directly or by implication, an environmental attribute or benefit.**
- **Literally truthful claims may, in the context in which they are presented, still convey a message that is false or misleading.**

Basis of Inquiry: Claims made by One Home Brands, Inc. d/b/a Blueland (or “the advertiser”) in website and social media advertising for its cleaning products were challenged by The Clorox Company (“Clorox” or “the challenger”), maker of competing cleaning products. The following are representative of the claims that served as the basis for NAD’s inquiry:

Express Claims:

- Blueland cleaning products effectively eliminate bacteria and viruses, including the virus that causes COVID-19.
- Blueland’s bottles are “forever” bottles.
- “Every piece of packaging—from our tablet pack wrapper, shipping materials, our Forever Bottles (which aren’t intended for you to recycle)—is recyclable.”
- Blueland bottles are recyclable, shatterproof and non-leaking.
- Blueland’s tablet wrappers are compostable and biodegradable.
- “Bad for Germs, Good for Earth”
- “We reimagined cleaning products to be better for your home and our planet.”
- “Tried, Tested, Proven. Eliminated more grease and grime than leading comparable brands - all without the harmful chemicals.”
- “Our cleaners outperformed the leading brands in efficacy tests completed at third party labs.”
- Blueland does not use “traditional disinfecting ingredients (like chlorine bleach or quaternary ammonium compounds) that may be harmful if ingested, so not great for kitchen and dining surfaces.”

Implied Claims:

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- Blueland cleaning products are disinfectants and kill bacteria and viruses, including COVID-19.
- Blueland cleaning products work better than competitors' cleaning products, including Clorox products.
- Blueland's bottles last forever.
- Blueland products are eco-friendly.
- Blueland products are good for the planet.
- Conventional cleaning products are unsafe.

Evidence Presented:

I. Advertiser's Evidence

In support of its environmental benefit claims, the advertiser explained the benefits associated with its replacement of items traditionally sold in disposable plastic bottles with reusable bottles, and its system where consumers can fill and re-fill the reusable bottles with dry cleaning tablets and water a potentially infinite number of times. The advertiser presented evidence that this results in a reduced transportation carbon footprint, as well as evidence that it purchased carbon offsets for its entire supply chain from product manufacturing to delivery to the end user.¹

The advertiser also submitted evidence of its environmental certifications, including:

- Verification by EPA's Safer Choice Program
- Leaping Bunny certification
- BioPreferred certification by the USDA
- Platinum level Material Health Certificates assessed by MBDC based on the Cradle to Cradle Certified Product Standard

In addition, the advertiser presented evidence that its packaging is recyclable and that its tablet wrappers are compostable and biodegradable, including documentation from the suppliers of the biodegradable PLA film and the biobased metal film lining.

In support of its product performance claims, the advertiser submitted general evidence on the efficacy of non-antibacterial hand soaps and cleaners in preventing illness and reducing germs. The advertiser also provided a declaration from the manufacturer of its acrylic bottles that the products are "non-shatter / shatter-resistant" plastic bottles.

¹ The advertiser noted that its offsets account for daily commutes of its personnel and any work related travel.

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With regard to its comparative cleaning claims, the advertiser determined the “leading brand” in each product category (i.e., glass, bathroom, multi surface) based on a consumer sales study it commissioned. Blueland compared its cleaning products to the leading conventional brand and at least one leading natural brand in each of the efficacy tests conducted by independent third-party labs. The advertiser submitted the following test reports and declarations from the testing laboratories:

- Bathroom – American Society for Testing Materials (“ASTM”) D5343-06
- Glass – Consumer Specialty Products Association (“CSPA”) DCC-09
- Multi Surface – ASTM D5343 and CSPA DCC-17

As support for its contention that conventional brand products have harmful chemicals, the advertiser pointed to certain ingredients in conventional brands that received “F” and “D” grades from the Environmental Working Group (“EWG”) due to certain concerns, as well as other ingredients that could potentially cause harm or allergic reactions. The advertiser also provided NAD with a complete list of the ingredients in its products to show that they do not include “traditional disinfecting ingredients (like chlorine bleach or quaternary ammonium compounds),” and relied on safety data sheets for traditional disinfecting ingredients to show that they are harmful if ingested.

II. Challenger’s Evidence

In support of its contention that Blueland should not state or imply that its cleaning products are disinfectants, the challenger relied on the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”) and its prohibition that products cannot claim to remove or kill bacteria and viruses unless such products are registered with the Environmental Protection Agency (“EPA”).

The challenger’s rebuttal evidence for Blueland’s comparative cleaning claims consisted of the results of in-house testing on Blueland’s multi surface cleaner comparing its effectiveness in cleaning a soiled surface with that of Clorox Clean Up and Formula 409 Multi Surface Cleaner, using the HPCA DCC-17 test.² The challenger also submitted a memorandum summarizing these results and concluding that the advertiser’s unqualified cleaning efficacy claims are not supported.

Decision:

This challenge involves claims for the advertiser’s cleaning products, which are designed to eliminate the need for single-use plastic by replacing some of the items traditionally sold in disposable plastic bottles with reusable bottles and dry replacement tablets. Consumers purchase cleaning “kits” from the Blueland website to make the cleaning products at home by combining dry tablets and water. Consumer can then fill and re-fill the reusable bottles as needed. At issue in this challenge are environmental benefit, product performance, and comparative cleaning claims made

² NAD noted that this test was previously the CSPA DCC-17 test. CSPA changed its name to HPCA and revised the DCC-17 testing protocol in 2018.

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in connection with Blueland’s multi surface, bathroom, glass + mirror, and hand soap cleaning products.

It is important for advertisers to be able to distinguish their products from those of their competitors and to tout superior performance capability when they possess adequate support for such claims. Advertising claims for the environmental benefits of products can influence the purchasing decisions of consumers who are concerned with sustainability and environmental issues. Thus, while advertisers should certainly be permitted, and even encouraged, to educate consumers about their products, it is equally important that the environmental benefits of such products be promoted in a responsible manner that does not exceed the scope of the supporting scientific evidence. Because consumers cannot typically verify for themselves the truth of environmental claims, advertising self-regulation plays a significant role in ensuring that such claims are truthful, accurate and non-misleading. Further, with respect to its review of the messages conveyed by environmental benefit claims, NAD seeks to harmonize its efforts in a manner that is consistent with the guidance provided in the FTC Green Guides. It is against this background that NAD reviewed the claims at issue in this proceeding.

I. Disinfectant Claims

During the course of the challenge, the advertiser informed NAD that it had permanently discontinued all express and implied claims that its surface cleaner products are disinfectants, such as the challenged claim that Blueland’s products “effectively eliminate bacteria and viruses.” NAD did not review these claims on their merits.

The advertiser also stated that it revised its advertising materials to more clearly distinguish between its hand soap advertising and surface cleaner advertising. NAD cautioned the advertiser to avoid blurring the line between its different product categories in a manner that may convey an unintended disinfectant claim for surface cleaners (e.g., avoid talking about hand soaps washing away germs while showing bottles of household cleaning supplies). NAD appreciates Blueland’s commitment to make these changes to future advertising, and recommended that Blueland also remove or revise any previous publicly-available social media (including comments from its customer service representatives) that state or imply disinfection abilities for its surface cleaners.³ These modifications will be treated, for compliance purposes, as though NAD recommended their discontinuance and the advertiser agreed to comply.

³ Examples of such previous materials include a Blueland Instagram sponsored post showing a tablet being dropped in an unnamed product bottle and stating “drop viruses and bacteria with these revolutionary cleaning tablets. No germs, no harmful ingredients, no plastic waste. Fill your Forever Bottle with water. Drop in a tablet. Start cleaning! Shop now at blueland.com”; a Blueland Facebook sponsored post showing a multi surface cleaning bottle being filled with water from the tap with the caption “Wash away viruses and bacteria with these revolutionary cleaning tablets” and the text “Wash away viruses and bacteria with these revolutionary cleaning tablets. No germs, no harmful ingredients, no plastic waste. Fill your Forever Bottle with water. Drop in a tablet. Start cleaning! Show now at blueland.com”; Blueland’s response to a customer question about whether its products are disinfectants and will kill viruses, including COVID-19 which states “while we can’t definitively say our products kill bacteria and viruses, the formulas do include surfactants (ingredients that reduce surface tension) to effectively eliminate bacteria and viruses!” and an email blast promoting the Clean Suite (Blueland’s full line of products) with the claim underneath “Your cell phone has 10x more germs than a toilet seat . . . a daily clean of high-touch surfaces is recommended for clean and healthy space!”

II. Environmental Benefit Claims

A. Claims that Blueland’s bottles are recyclable

The challenger took issue with Blueland’s recyclability claims for its packaging, including a response to its website FAQ “Is Blueland packaging recyclable,” which stated that “every piece of packaging – from our tablet wrapper, shipping materials, our Forever Bottles (which aren’t intended for you to recycle) – is 100% recyclable.”^{4, 5}

According to the challenger, the claim that Blueland’s Forever spray cleaner bottles are recyclable is not supported because they are made of acrylic, which is not recyclable. Whereas, the advertiser explained that because not all consumers have access to recycling centers that accept acrylic, it takes the bottles back from the consumer (at no expense to the consumer) and pays to have the acrylic bottles recycled. The advertiser also stated that its Forever bottles are designed to be reused a potentially infinite number of times, so the instances where they break and need to be recycled are rare.

The FTC Green Guides state that a product or package is recyclable if it “can be collected, separated, or otherwise recovered from a waste stream through an established recycling program for reuse or use in manufacturing or assembling another item.”⁶ Further, “marketers should prominently qualify recyclable claims to the extent necessary to avoid deception about the availability of recycling programs and collection sites to consumers.”⁷ While the advertiser referenced certain companies which are capable of recycling acrylic and will purchase scrap plastics for that purpose, it did not provide any evidence regarding the availability of acrylic recycling through conventional curbside or drop-off recycling programs that are available to consumers. Given the absence of data showing the percentage of consumers that have access to facilities that recycle acrylic, NAD considered the sufficiency of the advertiser’s qualification that Forever bottles “aren’t intended for you to recycle.” However, NAD determined that this language does not clearly indicate that Forever bottles are primarily recyclable through Blueland’s take-back program. Reasonable consumers could understand the sentence “our shipping materials, and our Forever Bottles (which aren’t intended for you to recycle) – are recyclable” to refer to the fact that the bottles are intended be used over-and-over again and not a limitation on the availability of recycling facilities.

Further, the advertiser did not provide a reasonable basis for a claim that its Forever bottles are “100% recyclable.” According to the advertiser, after customers send their bottles back to Blueland

⁴ NAD noted that this claim also appeared in the comments section of a Facebook advertisement, where Blueland responded to a consumer’s question about packaging by stating “all of our packaging – the wrappers, the shipping materials, the bottle – is 100% recyclable. In addition, our tablet covers are completely home compostable.”

⁵ During the course of the proceeding, this webpage was updated to state “our shipping materials, and our Forever Bottles (which aren’t intended for you to recycle) – are recyclable . . . Should anything happen to your Forever Bottle due to unforeseen circumstances and you’re unable to recycle it properly, we are happy to take it back free of charge and responsibly recycle it on your behalf.”

⁶ 16 C.F.R. §260.12(a). Further, advertisers should not make unqualified recyclability claims unless “recycling facilities are available to a substantial majority of consumers or communities where the items is sold,” with a substantial majority referring to at least 60 percent. Thus, in instances where the 60 percent threshold is not met, recyclability claims must be qualified. 16 C.F.R. §260.12(b)(1).

⁷ Id.

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for recycling, it then pays a third-party to clean the bottles and sells them to a recycler who melts the bottles down so the acrylic resin can be reused. The advertiser did not, however, present any evidence on the percentage of resin from its bottles that is actually reused by the recycler in manufacturing or assembling another item.

With regard to the claim that its shipping materials are recyclable, the advertiser explained that its shipping boxes, dunnage, and directional inserts for the boxes are completely made from paper and corrugated cardboard that is easily recycled. The packaging tape is plastic-free paper tape that is recyclable. Further, the advertiser stated that it used water based ink on its boxes to improve their recyclability and plant-starch based adhesives on the boxes and tape to reduce the use of chemicals. NAD determined that the advertiser provided a reasonable basis for the claim that these shipping materials are recyclable since paper recycling is widely available in the United States.

For these reasons, NAD recommended that the advertiser discontinue the claim, “every piece of packaging – from our tablet wrapper, shipping materials, our Forever Bottles (which aren’t intended for you to recycle) – is 100% recyclable,” as well as its use of unqualified recyclability claims for Forever bottles. NAD further recommended that the advertiser modify its recyclability claims to clarify that, in the instances in which a Forever bottle fails, it is only recyclable through Blueland’s take-back program. However, nothing in this decision precludes the advertiser from making appropriately qualified claims that other components of Blueland packaging, such as its shipping materials, are recyclable.

B. Claims that Blueland’s tablet wrappers are compostable and biodegradable

The challenged advertising includes unqualified claims that Blueland tablet wrappers are compostable and biodegradable. The challenger specifically questioned whether the metal film lining is actually compostable in ordinary household compost. Whereas, the advertiser maintained that each of its tablet wrappers is composed of several layers that are all compostable and biodegradable.

The FTC Green Guides specify that support for a compostable claim should consist of “competent and reliable scientific evidence that all the materials in the item will break down into, or otherwise become part of usable compost . . . in a safe and timely manner (i.e., in approximately the same time as the materials with which it is composted)” and that “a marketer should clearly and prominently qualify compostable claims to the extent necessary to avoid deception if the item cannot be composted safely or in a timely manner in a home compost pile or device”

As support for its claims, the advertiser explained that the layers of the tablet wrappers include biodegradable paper made from Forest Stewardship Council certified wood pulp, biodegradable PLA film made from renewable plant starch, such as corn or sugarcane, a compostable sealant layer, and a metal film lining. The advertiser submitted documentation from the suppliers of the biodegradable PLA film and the biobased metal film lining that the components will fully degrade into nothing but water, biomass, and CO₂. Further, Blueland stated that, contrary to the challenger’s assertion, the metal film lining is fully compostable and submitted documentation from its supplier noting that the metal film can be placed in both industrial and home composting environments.

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After reviewing these materials, NAD determined that the advertiser had provided a reasonable basis for claims that its tablet wrappers were both biodegradable and compostable.

C. The remaining environmental benefit claims

NAD evaluated the messages conveyed by the environmental benefit claims that Blueland's products and packaging are "better for your home and our planet," "earth-friendly," "Bad for Germs, Good for Earth," and that its bottles last "forever."

With regard to the claim that Blueland's bottles are "forever" bottles, NAD determined that, in the context of the advertising at issue, consumers will understand the term to mean that the bottles can be used over and over again, provided that they are used as intended and with reasonable care. A reasonable consumer would not expect the durability of the bottle to be unconditional and without limits. Further, use of the term "forever" is not misleading with respect to cost, since Blueland offers to replace any broken bottles free of charge.⁸ Consequently, NAD concluded that the advertiser's use of the term "forever" to describe its bottles did not convey a misleading message.

The challenger also took issue with the claims that Blueland's bottles are shatterproof and non-leaking, as they relate to the longevity of the bottles. NAD determined that the advertiser provided a reasonable basis for its claim that its cleaning bottles are shatterproof. The advertiser's evidence shows that acrylic is known in the industry to be a stronger alternative to glass that "won't shatter." Further, the manufacturer of Blueland's acrylic bottles provided a declaration that the "products are non-shatter / shatter-resistant bottles." The advertiser maintained that it does not advertise that its bottles are non-leaking and believes that there are no material "leaking" issues. NAD noted that there was no evidence presented by the challenger to the contrary. Thus, NAD determined the advertiser provided a reasonable basis for claims that its Forever bottles are shatterproof.

NAD next considered the challenged claim that Blueland reimagined cleaning products to be "better for your home and our planet," which appears on the advertiser's website, directly above four icons listing various product benefits: "earth-friendly packaging," "non-toxic ingredients," "superior cleaning power," and "money saving refills." According to the challenger, the claim, "better for your home and our planet" suggests a broader and more far reaching environmental benefit than can be supported by the evidence. Conversely, the advertiser maintained that the statements, "earth-friendly packaging" and "non-toxic ingredients," appropriately qualify the broader claim and tie it to specific environmental benefits, including:

- A reduced carbon footprint by having reusable bottles and shipping dry tablets;
- Ingredients and packaging certified by the EPA's Safer Choice Program and Cradle to Cradle to ensure they do not contain toxic or hazardous chemicals;
- Biopreferred certification by the USDA to ensure the products contain renewable biological ingredients and reduce adverse environmental health impacts;
- Recyclable packaging; and

⁸ For example, Blueland's references free replacement of the "forever" bottle on its website in through the claim "Introducing the Forever Bottle. Thoughtfully designed for you and the planet. Never buy or toss another plastic bottle again. Only pay \$2 for refills."

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- Compostable and biodegradable tablet wrappers.⁹

Under the FTC Green Guides, an advertiser should not make unqualified general environmental benefit claims because “it is highly unlikely that marketers can substantiate all reasonable interpretations of these claims.”¹⁰ Further, the Green Guides advise that “[t]o avoid deception, marketers should use clear and prominent qualifying language that limits the claim to a specific benefit” and ensure that the overall context of the advertisement does not imply an unsupported general environmental benefit message.¹¹ NAD has previously noted that unqualified claims of general environmental benefit are difficult to support, and depending on their context, may convey a wide range of messages to consumers.¹²

As it appears in the context of the advertising at issue, NAD determined that the claim, “better for your home and our planet” is an unqualified general environmental benefit claim. While the advertiser provided NAD with evidence of the specific environmental benefits of its products, NAD was concerned that the claim itself did not adequately identify those benefits for consumers, and thus, a reasonable consumer could take away an overly broad message regarding the nature and extent of the benefits provided by Blueland products. Even when read with the statement “earth-friendly packaging,” a reasonable consumer could take away unintended and unsupported messages, such as that Blueland bottles can be recycled through an established recycling program. Therefore, NAD recommended that the advertiser modify the claim, “better for your home and our planet” to clearly indicate the specific environmental benefits of its products.

Further, NAD determined that the challenged claim, “bad for germs, good for earth,” which appeared in the subject line of a single email Blueland sent to consumers who agreed to receive Blueland’s emails is an unqualified general environmental benefit claim and could reasonably convey the message that Blueland products have far-reaching environmental benefits or that they have no negative environmental impact. NAD recognized the advertiser’s certified efforts to reduce waste and its carbon footprint, as well as its efforts to help mitigate certain detrimental effects on the environment. However, an advertiser should not overstate the proven environmental benefits of its products. In the absence of any evidence in support of such a broad takeaway, NAD recommended that the “bad for germs, good for earth” claim be discontinued or modified to identify the specific ways in which its products and packaging are “good for the earth.”

III. Cleaning Performance Claims

⁹ The advertiser also argued in the alternative that this statement constitutes permissible puffery. NAD disagreed. While “better for your home and planet” could refer to Blueland’s mission to help the environment as the advertiser intended, it also is an objective statement that can be proven and tested.

¹⁰ 16 C.F.R. §260.4(b).

¹¹ 16 C.F.R. §260.4(c) and (d).

¹² LEI Electronics Inc. (Eco Alkalines Batteries), Report #5927, *NAD/CARU Case Reports* (February 2016); GreenPan, Inc. (Thermolon Ceramic Coated Cookware), Report #5519, *NAD/CARU Case Reports* (October 2012).

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NAD considered the advertiser's cleaning performance claims that Blueland's products "eliminated more grease and grime than leading comparable brands"¹³ and "outperformed the leading brands in efficacy tests completed at third party labs." While there are several different iterations of these claims,¹⁴ they refer to overall cleaning superiority without distinguishing between products. Therefore, the advertiser is responsible for providing a reasonable basis for these claims as to its entire product line.

It is important for advertisers to distinguish their products from those of competitors and tout performance capability when they possess adequate support for such claims. Comparative performance claims can have a significant impact on consumers' purchasing decisions and, consequently, on a competitor's market share. That is precisely why these claims must rest on solid testing and substantiation.

In support of its cleaning performance claims, the advertiser submitted the following test reports and declarations from the testing laboratories:

- Bathroom – American Society for Testing Materials ("ASTM") D5343-06
- Glass – Consumer Specialty Products Association ("CSPA") DCC-09
- Multi Surface – ASTM D5343 and CSPA DCC-17¹⁵

A. Testing on Blueland's bathroom cleaner

The advertiser stated that it conducted the industry standard ASTM D5343 test at an independent, third-party lab to demonstrate that its bathroom cleaner outperformed the other products tested. The advertiser explained that it chose Scrubbing Bubbles as the competitive "conventional" brand product to test against Blueland's bathroom cleaner because it was the "leading conventional brand" in Blueland's target market based on a consumer sales study that Blueland commissioned. However, the challenger argued that Blueland's reliance on this study to support a superiority claim against Clorox products is misplaced because Clorox's bathroom cleaners are "leading" brands based on IRI data. The challenger pointed to IRI data showing that in the twelve-month period ending May 24, 2020, the leading brands by unit share in the general sprays category including Clorox, Lysol, LAS and Formula 409. In the specialized bathroom spray category, the leading name brands include Scrubbing Bubbles, Clorox, Tilex and Clean.

¹³ The advertiser stated that it no longer has advertisements that claim "eliminated more grease and grime than leading comparable brands," and instead it makes monadic claims such as "No Time For Grease and Grime. This formula works to effectively eliminate your greasy, grimy messes" and "At Blueland, we firmly believe our non-toxic cleaning products have to work effectively at cutting grease, grime and stains. All our products undergo independent third party testing before launch to ensure they perform effectively." While NAD appreciates that the advertiser has chosen to focus on monadic claims, it did not commit to permanently discontinue the originally challenged claim. Therefore, NAD proceeded to review this claim on its merits.

¹⁴ A Blueland Instagram post states "our products have all been proven to clean better than the leading brands" and another contains the question "Does it work as well as other cleaners," to which the Head of R&D responds "Yes! So we have tested all of our products with a 3rd party lab, and all of our products are as good or better than the leading competitors."

¹⁵ NAD noted that this DCC-17 test was submitted only to refute the challenger's in-house HCPA DCC-17 test of Blueland's multi surface cleaner.

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NAD noted that both the advertiser's sales study and IRI data show that Clorox is one of the leading conventional brands and, therefore, it should have been included in efficacy testing used to support a claim against *all* market leaders.¹⁶ The challenged claim literally states that as compared to *any* leading brand Blueland has superior cleaning efficacy. NAD determined that the advertiser's testing against a single leading conventional brand – Scrubbing Bubbles – does not provide a reasonable basis for Blueland's superiority claims against "leading conventional brands."

With regard to the claim that Blueland bathroom cleaners "eliminated more grease and grime than leading comparable brands," Blueland tested its product against "leading comparable brands" Method and Seventh Generation. The advertiser explained that it considered "comparable brands" to be natural brands¹⁷ that offered cleaning products in the same product categories that Blueland offers. NAD reviewed the test results and determined that they do not provide a reasonable basis for the challenged claim because Blueland did not outperform Method.¹⁸ Specifically, after the same number of cleaning cycles (11) Blueland's bathroom cleaner achieved 98.2% cleaning efficiency, whereas Method Bathroom Tub & Tile achieved 100.7%.

Finally, NAD questioned whether Seventh Generation Tub & Tile may also be superior in efficacy to Blueland because the results show that it achieved 94.6% cleaning efficiency after only 6 cleaning cycles,¹⁹ whereas it took 11 cleaning cycles for Blueland's bathroom cleaner to achieve 98.2% cleaning efficiency. It is unknown whether Seventh Generation could have achieved a higher percentage cleaning efficiency than Blueland if it had also been tested for 11 cleaning cycles.

B. Testing on Blueland's glass cleaner

As an initial matter, NAD determined that reasonable consumers are not likely to take away the broad message that Blueland's glass cleaner is superior to a multi surface cleaner or a competitor's entire cleaning line. Rather, a reasonable consumer would understand that glass cleaners are being compared to other glass cleaners. The advertiser conducted the CSPA DCC-09 test to substantiate the claim that Blueland's glass cleaner "outperformed the leading brands in efficacy tests completed at third party labs."²⁰ This testing was conducted against glass and mirror cleaner competitors Windex ("conventional" brand) and Method ("comparable" brand). Based on data from the

¹⁶ Notably, in the advertiser's sales study Scrubbing Bubbles and Clorox showed 53% and 47% of market share in Blueland's market, respectively (n=450). While NAD was not provided with the survey methodology and cannot evaluate reliability, based on these results both brands should have been considered in any testing used to substantiate the advertiser's claim regarding "leading brands."

¹⁷ Natural brands were those advertised to have natural chemicals, to be eco-friendly, or to be non-toxic.

¹⁸ To assess the efficacy, four cleaners were used to clean soiled ceramic tiles. Each cleaner was applied to a cellulose sponge and a machine wiped the tiles with the sponge (mimicking a human wiping motion). The number of cycles is the number of times the machine wiped back and forth. The test evaluated the percent cleaning efficiency of each cleaner, measuring the amount of light that reflected off of the tiles once cleaned by each bathroom cleaner. A soiled tile would have little light reflected off of the tile and a completely clean tile would have the most light reflected off of the tile. The more light that's reflected off of the tile, the higher the percent cleaning efficiency score would be for that cleaner.

¹⁹ The maximum number of cycles run for this test was 11, per the industry standard. The test was stopped if a solution achieved a certain percentage of cleaning efficiency in fewer than 11 cycles, such as with Seventh Generation.

²⁰ NAD noted that the advertiser did not submit any testing to support the unqualified claim that its glass cleaner "eliminated more grease and grime than leading comparable brands."

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advertiser's consumer sales study, NAD concluded that it was appropriate for Blueland to test Windex and Method as the "leading" brands of glass and mirror cleaner. The challenger did not present any data to the contrary.

The advertiser's testing evaluated the performance of each of the tested cleaners – Blueland, Windex, and Method - on three dimensions: (1) how well it cleaned, (2) if it left streaks, and (3) if it smeared.²¹ The results showed that Blueland outperformed the competitors across these categories, however, NAD had concerns regarding whether the performance differences are consumer meaningful. For example, on a scale from 1-4 on the cleaning test, Blueland scored 3.5; Windex scored 3.43; and Method scored 3.4. NAD has consistently held that product testing results must not only be statistically significant, but also consumer meaningful. In order to produce meaningful results for the purposes of claim support, product testing should be conducted under consumer relevant conditions, using accepted methodology and protocols, and should relate directly to the advertising claims.²² While Blueland used industry standard testing, it did not provide any evidence to show that the difference in scores results in cleaner glass in a way that is consumer meaningful. The advertiser also did not provide any evidence regarding statistical significance of the results.

C. Testing on Blueland's multi surface cleaner

The advertiser stated that it conducted the industry standard ASTM D5343 test at an independent, third-party lab to demonstrate that its multi surface cleaner outperformed the other products tested, including Clorox's multi surface cleaner. The testing was conducted on Blueland's multi surface cleaner as compared to Clorox Clean-Up, Seventh Generation and Method. The parties disputed the consumer-relevance of the type of test soil used in the advertiser's ASTM D5343 testing, as well as whether the test constitutes appropriate support for superiority claims for a multi surface cleaner (i.e, whether the scope of the test is limited to bathroom cleaning products).

The challenger argued that the ASTM D5343 is designed only for use on bathroom cleaners and that the methodology calls for testing of only one type of soil: soap scum. Unlike bathroom cleaning products, however, multi-purpose cleaners should be tested on various types of soils, which typically include grease and kitchen soil.²³ Further, the challenger took issue with the fact that Blueland's advertising specifically touts that it "eliminated more grease and grime," yet only soap scum was tested.

²¹ To assess the efficacy, the three brands were used to clean soiled glass plates. The same amount of cleaner was applied to each glass plate. A machine wiped the glass plates with a cheesecloth (mimicking a human wiping motion) 10 times for each cleaner. The samples were then given a score from 1-4 with 1 being the worst performance and 4 being the best performance. The test was completed three times and an average rating for each dimension of testing was created for each brand.

²² See, e.g., Reckitt Benckiser, LLC (Air Wick Pure Air Fresheners), Report #6098, *NAD/CARU Case Reports* (July 2017).

²³ The challenger also questioned whether or not the soiled tiles were baked after the soil was applied, which is a requirement of the method. However, the advertiser provided a declaration from the testing laboratory confirming that the soiled tiles were in fact baked during the test.

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It was the advertiser's position that the appropriate test soil was used. According to the advertiser, even though it is named "bathroom soil" or "soap scum" in the industry, the test soil is actually a combination of ingredients that are varied and make the test much broader than merely a bathroom cleaner test.²⁴ According to the advertiser, the variety of ingredients that make up the D5343 test soil is precisely the reason it was selected – it contains a large and complex range of soils that is better suited for Blueland's recommended use of its multi surface cleaner.²⁵ With regard to the scope of the test, the advertiser referred to the Standard's statement that it is meant for "products intended for use on ceramic tiles," and maintained that the test is not limited only to bathroom cleaning products. Ceramic tiles are present in many places in typical homes, including kitchen counters, kitchen backsplashes, laundry rooms, patios, floors throughout the home, and other places.

NAD reviewed the ASTM D5343 methodology and determined while it can be used to test multi-purpose cleaners (and bathroom cleaners), it is limited to an assessment of product performance of such cleaners only on the soil of ceramic bathroom tiles. The test "Significance and Use" states:

This methodology can only be applied to assess product performance on typical bathroom soils and is not inclusive of all potential soils present on ceramic tiles or other bathroom surfaces. An assessment of cleaning performance on surfaces other than ceramic tile cannot be presumed since there is no confirmed basis for correlation for this soil on other surface or substrate types.²⁶

While "soap scum" may include some greasy and grimy ingredients, it is clear from this statement that the protocol is designed to assess product performance on "bathroom soils." Moreover, the advertiser noted in its submissions to NAD that Blueland's recommended use of its multi surface cleaner is a "range of surfaces in all rooms of the home," however ASTM D5343 is only applicable to ceramic tiles. For these reasons, NAD determined that the results of the advertiser's testing are not consumer-relevant and do not provide a reasonable basis for the challenged superiority claims for Blueland's multi surface cleaner.

Having determined that Blueland did not provide a reasonable basis for the challenged claims as related to its multi surface cleaner, NAD did not review the challenger's rebuttal evidence which consisted of the results of in-house testing on Blueland's multi surface cleaner comparing its effectiveness in cleaning a soiled surface with that of Clorox Clean Up and Formula 409 Multi Surface Cleaner, using the HPCA DCC-17 test. NAD also did not review the advertiser's CSPA DCC-17 test, which was submitted only to refute the challenger's in-house DCC-17 test.

²⁴ The D5354 "soap scum" is a complex mixture of ingredients such as dirt, synthetic sebum (oil/wax), metal stearates, stearates (fatty acid, salt) and carbon black; the synthetic sebum further includes olive oil, coconut oil, paraffin wax, sperm wax, palmitic acid (fatty acid), stearic acid (fatty acid), and squalene (oil). The dirt used is SuperSoil brand potting soil.

²⁵ The advertiser explained that to substantiate the phrase "grease and grime" it categorized each constituent in the test soil into either grease or grime based on the type and characteristics of the constituent.

²⁶ Further, test "Scope" states: "This guide covers the evaluation of the cleaning performance of products intended for use on ceramic tiles . . . This guide is not appropriate for evaluating performance on grout. This guide also excludes other surfaces such as glass, resilient flooring, synthetic countertop surfaces or washable wall surfaces."

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For all of these reasons, NAD recommended that the advertiser discontinue the claims that its products “eliminated more grease and grime than leading comparable brands” and “outperformed the leading brands in efficacy tests completed at third party labs.”

IV. Comparative safety claims

It was the challenger’s position that throughout its advertising, Blueland falsely denigrates its competitors’ products by stating that it is dangerous to touch or eat from surfaces cleaned with antibacterial cleaners and that such other cleaners are “harmful.” The challenged claims included “Tried, Tested, Proven. Eliminated more grease and grime than leading comparable brands - all without the harmful chemicals”²⁷ and Blueland’s FAQs which state “We also don’t use traditional disinfecting ingredients (like chlorine bleach or quaternary ammonium compounds) that may be harmful if ingested, so not great for kitchen and dining surfaces.” According to the challenger, all of Clorox’s products, some of which have been in the market for decades, are safe and effective when used in accordance with their labels and directions. The challenger stated that, in approving the cleaning products as disinfectants, the EPA specifically deemed them safe for use in the kitchen.

As support for its contention that conventional brand products have harmful chemicals, the advertiser pointed to certain ingredients in Clorox Multi Surface, Scrubbing Bubbles, and Windex that received “F” and “D” grades from the Environmental Working Group (“EWG”) due to certain concerns, as well as other ingredients that could potentially cause harm or allergic reactions. The advertiser also provided NAD with a complete list of the ingredients in its own products to show that they do not include “traditional disinfecting ingredients (like chlorine bleach or quaternary ammonium compounds),” and relied on safety data sheets for traditional disinfecting ingredients found in Clorox Disinfecting Bleach and SC Johnson’s TruShot disinfectant to show that they are harmful if ingested. The advertiser posited that using these disinfecting chemicals on locations where people prepare and ingest food (e.g. kitchen and dining surfaces) undoubtedly increases the likelihood of ingesting them.

NAD determined that although the claim that Blueland products do not contain the same alleged “harmful” chemicals as leading comparable brands is literally true, one of the messages reasonably conveyed is that conventional brand cleaning products are less safe than Blueland’s product when used as directed. The claim “We also don’t use traditional disinfecting ingredients (like chlorine bleach or quaternary ammonium compounds) that may be harmful if ingested, so not great for kitchen and dining surfaces” expressly communicates a similar comparative safety message.

NAD has long recognized an advertiser’s right to make literally truthful and accurate advertising claims sometimes at the expense of its competitors. Denigrating claims, however, must be truthful,

²⁷ Blueland stated that it did not intend to have its claims regarding harmful chemicals be interpreted as applying to comparable brand products (i.e., Method glass, Method all-purpose, Method bath, Seventh Generation tub and tile, and Seventh Generation all-purpose). Therefore, it committed to permanently modify the claim to make clear that the statement regarding harmful chemicals applies only in regard to conventional brands, including the Challenger’s brand. NAD noted that this commitment did not resolve any of the issues raised in this challenge since Clorox’s concern centers on the comparison to conventional brands.

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accurate and narrowly drawn.²⁸ Further, advertisers should avoid overstating dangers of product use on human health in the absence of scientific evidence linking such dangers to product use.²⁹

There is no evidence in the record indicating that, when used as directed, Blueland's product is safer than Clorox, or that Clorox's product with "traditional disinfecting ingredients" is "not great for kitchen and dining surfaces" because it is likely to be ingested and cause harm. The fact that a particular ingredient may be linked to certain health risks when ingested, or linked to aquatic toxicity, is not reliable evidence of comparative product safety of the products at issue here, especially given the fact that EPA has specifically deemed Clorox's products safe.³⁰ For these reasons, NAD determined that the advertiser did not provide a reasonable basis for the challenged comparative safety claims and recommended that they be discontinued.

Conclusion:

During the course of the challenge, the advertiser informed NAD that it had permanently discontinued all advertising which implied that its surface cleaner products are disinfectants, such as the challenged claim that Blueland's products "effectively eliminate bacteria and viruses." NAD did not review these claims on their merits. These claims will be treated, for compliance purposes, as though NAD recommended their discontinuance and the advertiser agreed to comply.

The advertiser also stated that it revised its advertising materials to more clearly distinguish between its hand soap advertising and surface cleaner advertising. NAD appreciates Blueland's commitment to make these changes to future advertising and recommended that Blueland also remove or revise any previous publicly-available social media (including comments from its customer service representatives) that state or imply disinfection abilities for its surface cleaners. The modified advertising will be treated, for compliance purposes, as though NAD recommended the modifications and the advertiser agreed to comply.

NAD concluded that the advertiser's use of the term "forever" to describe its bottles did not convey a misleading message. NAD also determined that the advertiser provided a reasonable basis for claims that its Forever bottles are shatterproof. However, NAD recommended that the advertiser discontinue the claim, "every piece of packaging – from our tablet wrapper, shipping materials, our Forever Bottles (which aren't intended for you to recycle) – is 100% recyclable," as well as its use of unqualified recyclability claims for Forever bottles. NAD further recommended that the

²⁸ Comcast Cable Communications, LLC (Xfinity Internet Service), Report #6199, *NAD/CARU Case Reports* (June 2018).

²⁹ Better Life (All Purpose Cleaner), Report #6090, *NAD/CARU Case Reports* (June 2017) (recommending discontinuance of challenged advertising where advertiser did not provide a reasonable basis for the direct and/or implied comparative safety claims that Windex and other cleaning products with synthetic ingredients are less safe and more "toxic" than Better Life's "natural" product); Seventh Generation, Inc. (Seventh Generation Household Cleaning & Laundry Products), Report #4488, *NAD/CARU Case Reports* (May 2006) (recommending that the advertiser discontinue all express or implied references to chlorine and/or organochlorines in household products as being dangerous and posing health risks to consumers).

³⁰ Although it is certainly possible that the product could be misused or accidentally ingested, in ascertaining the truthfulness and accuracy of Blueland's advertising claims, NAD considers only the reasonable usage of the product. See, e.g., Better Life (All Purpose Cleaner), Report #6090, *NAD/CARU Case Reports* (June 2017); sBioMed, LLC (Steriplex SD), Report #5805, *NAD/CARU Case Reports* (January 2015).

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advertiser modify its recyclability claims to clarify that, in the instances where a Forever bottle fails, it is only recyclable through Blueland's take-back program. However, nothing in NAD's decision precludes the advertiser from making appropriately qualified claims that other components of Blueland packaging, such as its shipping materials, are recyclable.

NAD determined that the advertiser had provided a reasonable basis for claims that its tablet wrappers were biodegradable and compostable.

NAD recommended that the advertiser modify the claim "better for your home and our planet" to clearly indicate the specific environmental benefits of its packaging.

NAD recommended that the "bad for germs, good for earth" claim be discontinued or modified to identify the specific ways in which its products and packaging are "good for the earth."

NAD recommended that the advertiser discontinue the claims that its products "eliminated more grease and grime than leading comparable brands" and "outperformed the leading brands in efficacy tests completed at third party labs."

NAD recommended that the challenged comparative safety claims "all without harmful chemicals" and "we also don't use traditional disinfecting ingredients (like chlorine bleach or quaternary ammonium compounds) that may be harmful if ingested, so not great for kitchen and dining surfaces" be discontinued.

Advertiser's Statement:

Blueland intends to fully comply with NAD's recommendations. Blueland appreciates the opportunity to participate in the National Advertising Division's self-regulatory process and is a strong supporter of this process. Blueland is pleased with NAD's recognition of Blueland's core product principles: (1) recyclable or compostable packaging; (2) product formulations as supported by the numerous certifications granted to its various products including Platinum Material Health Certificates from Cradle to Cradle, EPA Safer Choice, USDA BioPreferred and Leaping Bunny; (3) effective cleaning formulas that were tested at independent, third-party labs; and (4) formulations without ingredients that are found in some of the Challenger products that have received "F" ratings from the Environmental Working Group. Blueland is glad to revise its marketing materials to come into full compliance with the technical aspects of NAD's guidance, while keeping its primary focus on its essential core mission of eliminating single-use plastic from everyday household products and offering consumers effective products that come in sustainable packaging and include safe ingredients. (#6416 LCS, closed 09/28/2020)