

Beauty Science Group, Inc.

Hair La Vie

Challenger: Brock Beauty, Inc.
Product Type: Dietary Supplements
Issues: Performance Claims; Testimonials; Endorsements
Disposition: Modified/Discontinued

- **Advertisers are obligated to have substantiation for their advertising claims and need to support all messages reasonably conveyed, not just the message they intended to convey.**

Basis of Inquiry: Claims made by Beauty Science Group, Inc. (“La Muse” or “the advertiser”) in print, internet and video advertising, as well as on product packaging, for its Hair La Vie dietary supplement were challenged by Brock Beauty, Inc. (“Brock” or “the challenger”), a competing manufacturer of dietary supplements and beauty products. The following are representative of the claims that formed the basis of NAD’s inquiry:

Express Claims:

“The ingredients in Hair La Vie help promote existing hair growth.”

“Whether you want to give the appearance of naturally healthy hair, need help to strengthen your strands, fortify your follicles, support your scalp, or promote vibrant, beautiful hair we’ve got you covered.”

“Hair La Vie uses natural and safe ingredients. This product contains no fillers, harsh chemicals or artificial flavoring/coloring.”

Editorial content and claims on a third-party website.

Challenger’s Position¹:

¹ The challenger took issue with a number of claims that the advertiser agreed to permanently discontinue, specifically: (1) All natural hair repair formula; (2) Repair and regrow hair; (3) Once the follicle is repaired, hair begins to grow; (4) Unbreakable hair stage; (5) Hair La Vie products can reverse or cure baldness; (6) In our latest consumer survey, 82% reported faster existing hair growth* (*Based on a consumer survey measuring customers’ opinions and subjective experiences with Hair La Vie) (revised from the originally challenged “82% saw faster hair growth.”). The challenger also took issue with the following claims: (1) “Made in the USA; (2) “Healthier. Longer. Fuller”; (3) “Longer. Fuller. Faster”; and (4) “Created Hair La Vie because I never wanted another woman to have to go through the insecurity and heartbreak with hair loss, thinning and damage.” In its reply, the advertiser indicated that it would modify the claims as follows: (1) Made in the USA with domestic and foreign ingredients; (2) Great hair naturally; (3) Healthy hair naturally; and (4) Created Hair La Vie because I never wanted another woman to have to go through the insecurity and heartbreak with hair that feels brittle and looks damaged. The challenger indicated that it does not take issue with the claims as modified. The advertiser also agreed to permanently discontinue the video advertisement, with which the challenger took issue for, among other things, failing to identify 1) whether the women featured in the video are actors or actual customers, 2) what expertise, if any, the “product specialist” identified in the video has with the product, and 3) the failure to disclose the relationship of the celebrity hair stylist with La Muse.

I. “The ingredients in Hair La Vie help promote existing hair growth.”

The challenger argued that this claim reasonably implies that *all* of Hair La Vie’s ingredients promote existing hair growth. According to the challenger, the advertiser’s reliance on the expert report of Dr. Marvin Heuer (the “Heuer Report”) is misplaced because it does not constitute competent and reliable scientific evidence. Moreover, Dr. Heuer relied on ingredient studies which did not test the same amount of the ingredient as is found in Hair La Vie and were conducted on subjects who were deficient in a vitamin or nutrient or who are suffering from alopecia and thinning hair. The challenger referred to a portion of the Heuer Report in which he concedes that “not all ingredients will be effective to all consumers since it is impossible to know their initial characteristics and deficiencies.” Given that the target audience of the challenged advertising is healthy consumers, and in light of the lack of supporting evidence, the challenger asserted that the challenged claim must be discontinued.

II. “Whether you want to give the appearance of naturally healthy hair, need help to strengthen your strands, fortify your follicles, support your scalp, or promote vibrant, beautiful hair we’ve got you covered.”

The challenger argued that this is a product performance claim for which the advertiser provided no support and should, therefore, be discontinued.

III. “Hair La Vie uses natural and safe ingredients. This product contains no fillers, harsh chemicals or artificial flavoring/coloring.”

The challenger argued that the advertiser has failed to submit any testing of Hair La Vie’s ingredients at the dosage levels found in the product, nor has it provided any evidence that each ingredient has been submitted to safety testing that is part of the manufacturing process. Consequently, the challenger averred, the claim must be discontinued.

IV. Editorial content and claims on a third-party website.

The challenger took issue with third-party websites² which the challenger argued contain fabricated testimonials and consumer reviews which appear to be editorial content and, as a result, mislead consumers. The challenger also noted that the link to Hair La Vie on one of the third-party websites is affiliated with the Hair La Vie website.³ Consequently, the challenger argued, the advertiser supports the marketing content on this website.

Advertiser’s Position:

I. The ingredients in Hair La Vie help promote existing hair growth.

² The challenger also referred to a third-party website, <http://hairproductcomparison.com>, but the webpage was taken down during the course of NAD’s inquiry. https://consumerssurvey.org/page/hair_supplements.

³ www.consumerssurvey.org/page/hair-supplmts/hairlavie.

The advertiser argued that the challenged claims are premised on a recent decision issued by the Electronic Retailing Self-Regulation Program (“ERSP”) which, like the NAD, is a component of the advertising industry’s self-regulatory program. It was the advertiser’s position that the ingredients in its product are essential for existing hair growth. The challenger also referred to the Heuer Report, additional studies on biotin, iron and collagen, as well as an opinion on biotin issued by the European Food Safety Authority (“EFSA”) which states that “biotin contributes to the maintenance of normal hair.”⁴ The advertiser asserted that this constitutes competent and scientific evidence which fully supports the challenged claim.

II. “Whether you want to give the appearance of naturally healthy hair, need help to strengthen your strands, fortify your follicles, support your scalp, or promote vibrant, beautiful hair we’ve got you covered.”

The advertiser agreed to further revise the challenged claim to omit references to strands, follicles and the scalp, focusing instead on subjective perceptions of hair appearance and beauty. The challenger referred to a consumer survey which assessed how customers felt about Hair La Vie’s performance. According to the advertiser, the ERSP decision stated that the survey has value as “an important information gathering tool” and demonstrates how customers felt the product performed.⁵

III. “Hair La Vie uses natural and safe ingredients. This product contains no fillers, harsh chemicals or artificial flavoring/coloring.”

The advertiser argued that it is not making a “100% safe ingredients” claim and noted that the U.S. Food and Drug Administration (“FDA”) encourages the consumption of most of the ingredients in Hair La Vie. The advertiser also maintained that the levels of vitamins B1 and B6 in its product are well below the levels which they have been found to have No Observed Adverse Effect Level (NOAEL). As to biotin, the advertiser referred to International Alliance of Dietary/Food Supplement Associations which note that levels of 5 mg and 7.5 mg of biotin in dietary supplements are quite common and are likely to be safe given that there are no FDA reports of any adverse effects.⁶

IV. Editorial content and claims on a third-party website.

The advertiser explained that one of the websites identified by the challenger, www.hairproductcomparison.com, is an outdated affiliate website which will be taken down. With respect to another affiliated website, www.consumersurvey.org, the advertiser stated that it will request that a disclosure be placed on each Hair La Vie page to explain the relationship

⁴ The advertiser noted that its product provides 5 mg of biotin per day, whereas the EFSA opinion notes a recommended minimum daily dose of 0.15 mg/day of biotin.

⁵ [La Muse Beauty \(Hair La Vie Revitalizing Hair Blend\)](http://www.lamusebeauty.com), ERSP Report #393 (November 2016).

⁶ John N. Hathcock, Ph.D., *Safety of Vitamin and Mineral Supplements -Safe Levels Identified by Risk Assessment*, International Alliance of Dietary/Food Supplement Associations, <http://www.iadsa.org/images/userfiles/IADSA%20vitamins%20and%20minerals.pdf>, at 29.

between itself and the affiliated website which reads as follows: “Disclosure: We are compensated for our reviews. If you click through the links on this page and make a purchase on a partner site, then we receive a commission and/or financial benefit. This is how we keep the content on this site free and pay for the products that are reviewed on the site.” The advertiser also assured that consumersurvey.org will use only existing testimonials from the Hair La Vie website.

Decision:

I. Permanently Discontinued and Revised Claims

A. Permanently Discontinued Claims

During the course of the instant proceeding, the advertiser advised NAD in writing that instead of submitting substantiating evidence it had elected to permanently discontinue the following challenged claims: (1) All natural hair repair formula; (2) Repair and regrow hair; (3) Once the follicle is repaired, hair begins to grow; (4) Unbreakable hair stage; (5) Hair La Vie products can reverse or cure baldness; (6) In our latest consumer survey, 82% reported faster existing hair growth* (*Based on a consumer survey measuring customers’ opinions and subjective experiences with Hair La Vie).⁷ In reliance on the advertiser’s representation that these claims have been permanently discontinued, NAD did not review these claims on their merits. The voluntarily discontinued claims will be treated, for compliance purposes, as though NAD recommended their discontinuance and the advertiser agreed to comply.

The advertiser also advised NAD that it would modify the following claims with which the challenger originally took issue: 1) “Made in the USA; (2) “Healthier. Longer. Fuller”; (3) “Longer. Fuller. Faster”; and (4) “Created Hair La Vie because I never wanted another woman to have to go through the insecurity and heartbreak with hair loss, thinning and damage.” These voluntarily discontinued claims will likewise be treated, for compliance purposes, as though NAD recommended their discontinuance and the advertiser agreed to comply. The challenger did not take issue with the claims as modified which are as follows: (1) Made in the USA with domestic and foreign ingredients; (2) Great hair naturally; (3) Healthy hair naturally; and (4) Created Hair La Vie because I never wanted another woman to have to go through the insecurity and heartbreak with hair that feels brittle and looks damaged. Given that the challenger has not taken issue with these modified claims, NAD did not review them on the merits.

II. YouTube Video Advertisement

While the advertiser agreed to permanently discontinue a YouTube video advertisement for Hair La Vie which features, among other things, testimonials from customers who used Hair La Vie and experienced dramatic hair growth (e.g., one inch after the first month of taking Hair La Vie)

⁷ Revised from the originally challenged “82% saw faster hair growth.”

and expert endorsements of the product. As of the date of this decision, the advertisement continues to appear on YouTube. Consequently, NAD reviewed it on its merits.

NAD has routinely held that an advertiser may not make claims through consumer testimonials that could not be substantiated if made directly by the advertiser and that anecdotal evidence, based solely on the experiences of individual consumers, is insufficient to support product efficacy claims. Further, the Federal Trade Commission's guide on the use of testimonials in advertising provide that when an advertiser uses a testimonial endorsing a product by describing a personal experience, viewers are likely to interpret the advertisement to mean that they too can expect to have the same experience. Therefore, unless the advertiser can independently substantiate that the consumer endorser's claims are typical of most users, the advertiser must clearly disclose the performance that consumers can typically expect, or the extent of the typicality of the endorser's experience.⁸

Expert endorsements which speak to the efficacy of the product require not only an expert having the appropriate qualifications to provide the stated expertise, but the endorser must conduct a thorough evaluation or testing of the product.⁹ In short, advertisers may not make claims either through consumer testimonials or expert endorsements that could not be substantiated if made directly by the advertiser.

The advertiser has failed to provide any competent and reliable scientific evidence demonstrating that Hair La Vie grows thicker, stronger or fuller hair, or any evidence demonstrating that the expert endorsers have conducted a thorough evaluation or testing of the product. In the absence of any supporting evidence, NAD recommended that the YouTube video advertisement be discontinued.

III. "The ingredients in Hair La Vie help promote existing hair growth."

In support of the challenged claim "The ingredients in Hair La Vie help promote existing hair growth," the advertiser relied on the following: 1) the report of Dr. Marvin Heuer which, the advertiser argues, is based on an extensive review of Hair La Vie and ingredient studies; 2) additional studies on biotin, iron and collagen; and 3) an EFSA opinion on biotin which states that "biotin contributes to the maintenance of normal hair."

With respect to the Heuer Report, many of the studies to which Dr. Heuer refers, as well as the additional studies on biotin, iron and collagen, were conducted on individuals with vitamin and mineral deficiencies (e.g., iron, zinc), disease populations (e.g., alopecia, Alzheimer's disease, coronary disease, individuals necessitating parenteral [intravenous] feeding), and other non-relevant populations (e.g., infants, animals). Even if some of the test populations were relevant, the amounts of the ingredients administered in the studies do not match the amounts of the ingredients in the actual product. Additionally, some of the studies discussed in the Heuer

⁸ Flora, Inc. (Udo's Oil 3-6-9 Blend), Report #5389, *NAD/CARU Case Reports* (October 2011); The Elations Company, LLC (Elations Liquid Supplements), Report #5196, *NAD/CARU Case Reports* (July 2010).

⁹ *Id.* at § 255.3.

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Report were conducted *in vitro* which provide, at best, background information about the efficacy of a vitamin or mineral.¹⁰

Finally, The Heuer Report contains an informal summary of studies. Such informal summaries generally do not impart enough information for NAD to properly evaluate whether the studies cited constitute competent and reliable scientific evidence. The honest opinions of experts do not relieve the advertiser of possessing competent and reliable scientific evidence to support its underlying claims. According to the FDA Guidance for Industry: Substantiation for Dietary Supplement Claims:

An abstract or informal summary of an article is less reliable, because such documents usually do not give the reader enough insight into how the research was conducted or how the data were analyzed to objectively evaluate the quality of the research data and the conclusions drawn by the authors. Moreover, the mere fact that the study was published does not necessarily mean that the research is competent and reliable evidence adequate to substantiate a particular claim.¹¹

As to the EFSA opinion on biotin's relationship to hair growth and maintenance, NAD has reviewed numerous hair health claims that relied upon the EFSA opinion regarding dietary intake of biotin and has determined that the EFSA opinion can support qualified claims.¹² In Hairfinity Hair Vitamin¹³, NAD determined that the advertiser's unqualified claims that the Hairfinity product "supports," "nourishes," or "encourages healthy hair growth," convey a broad message that Hairfinity spurs hair growth that consumers would not otherwise experience, a message which was not supported by the evidence in the record, but that the advertiser could make a qualified claim regarding the physiological role that the biotin in Hairfinity has in "supporting," "nourishing," or "encouraging" consumers *existing* hair growth and maintenance. Similarly, in CVS Hair Nourishing Supplement¹⁴, NAD determined that the EFSA opinions on, among other things, biotin could support claims that the ingredients in CVS Hair Nourishing Supplement "support existing hair growth from within" and "by providing nutrients this unique supplement supports existing hair" because they are expressly limited to the physiological role of these nutrients in hair growth and maintenance.

The EFSA opinion states that scientific evidence on biotin supports the following claim: "Biotin contributes to the maintenance of normal hair" and recommends a minimum intake of 15 percent

¹⁰ New Nordic U.S.A., Inc. (Skin Care™ Collagen Filler), Report #5901, *NAD/CARU Case Reports* (November 2015).

¹¹ Good Health Naturally, Report #5441, *NAD/CARU Case Reports* (March 2012). <http://www.fda.gov/Food/GuidanceComplianceRegulatoryInformation/GuidanceDocuments/DietarySupplements/ucm073200.htm>; <http://www.ftc.gov/bcp/menus/resources/guidance/adv.shtm>;

¹² Brock Beauty, Inc. (Hairfinity Hair Vitamin), Report #5904 (November 2015); Lang Pharma Nutrition, Inc. (CVS Hair Nourishing Supplement), Report #5881, *NAD/CARU Case Reports* (September 2015).

¹³ Brock Beauty, Inc. (Hairfinity Hair Vitamin), *supra* note 12.

¹⁴ Lang Pharma Nutrition, Inc. (CVS Hair Nourishing Supplement), Report #5881, *NAD/CARU Case Reports* (September 2015).

of the DRV (or .023 mg).¹⁵ Hair La Vie contains a daily dose of 5000 micrograms or 5 mg of biotin, which is more than the minimum dose recommended by the EFSA to make a qualified claim regarding the role of biotin in maintaining existing hair growth.

For all the foregoing reasons, NAD recommended that the advertiser modify the claim “The ingredients in Hair La Vie help promote existing hair growth” to state that the biotin in Hair La Vie helps promote existing hair growth.

IV. “Whether you want to give the appearance of naturally healthy hair, need help to strengthen your strands, fortify your follicles, support your scalp, or promote vibrant, beautiful hair we’ve got you covered.”

The advertiser indicated that it would further revise this claim to omit references to strands, follicles and the scalp, focusing instead on subjective perceptions of hair appearance and beauty which, it argued, are supported by its consumer survey which focused on its customers’ experience with Hair La Vie. While the advertiser has not informed NAD as to how the modified claim would read, NAD considered the subjective portion of the claim that its product will “promote vibrant, beautiful hair” and whether the consumer use survey is sufficiently reliable to support this subjective claim.¹⁶

The survey was emailed to 4,696 Hair La Vie customers of which 276 customers responded. The survey questions and a summary of the responses was provided, however, no information was provided about the survey methodology. The questions asked, among other things, how long customers took Hair La Vie, approximate hair growth while taking Hair La Vie, when they saw hair growth and were asked to opine on their experience with Hair La Vie in a series of closed-ended questions.¹⁷

¹⁵ See also Scientific Opinion on the substantiation of health claims related to biotin and energy-yielding metabolism (ID 114, 117), macronutrient metabolism (ID 113, 114, 117), maintenance of skin and mucous membranes (ID 115), maintenance of hair (ID 118, 2876) and function of the nervous system (ID 116) pursuant to Article 13(1) of Regulation (EC) No 1924/2006, <https://www.efsa.europa.eu/en/print/efsajournal/pub/1209>, at 8. See also Scientific Opinion on the substantiation of health claims related to biotin and maintenance of normal skin and mucous membranes (ID 121), maintenance of normal hair (ID 121), maintenance of normal bone (ID 121), maintenance of normal teeth (ID 121), maintenance of normal nails (ID 121, 2877), reduction of tiredness and fatigue (ID 119), contribution to normal psychological functions (ID 120) and contribution to normal macronutrient metabolism (ID 4661) pursuant to Article 13(1) of Regulation (EC) No 1924/2006, at <http://onlinelibrary.wiley.com/doi/10.2903/j.efsa.2010.1728/epdf>, at 2.

¹⁶ Certain of the challenged claims were the subject of a monitoring case initiated by the Electronic Retailing Self-Regulation Program (ERSP), one of the components of the advertising self-regulatory system. While ERSP and NAD have the same missions, i.e., to ensure that advertising claims made in national advertising are truthful and accurate, they operate separately and have separate procedures. Consequently, while NAD appreciates ERSP’s review of some of the same advertising claims that were challenged in the instant inquiry, it is not bound by ERSP’s findings. Some of the claims at issue in the ERSP inquiry were premised on the same consumer survey referenced in one of the now permanently discontinued claims at issue in this inquiry.

¹⁷ Among the closed-ended answer choices in response to the question “Which statement is most accurate for your experience with hair La Vie?” were as follows: (1) my hair grew much faster with Hair La Vie; (2) my hair grew somewhat faster with Hair La Vie; (3) my hair grew a little faster with Hair La Vie; and (4) my hair did not grow faster with Hair La Vie.

A properly conducted consumer use survey requires certain standards and controls to ensure that the responses are free from bias (e.g., blinding, randomization), that there is a representative study population, and that there is proper validation of the results.¹⁸ NAD could not fully assess the survey's reliability because the advertiser has failed to provide any information concerning the survey methodology or any controls that were used to ensure the reliability of the results. NAD took issue with the survey questions which asked respondents to assess their hair growth, thickness and strength. One of the questions asked customers to assess their approximate hair growth while taking Hair La Vie as well as when they saw results. However, the respondents were never asked to measure hair growth prior to taking the survey nor were they asked to notice when they saw "results" and what those results would be (i.e., hair thickness, hair strength, hair length). In any case, claims relating to objective attributes (e.g., hair growth, length, strength and thickness) cannot be supported by subjective assessments in a questionnaire.¹⁹ Only one out of the 12 questions in the questionnaire related to a subjective assessment (whether subjects thought their hair was "healthier" after taking Hair La Vie). Further, the responses to the questions were similarly worded (e.g., my hair grew a little faster with Hair La Vie; my hair grew somewhat faster with Hair La Vie). Consequently, the responses to these questions are inherently unreliable. In addition, to the extent that some of the respondents indicated a certain amount of hair growth, these responses cannot be correlated with the amount of time the respondents took Hair La Vie.

For all the foregoing reasons, NAD determined that the survey was not sufficiently reliable to support the challenged advertising claims.

V. "Hair La Vie uses natural and safe ingredients. This product contains no fillers, harsh chemicals or artificial flavoring/coloring."

The challenger argued that this claim implies that all of the ingredients in Hair La Vie are safe, noting that the advertiser has failed to provide any evidence that each ingredient has been submitted to safety testing as part of the manufacturing process. The advertiser argued that it is not claiming that its ingredients are 100% safe or that the product is proven to be safe.

Advertisers have an obligation to possess substantiation for their advertising claims including all messages reasonably conveyed, not just the message they intended to convey.²⁰

The challenged claim appears in an answer to one of the questions in the Frequently Asked Questions portion of the advertiser's website. The question asks, "How do I know Hair La Vie is a safe product?" The response is as follows: "Hair La Vie uses natural ingredients in safe dosages. This product contains no fillers, harsh chemicals or artificial flavoring/coloring. We

¹⁸ Behavioral Technology Group, Inc. (Pavlok), Report # 6028, *NAD/CARU Case Reports* (November 2016). See also Shari Seidman Diamond, J.D., Ph.D., Reference Guide on Survey Research, [http://www.fjc.gov/public/pdf.nsf/lookup/sciman04.pdf/\\$file/sciman04.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/sciman04.pdf/$file/sciman04.pdf), at 270 ("Does the Survey Report Include Complete and Detailed Information on All Relevant Characteristics?").

¹⁹ Brock Beauty, Inc. (Hairfinity Hair Vitamin), *supra* note 12.

²⁰ Comcast Communications, Inc. (Xfinity Internet, Television & Telephone Services), Report #5974, *NAD/CARU Case Reports* (July 2016).

recommend consulting with your physician before taking any dietary supplement, including Hair La Vie. Hair La Vie should not be used by pregnant or nursing women.”²¹ NAD determined that the challenged advertising reasonably conveys the message that the product is safe because it contains natural and safe ingredients and contains no fillers, harsh chemicals or artificial flavoring/coloring.

The challenger asserted that the challenged safety claim should be supported by evidence of the advertiser’s adherence to good manufacturing practices. However, adherence to good manufacturing practices, standing alone, does not provide support for a safety claim. The FDA’s Final Rule on Current Good Manufacturing Practice in Manufacturing, Packaging, Labeling, or Holding Operations for Dietary Supplements states that the “focus of CGMP is on process controls to ensure that the desired outcome is consistently achieved, and not on the inherent safety of the ingredients used [which is addressed by other statutory prohibitions].”²² It further notes that dietary supplement manufacturers are responsible for evaluating “the safety of the ingredients under, for example, section 402(f) of the Federal Food, Drug, and Cosmetic Act.”

In the cases where NAD determined that dietary supplement manufacturers supported claims that their products were safe, reliable clinical studies demonstrated that the product is safe. For example, in Prelief Dietary Supplements, NAD determined that the claim Prelief is “safe and effective” was supported because Prelief was well-tolerated by most people in the clinical studies on the product and calcium glycerophosphate (Prelief is the brand name for calcium glycerophosphate) is a common calcium ingredient that appears in foods, including infant formula.²³ Similarly, in Omega XL Dietary Supplements, NAD determined that the claim Omega-XL is “safe” was supported because there were several trials of Omega-XL in which no serious health conditions were reported among the Omega XL participants (or placebo or fish oil participants).²⁴

The advertiser failed to submit any testing demonstrating that its products, or the ingredients therein, are safe. Instead, it relied on the following: 1) that most of the ingredients in Hair La Vie are vitamins and minerals with established reference daily intakes which are both safe and recommended by the FDA as part of a balanced and healthy diet; 2) that the levels of vitamins B1 and B6 in its product are well below the levels which they have been found to have No Observed Adverse Effect Level (“NOAEL”); and 3) biotin at the levels of 5 mg and 7.5 mg has been found by the International Alliance of Dietary/Food Supplement Associations to be common and likely to be safe given that FDA has not announced any reports of adverse effects.

²¹ <https://hairlavie.com/faq>.

²² 72 FR 121, at 34763, 34765. Section 201(s) of the Food, Drug & Cosmetic Act (21 U.S.C. § 321(s)) exempts dietary ingredients used in dietary supplements from the food additive definition. Although a dietary ingredient used in a dietary supplement must not adulterate the supplement under section 402(f) of the FD&C Act (21 U.S.C. § 342(f)), it does not have to be GRAS for its intended use in the supplement. <http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/IngredientsAdditivesGRASPackaging/ucm381315.htm>

²³ DSE Healthcare, LLC (Prelief Dietary Supplements), Report #5991, *NAD/CARU Case Reports* (August 2016).

²⁴ Great Health Works, Inc. (Omega XL Dietary Supplements), Report # 5870, *NAD/CARU Case Reports* (July 2015).

Daily values, or DVs, are established by the FDA and are used on dietary supplement labels and suggest how much of a nutrient a serving of the food or supplement provides in the context of a total daily diet.²⁵ The DVs of a given vitamin or mineral do not, standing alone, speak to the safety of dietary supplements especially where, as here, the product also contains a proprietary blend of various ingredients in undisclosed doses.

With respect to the NOAEL of vitamins B1 and B6, NOAEL is a term which refers to the actual doses used in human clinical or experimental animal studies.²⁶ The document to which the advertiser cites is from a website called MediNiche which is provider of professionally recommended OTC healthcare products, specifically nutraceuticals.²⁷ The fact sheet on MediNiche does not provide the source of the referenced No Observed Adverse Effect figures. NAD further noted that the EFSA has found that “[d]ue to the lack of systematic oral dose-response intake studies as well as the extreme low toxicity no LOAEL (lowest dose at which there was no observed toxic or adverse effect) and NOAEL can be established.”²⁸ Lastly, the prevalence of biotin supplementation at or above the levels found in Hair La Vie does not speak to the safety of Hair La Vie which contains 11 additional ingredients as well as a proprietary blend of ingredients.

For all the foregoing reasons, NAD recommended that the claim, “Hair La Vie uses natural and safe ingredients. This product contains no fillers, harsh chemicals or artificial flavoring/coloring.” be discontinued.²⁹ NAD noted that nothing in the decision prevents the advertiser from promoting the absence of certain chemicals and/or artificial flavoring/coloring.

VI. Editorial content and claims on a third-party website.

La Muse has an affiliate marketing relationship with ConsumerSurvey.org.³⁰ ConsumerSurvey.org has two webpages which feature Hair La Vie. The first is entitled “Consumer Survey: Top Existing Hair Growth Vitamins of 2017.”³¹ The article explains the ingredients which enable hair growth, myths about hair growth and features “before” and “after” pictures of a woman who has noticeably longer, thicker and fuller hair after taking “hair supplements. ConsumerSurvey.org rates Hair La Vie #1 with 4.7 out of 5 stars. Their webpage includes a hyperlink to the Hair La Vie website where consumers can purchase the product. The second webpage is entitled “2017 Buyer's Guide: Hair La Vie Vitamin Review” with a reference

²⁵ https://ods.od.nih.gov/Health_Information/ods_frequently_asked_questions.aspx#Information.

²⁶ <https://tox.tutor.nlm.nih.gov/02-006.html>.

²⁷ <http://www.mediniche.com/ourcompany.html>.

²⁸ Tolerable Upper Intake Levels for Vitamins and Minerals, Scientific Committee on Food Scientific Panel on Dietetic Products, Nutrition and Allergies, European Food Safety Authority (February 2006), http://www.efsa.europa.eu/sites/default/files/efsa_rep/blobserver_assets/ndatolerableuil.pdf, at 95.

²⁹ NAD also cautioned the advertiser to avoid making safety claims regarding ingredients in its product absent reliable testing on each of the ingredients.

³⁰ <https://consumerssurvey.org/>.

³¹ <https://consumerssurvey.org/lp/hairsupplements>.

to Consumersurvey.org's star ratings for Hair La Vie and consumer testimonials (e.g., "I can't believe my hair is growing again!"). Various purchasing offers for Hair La Vie appear at the bottom of the webpage and upon clicking on the "add to cart" hyperlink, consumers are directed to the Hair La Vie website where they can purchase the product.

NAD noted that consumers are likely to weigh ConsumersSurvey.org's recommendation of Hair La Vie differently if consumers have knowledge that ConsumerSurvey.org receives compensation for purchases of Hair La Vie from its website. As a result, the connection between Hair La Vie and ConsumersSurvey.org is a connection that is material and should be disclosed.³² La Muse advised NAD that it will request that the following disclosure be placed on each Hair La Vie page on www.consumerssurvey.org to explain the relationship between itself and the affiliated website which reads as follows: "Disclosure: We are compensated for our reviews. If you click through the links on this page and make a purchase on a partner site, then we receive a commission and/or financial benefit. This is how we keep the content on this site free and pay for the products that are reviewed on the site." NAD appreciated the advertiser's willingness to direct ConsumerSurvey.org to make this disclosure and cautioned that the disclosure must be clear and conspicuous in order to be effective.³³

ConsumerSurvey.org also makes product performance claims, including through testimonials, endorsements and visuals depicting Hair La Vie's efficacy. Paid endorsements may not convey any express or implied claims that would be misleading if made directly by the advertiser.³⁴ Here, the advertiser failed to support its claims that Hair La Vie grows thicker, stronger or fuller hair. Consequently, NAD recommended that the advertiser advise ConsumersSurvey.org that they cannot make unsupported claims, including through the use of testimonials, which the advertiser cannot independently substantiate.

³² See FTC Guides Concerning the Use of Endorsements and Testimonials §255.5 example 3. ("Consumers might not realize that a celebrity discussing a medical procedure in a television interview has been paid for doing so, and knowledge of such payments would likely affect the weight or credibility consumers give to the celebrity's endorsement. ... Assume that instead the tennis player touts the results of her surgery— mentioning the clinic byname – on a social networking site that allows her fans to read in real time what is happening in her life. Given the nature of the medium in which her endorsement is disseminated, consumers might not realize that she is a paid endorser. Because that information might affect the weight consumers give to her endorsement, her relationship with the clinic should be disclosed.") <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-publishes-final-guides-governing-endorsements-testimonials/091005revisedendorsementguides.pdf>.

³³ In its *.Com Disclosures: How to make Effective Disclosures in Digital Advertising*, the FTC advises that an effective disclosure should be placed "as close as possible to the triggering claim." *.Com Disclosures: How to make Effective Disclosures in Digital Advertising*, <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-staff-revises-online-advertising-disclosure-guidelines/130312dotcomdisclosures.pdf>, at ii.

³⁴ FTC's Guides Concerning the Use of Endorsements and Testimonials in Advertising, 16 C.F.R. § 255.1(a). See also *Goop, Inc. (Moon Juice Action Dust and Brain Dust Dietary Supplements)*, Report #5977, *NAD/CARU Case Reports* (July 2016) (noting that product efficacy claims for Moon Juice Action Dust and Brain Dust Dietary Supplements which are marketed on Goop, an online lifestyle publication, and endorsed by Gwyneth Paltrow, the founder of Goop, impose an obligation on Goop as a marketer to verify that the products provide the benefits it claims. The obligation to insure that advertising claims are truthful extends beyond the manufacturer of the product to affiliates who market the product).

ConsumersSurvey.org also claims that Hair La Vie is “our #1 rated” hair growth vitamin. ConsumersSurvey.org was not a party to this proceeding and, as a result, NAD did not have sufficient information to determine the reliability of the ratings and their use of consumer reviews and, hence, whether the challenged claim is supported.

Conclusion:

During the course of the instant proceeding, the advertiser advised NAD in writing that instead of submitting substantiating evidence it had elected to permanently discontinue the following challenged claims: (1) All natural hair repair formula; (2) Repair and regrow hair; (3) Once the follicle is repaired, hair begins to grow; (4) Unbreakable hair stage; (5) Hair La Vie products can reverse or cure baldness; (6) In our latest consumer survey, 82% reported faster existing hair growth* (*Based on a consumer survey measuring customers’ opinions and subjective experiences with Hair La Vie) (revised from the originally challenged “82% saw faster hair growth.”). In reliance on the advertiser’s representation that these claims have been permanently discontinued, NAD did not review these claims on their merits. The voluntarily discontinued claims will be treated, for compliance purposes, as though NAD recommended their discontinuance and the advertiser agreed to comply.

The advertiser also advised NAD that it would modify the following other claims with which the challenger originally took issue: 1) “Made in the USA; (2) “Healthier. Longer. Fuller”; (3) “Longer. Fuller. Faster”; and (4) “Created Hair La Vie because I never wanted another woman to have to go through the insecurity and heartbreak with hair loss, thinning and damage.” These voluntarily discontinued claims will likewise be treated, for compliance purposes, as though NAD recommended their discontinuance and the advertiser agreed to comply. The challenger did not take issue with the claims as modified which are as follows: (1) Made in the USA with domestic and foreign ingredients; (2) Great hair naturally; (3) Healthy hair naturally; and (4) Created Hair La Vie because I never wanted another woman to have to go through the insecurity and heartbreak with hair that feels brittle and looks damaged. Given that the challenger has not taken issue with these claims, NAD did not review them on the merits.

NAD further recommended that the advertiser modify the claim “The ingredients in Hair La Vie help promote existing hair growth” to state that the biotin in Hair La Vie helps promote existing hair growth.

NAD determined that the consumer use survey was not sufficiently reliable to support the challenged objective performance claims about Hair La Vie.

With respect to the claim “Hair La Vie uses natural and safe ingredients. This product contains no fillers, harsh chemicals or artificial flavoring/coloring,” NAD recommended that the advertiser discontinue the claim but noted that nothing in the decision prevents the advertiser from promoting the absence of certain chemicals and/or artificial flavoring/coloring.

Lastly, NAD recommended that the advertiser advise ConsumersSurvey.org that they cannot make unsupported claims, including through the use of testimonials, that the advertiser cannot

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itself substantiate and that the advertiser must clearly and conspicuously disclose the relationship between itself and ConsumersSurvey.org in order to be effective.

Advertiser's Statement:

Despite believing its evidence meets the legal standard of competent and reliable scientific evidence, La Muse Beauty ("La Muse") agrees to comply with NAD's recommendations.

La Muse thanks NAD for its thorough review of this matter. La Muse firmly believes in the efficacy of its Hair La Vie product and is pleased NAD found La Muse has support for the claim that the biotin in Hair La Vie helps promote existing hair growth. La Muse is also gratified that NAD recognized La Muse's cooperation. La Muse respectfully disagrees with NAD's remaining conclusions, but it respects the self-regulatory process and will take NAD's recommendations into account for future advertising.

La Muse is grateful to have been part of this process and is confident it has emerged as an even better company as a result. La Muse again thanks NAD for its time and consideration. **(#6055 AMU, closed 02/21/2017)**