

LABDOOR, Inc.

LabDoor's Dietary Supplement Rating and Ranking System

Challenger: Jarrow Formulas, Inc.
Product Type: Dietary Supplements
Issues: Performance Claims; Testimonials
Disposition: Referred to Government Agency

Basis of Inquiry: Internet claims made by Lab Door, LLC, (“the advertiser”) for its dietary supplement rating and ranking claims were challenged by Jarrow Formulas, Inc. (“the challenger”), a maker of dietary supplements. The following claims formed the basis for the challenge:

Express Claims:

“Research, find, and buy the best supplements based on real science.”

“Enables consumers to identify and purchase “the best supplements.”

“Laboratory results and label claims for each product are used to calculate a Quality score, which is comprised of individual scores for Label Accuracy, Product Purity, Nutritional Value, Ingredient Safety and Project Efficacy.”

“LabDoor also ranks supplements “by Value through a paired matching of quality and price.”

“Products are ranked and assigned an A through F grade based on their overall Quality score.”

“LabDoor purports to base its product purity rank on “a purity assessment of heavy metals and Proposition 65.”

LabDoor acknowledges that its nutritional value score is based on Dietary Reference Intake (“DRI”) comparison and, if a DRI is not applicable, “an evaluation of peer-reviewed research and meta-analyses is performed to ascertain relevant thresholds.”

“LabDoor ingredient safety ranking is “based on assessment of whether a product has too much of an active ingredient.”

Implied Claims:

Any and all implied representations as LabDoor’s ability to present accurate information to assist consumers in their purchasing decisions with respect to dietary supplements, including, but not limited to: Top 10 lists; A-F letter grading; statements such as “highest quality” or “best value” for consumers.

Any and all implied representations as to the ability to use laboratory testing or “reverse engineering” to determine and rank the safety and efficacy of dietary supplements.

Any and all implied representations as to the accuracy or capability of LabDoor’s “proprietary algorithm” in ranking/comparing dietary supplements.

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Use of LabDoor.com and LabDoor Magazine as “editorial content” to imply expertise in fields of nutrition and increased sales.

Challenger's Position:

The challenger argued that the advertiser markets third-party dietary supplements via its website and receives approximately ten percent of each sale transacted on its website or through its affiliates.

According to the challenger, the advertiser purports to differentiate itself from other clearinghouse websites by ranking and rating supplements. The challenger maintained that LabDoor's ranking and grading systems, and statements concerning the quality and value of the supplement products sold on its website, are advertising claims that must be substantiated by competent and reliable scientific evidence. The challenger further argued that LabDoor's claim that its research is “based on real science” amounts to an establishment claim for which it must have human clinical trial testing. The challenger contended that the advertiser does not possess the requisite substantiation for any of its health-related performance or establishment advertising claims.¹

The challenger also argued that the advertiser's LabDoor Magazine – published on its website where consumer can also purchase supplements – is advertising disguised as editorial content. Advertising in a format that appears to be editorial has the potential to mislead or confuse consumers because consumers may attach a different weight or significance to editorial content than to pure advertising content. The challenger further maintained that the articles contained therein were tantamount to health-related advertising claims – such as recommending vitamins to reduce the risk of skin cancer -- for which the advertiser had no competent and reliable scientific evidence, and were not peer-reviewed or written by authors who possessed the necessary scientific credentials to make such recommendations.

Although outside of NAD's jurisdiction, the challenger also alleged that the challenged advertising violated federal Dietary Supplement Healthcare Education Act, California's Sherman Act, and California's Proposition 65.

¹ The challenger noted that the advertiser describes on its website the methodology it employs to rank and grade supplements. The challenger contended that it is unlikely that LabDoor, in reality, actually ranks and grades products according to its publically purported methodology. As evidence of its skepticism, the challenger pointed to a recent substantive change in LabDoor's methodology that failed result in changes in the ranking or ratings of any of the supplements on the LabDoor website. In any event, the challenger argued that laboratory testing of active ingredients, possible contaminates and/or pharmacokinetic data failed to rise to the level of competent and reliable scientific evidence necessary to support the advertiser's claims.

Decision:

The advertiser advised NAD in writing that it will not participate in the self-regulatory process. The advertiser cited its belief that the challenger initiated this process for the purpose of asymmetrical pre-litigation discovery.

NAD noted that the Advertising Self-Regulatory Council is a voluntary forum that does not include a discovery procedure. At NAD, advertisers bear the burden of providing a basis for all the messages reasonably conveyed by their advertising claims. Advertisers select, at their own discretion, the arguments and documentary evidence that they believe provide support for their claims. Importantly, the ASRC Policies & Procedures permit advertisers to submit their evidence confidentially to NAD.² NAD considers confidential information as part of its decision-making process, but confidential information is never shared with the challenger, nor does any confidential information appear in the publically available decision or press release.³

Given the advertiser's election not to participate in the NAD process and its failure to file a substantive written response, NAD is referring this matter to the appropriate governmental authorities, including the Federal Trade Commission, pursuant to section 2.10 (A) of the ASRC Policies & Procedures. (**#6094 KAD, referred to government 06/28/2017**)

² ASRC Policies & Procedures sec. 2.5

³ The advertiser also cited its belief that the challenger did not open this challenge in good faith. NAD has the jurisdiction to determine the truthfulness and accuracy of national advertising claims. NAD makes no determinations about the parties' intentions. While there are some limited circumstances that would require NAD to administratively close a case, the advertiser's allegation of lack of good faith is not recognized as such a circumstance. ASRC Policies & Procedures sec. 2.2(B)(1)(b)-(e) and 2.2(E)