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The fine line between puffery and false advertising

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In the ever-competitive luxury goods industry, advertising and marketing play a crucial role in capturing the attention and loyalty of customers and potential customers.

Among the various techniques employed in advertising, puffery has emerged as an effective approach to enhancing the appeal and distinctiveness of a brand's products or services.

Puffery refers to exaggerated or extravagant claims made in promotional materials or advertisements that usually involve the use of subjective statements, vague language or hyperbole to create an impression of superiority or desirability for a product or service.

In most jurisdictions, puffery is considered legal, as it is understood that consumers are capable of recognizing exaggerated statements and not interpreting them as factual representations.

Yet, there is a fine line between puffery and false advertising and it is crucial for brands to be aware of the legal limits surrounding these claims.

From the United States Court of Appeals for the Second Circuit, *MacNaughton v. Young Living Essential Oils, LC* (May 2, 2023) is a recent illustrative case dealing with essential oils and blends that explores the use of puffery in advertising and how potentially it can lead to costly consequences.

In this article, I delve into the details of the case, and how luxury brands need to navigate the boundaries of puffery to ensure compliance with consumer protection laws.

MacNaughton v. Young Living Essential Oils

Young Living specializes in essential oils and blends, and labels its products as "100% Pure, Therapeutic-Grade," asserting that the oils offered physical, mental or medicinal advantages.

Despite the National Advertising Division (NAD) and the National Advertising Review Board (NARB) both industry oversight bodies having recommended that Young Living cease making these claims, the company continued to market its products as "therapeutic-grade."

Subsequently, plaintiff Lori MacNaughton, on behalf of herself and a putative class of consumers, feeling deceived by the alleged false advertising, initiated a lawsuit, asserting claims under common law and New York General Business Law 349 and 350. These statutes aim to protect consumers against deceptive acts, practices, and false advertising.

According to the complaint, Ms. MacNaughton and individuals similarly situated, moved by deceptive labeling, marketing and advertising, paid a premium for Young Living's essential oils, which provided no scientifically proven health-related benefits and failed to provide the promised "therapeutic" benefits.

In the district court Young Living moved to dismiss the action, and the court dismissed Ms. MacNaughton's suit, finding that Young Living's claims were "run-of-the-mill puffery that companies use when trying to persuade potential customers to part with their dollars."

Ms. MacNaughton's appeal followed with the Second Circuit siding with consumers.

Puffery: Two categories and legal implications

The Second Circuit initially noted that the district court did not have the benefit of its recent decision in *Int'l Code Council, Inc. v. UpCodes Inc.*, 43 F.4th 46 (2d Cir. 2022), which explained a critical distinction between " *subjective statements* that are non-actionable puffery as a matter of law, and *objective statements* that are provable and not so facially implausible that no reasonable buyer could justifiably rely on them."

Int'l Code Council requires the statements that are identified as both provable and plausible are subject to a "fact-intensive inquiry" on how a reasonable buyer would be affected and should not be resolved on a motion to dismiss.

Further elaborating on the concept of puffery, the appellate court differentiated between these two types.

The first category encompasses subjective statements.

Subjective puffery involves opinions or claims that cannot be proven true or false and are expressed in broad, vague and commendatory language. These statements are considered to be the seller's opinion only and are not actionable as a matter of law.

The second category is objective statements.

Objective puffery consists of exaggerated, boastful statements that, while technically provable, are so exaggerated that no reasonable buyer would justifiably rely on them.

In an example provided in *Int'l Code Council* "[i]f a bubblegum brand advertised that its gum permits chewers to blow a bubble as big as the moon,' the statement would be literally false, but it is facially implausible that any reasonable buyer could justifiably rely on that claim. . . . That statement would therefore be ripe for dismissal on puffery grounds.' . . . Yet, if the company falsely advertised that you could blow a bubble bigger than your own head,' it is plausible that a reasonable buyer could be misled."

Court's opinion on appeal

The court concluded that Young Living's statements about its "therapeutic-grade" oils having health and medicinal benefits are both provable and not "so patently hyperbolic that any allegations that it misled consumers are facially implausible." It found that the term, "therapeutic-grade," is not a subjective or vague term and, additionally, Young Living directed its salespeople to specifically emphasize that every oil "has the highest naturally-occurring blend of constituents to maximize the desired effect" and that "Young Living truly has the experience to produce essential oils that work."

The court opined that the statements and claims are "plausible[,] [such] that a reasonable consumer would construe" them to mean what they say, and as such, they fall squarely within the second type of puffery.

As a result, and consistent with *Int'l Code Council*, Young Living's statements required a fact-intensive inquiry to assess how a reasonable buyer would react to the relevant statements to confirm whether the statements are actually mere puffery, for which the seller cannot be held liable, and it is not appropriate to decide that on a motion to dismiss. The court ruled that the claims should therefore proceed to discovery and, as a result, vacated the dismissal.

Takeaways

MacNaughton teaches how to evaluate and navigate the boundaries of puffery and ensure compliance with

consumer protection laws.

While brands have some latitude in marketing their products, it is essential to strike a balance between enticing consumers and yet continuing to make truthful claims. The case highlights the need for brands to avoid misleading or unsupported statements that may harm consumer trust and lead to legal repercussions.

Distinguishing between objective and subjective puffery is critical and brands should carefully evaluate their marketing claims to ensure they avoid overstatements that can be perceived as misleading.

How a reasonable buyer would interpret and rely on a specific marketing claim needs to be considered.

Statements that imply specific benefits or qualities should be supported by evidence or carefully phrased to avoid misleading consumers.

The *MacNaughton* court case emphasized that determining the validity of puffery claims requires a fact-intensive inquiry into how reasonable buyers would react.

Therefore, brands should be prepared with substantiation of their advertising claims if legal challenges arise and understand that a puffery defense may not necessarily be resolved at the early stages of litigation.

MACNAUGHTON SERVES AS a helpful reference point for brands, highlighting the boundaries of advertising puffery.

By understanding the two different categories of puffery and their legal implications, brands can refine their marketing strategies to maintain consumer trust, adhere to consumer protection laws and avoid potential lawsuits.

Striking the correct balance between aggressive advertising and responsible marketing practices is crucial in preserving brand reputation and fostering long-term success in the luxury goods sector.

The views expressed in this article are purely the author's.

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