

12 Apr 2022 | News

Clif Energy Bar Claims Need Substantiation When Together, Or Enter 'Realm Of Puffery' Separated

NAD Conducts Third Review In Two Years Of Clif And Kind Ad Claim Disputes

by [Malcolm Spicer](#)

In third review in two years of ad claim disputes between Clif and Kind, BBB National Programs' NAD determined Clif's use of two claims in the same sentence in video ads makes an express claim and a superiority claim requiring substantiation and isn't puffery not needing substantiation.

Clif Bar & Co. must separate the claims "The Ultimate Energy Bar" and "optimal blend of protein, fat and carbs" in the voiceover for a digital ad so the phrases don't modify each other and move the claims out of the "realm of puffery," an industry self-regulation group recommends.

In its third review in two years of ad claim disputes between Clif and nutritional, energy and meal replacement bar competitor Kind LLC, BBB National Programs Inc.'s National Advertising Division determined that Clif's use of the two claims one after the other in the same sentence makes an express claim and a superiority claim requiring substantiation and isn't puffery not needing substantiation.

Clif's evidence presented for NAD attorneys' review didn't substantiate either an express or implied claim in video ads broadcast on social media platforms, according to the NAD report published on 12 April.

Clif asserted consumers are accustomed to seeing "ultimate" in advertising, understanding it as

puffery, and consumers viewing the challenged ad would understand “The Ultimate Energy Bar” used in its 30-second ad “Let’s Move the World” as “non-quantifiable puffery,” NAD attorneys wrote.

The Emeryville, CA-based firm also argued its ad “is merely aspirational in nature” although “no comparative references” in advertising are known that support “ultimate ... firmly in the realm of puffery.”

Kind contended that the ad “calls out Clif Energy Bars as the ultimate energy bar due to its optimal blend of nutrients which conveys to consumers a measurable claim that Clif Energy Bars are better than other energy bars for the activities depicted in the commercial,” the report states.

Clif Has Expert, Kind Has USPTO Trademark Refusal

Clif provided an expert declaration from a registered dietician and nutrition consultant that significant scientific evidence shows athletic performance can be maintained with high carbohydrate availability.

The expert also cited multiple scientific articles indicating most athletes benefit from 30 g to 60 g of supplemental carbohydrate per hour of activity, and noted that Clif Energy bars contain multiple forms of carbohydrates in amounts from 38 g to 46 g per serving.

Referencing an article which found including protein in conjunction with carbohydrates during activity improved next day performance, the expert stated Clif Energy bars contain moderate amounts of protein to contribute to performance and avoid inhibiting the body’s absorption of carbohydrates.

The declaration also referenced the importance of fat as a macronutrient which, together with carbohydrates, fuels aerobic metabolism during exercise. When consumed in amounts present in Clif energy bars, fat can contribute energy without delaying gastric emptying or negatively impacting the absorption of carbohydrates, the expert stated.

New York-based firm Kind didn’t present an expert’s testimony or declaration. Its evidence was an August 2020 US Patent and Trademark Office letter refusing Clif’s trademark application for “The Ultimate Energy Bar”; Clif’s response in February 2021 to the USPTO’s



CLIF ENERGY BARS CLAIMS CHALLENGED IN A

refusal; and the agency's final refusal of Clif's trademark application later that month.

NAD REVIEW WEREN'T PUFFERY AND WEREN'T SUBSTANTIATED. *Source: Source: Alamy*

Kind also offered documents printed of product offerings and recommendations from Clif's website.

'Tangible, Factual Assertions' Aren't Puffery

NAD attorneys acknowledged Clif's claims and similar advertising could be considered puffery. But "laudatory claims combined with specific, tangible factual assertions can be understood by consumers to be an objective, measurable claim."

"Ultimate Energy Bar" alone may convey hyperbole or a non-provable opinion, however, in Clif's ad the claim here "is immediately followed by measurable product attributes (i.e. an optimal blend of protein, fat and carbs) telling the consumer why the product is the 'ultimate' and rendering it an objectively provable claim requiring substantiation," according to the NAD report.

The same determination was made for "an optimal blend": standing alone, it may convey a laudatory opinion constituting puffery, but the Clif ad links "optimal blend" to specific measurable product attributes of protein, fat and carbs and delivers a message of an optimized blend of nutrients conveying an objective superiority message that requires substantiation.

Clif didn't agree with the attorneys' recommendations, but noted the NAD review didn't conclude that either "ultimate energy bar" or "an optimal blend of protein, fat and carbs" standing on its own conveys an objective claim requiring substantiation.

While not agreeing with NAD attorneys' determination "that juxtaposing these phrases to one another takes each 'out of the realm of puffery,' Clif agrees to cease juxtaposing its "ultimate energy bar" tagline with its reference to 'optimal' nutrients," the firm said in its statement included in the NAD report.

The ad featuring the challenged claims used in the same way in the same voiceover statement [remained accessible](#) on the Youtube platform through 12 April.

In a review published in September 2020, the NAD concluded a TV commercial Kind had been airing with the statement "75% less sugar than the leading Clif bar" made an unfair "line claim," which communicates that promised product benefits or other qualities and characteristics apply for all products in a brand's line. (Also see "[Kind's Specific Ingredient Claims Remain Airborne After General Comparison To Clif Bar Line Grounded](#)" - HBW Insight, 24 Sep, 2020.)

NAD attorneys agreed with Clif's challenge that a lack of clarity in the ad about the bars being

compared resulted “in an overly broad and misleading line claim that imputes the applicability” of the less sugar claim “to the entire KIND and Clif bar lines. Kind, in its statement included in the NAD report, said it no longer was airing the challenged TV commercial.

In a report published in July that year following a Single Well Defined Issue Fast-Track (SWIFT) review, NAD attorneys determined Clif, in ads that would display in Google search results for “Kind Bars” or “energy bars,” made unsupported express claims comparing the performance of Clif and Kind bars. (Also see "[Clif Bar Claims In Google Ads Clipped In Accelerated Review Of Kind Challenge](#)" - HBW Insight, 8 Jul, 2020.)

The ad featured two claims that when viewed together read, “A Better Performing Bar|Clif Bar For Sustained Energy” or “a Better Performing Bar – Clif Bar For Sustained Energy – Energy on the Go.”